

IN THE COURT OF APPEALS OF IOWA

No. 1-954 / 11-1653
Filed January 19, 2012

**IN THE INTEREST OF R.L., A.R.-L., and A.R.,
Minor Children,**

K.L., Mother,
Appellant,

A.F.L., Father,
Appellant.

Appeal from the Iowa District Court for Clay County, Charles K. Borth,
District Associate Judge.

A mother and father appeal the termination of their parental rights to their
three children. **AFFIRMED.**

Michael H. Johnson of Johnson Law Firm, Spirit Lake, for appellant
mother.

Austin P. Fiala, Spencer, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael J. Houchins, County Attorney, and Kristi Busse,
Assistant County Attorney, for appellee State.

James C. Hastings, Okoboji, attorney and guardian ad litem for minor
children.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

VAITHESWARAN, P.J.

A mother and father appeal the termination of their parental rights to their three children, born in 2005, 2006, and 2009. The mother contends: (1) the record lacks clear and convincing evidence to establish the grounds for termination cited by the district court; (2) termination is not in the best interests of the children; and (3) termination would be detrimental to the children due to the closeness of the parent-child relationship. The father raises the first and third issues.

I. The district court terminated the parents' rights pursuant to Iowa Code section 232.116(1)(f) and (h) (2011) (requiring proof of several elements including proof that children could not be returned to parents' custody). On our *de novo* review, we find clear and convincing evidence to establish these grounds for termination. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (setting forth standard of review).

The mother first became involved with the Iowa Department of Human Services in 2005, based on her marijuana use during the pregnancy of her first child. Over the next several years, she and the father of the children, with whom she had had a fifteen-year relationship, were the subject of numerous founded child abuse reports. The district court thoroughly summarized the contents of those reports in its termination ruling; they paint a recurrent picture of domestic violence and substance abuse.

The mother relapsed several times on marijuana, alcohol, and prescription medication. Approximately two months before the termination hearing, she took more than the prescribed amount of an anxiety medication. At the same time,

she traveled to an emergency room in another town with complaints of abdominal pain and was injected with a narcotic pain medicine. She stated she did not go to the emergency room in her own town because she “wanted a second doctor’s opinion, a different doctor’s opinion, on what we could do.”

The district court did not find the mother’s explanation credible, noting that “a completely adequate emergency room, with physicians familiar with her care, was located within minutes of her home.” The court cited this as another example of “drug seeking” behavior.

We agree with the court’s assessment. While the mother testified that she advised the emergency room physician of her addictive personality, medical records do not mention her recent overuse of the anxiety medication. This discrepancy between what the mother said she disclosed and what the records state she disclosed supports the court’s adverse credibility finding.

This episode compromised the mother’s chances of reunification with the children. While the department had contemplated transitioning her from supervised to semi-supervised or unsupervised visits, the agency decided not to do so in light of what occurred on the day following the emergency room visit. On that day, the mother went to pick up the children for a visit that had been scheduled to give the mother an opportunity to care for her children on a semi-supervised basis. Because of her excessive sedation, the mother almost drove into a ditch with the children in the car. She appeared lethargic and, according to a service provider supervising the visit, “was unable to care for her children at that time resulting in me having to drive the children back to their foster care.”

The service provider confronted the mother about her condition. The mother told her she took the extra anxiety medication “to escape.” The mother’s counselor likewise expressed concern about the mother’s overuse of the anxiety medication. He told the department’s caseworker that the mother did not need the medication and was using it as a way of coping. He stated that she had learned the language of recovery but was not following through. A month before the termination hearing, he reported that

an area of concern for [the mother] is her continual medical problems. Whether or not these are warranted lie beyond the scope of my expertise, but I must point out that the timing appears suspicious. I sincerely hope [the mother’s] health ceases to be a concern for her and she can with a clear mind try the recovery way of life. At this point, Dimension 5, or relapse/continued use remains a concern. She can manage but needs prompting.

The mother’s treating physician opined that her behaviors after the emergency room visit may have resulted from an adverse reaction to the combination of the anxiety medication and the narcotic pain injection. Whether or not the mother had any reason to anticipate the reaction of the combination of medications, her own statement to the service provider, her decision to leave town for treatment of her abdominal pain, and the discrepancy between her testimony and the medical records indicate her goal was to obtain more or different drugs than had previously been prescribed at her local hospital. The timing of her actions, on the eve of an important step toward reunification with her children, compels the conclusion that she is not prepared to have her children returned to her care.

At the termination hearing, all of the professionals who testified recommended termination of the mother’s parental rights. The service provider

stated, "I just believe that there is a lot of inconsistency within the home, lack of structure." A Court Appointed Special Advocate similarly testified,

My main concern for [the mother] is through a long period of time of the family team meeting process she's been given a lot of opportunities, many, many opportunities, to find through substance abuse recovery and to deal [with] her domestic violence issues, which I think have impacted her and the children. And I have seen brief periods where she's successful, but then ultimately, like after two or three months, something else will happen, whether it be another legal charge or another child abuse investigation or relapse, and then she's not successful for a period of time. So my concern is her ability to consistently be able to provide a safe, permanent, stable home for the boys because of their young age.

An in-home family consultant who worked with the parents and supervised visits testified, "[T]he biggest concern at this point is continuing substance abuse issues with [the mother] if the kids were returned to her care today." While he believed that children "in any case" could suffer emotional trauma as a result of termination of their parents' rights, he did not believe these children could be safely returned to the care of their mother. The department caseworker expressed the same opinion.

The children's father faced similar problems. He testified he used alcohol and marijuana a week before the termination hearing. He stopped attending an outpatient drug treatment program approximately five months before the termination hearing and admitted he had not looked into alternate programs. While his weekly two-hour supervised visits with the children went well, his ongoing substance abuse prevented him from moving to less supervised interactions with them. He failed to complete a batterer's education program during the years of juvenile court involvement, although domestic violence had been identified as a separate, serious obstacle to family reunification. The

professionals who testified at the termination hearing expressed similar opinions about the prospect of reunification with the father as they did with respect to the mother.

Based on this record, we agree with the district court that the children could not be returned to the parents' custody.

II. Iowa Code section 232.116(2) requires us to “give primary consideration to the child’s safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.” *Accord P.L.*, 778 N.W.2d at 40. Citing the in-home family consultant’s testimony, the mother contends the best placement of the children was with her. As noted, that consultant, as well as the other professionals, recommended termination of the mother’s parental rights and stated termination would be in the children’s best interests. As the mother placed the children’s safety in jeopardy on the eve of transitioning to less restrictive visitation, we agree with the district court that termination of the mother’s parental rights was in the children’s best interests.

III. Iowa Code section 232.116(3)(c) provides an exception to termination if “[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.” *Accord P.L.*, 778 N.W.2d at 41. There is no question that the children shared a bond with the parents. This bond, however, could not serve as a substitute for adequate parenting. The children required and were receiving the structure that their parents had, for years, been unable or unwilling to provide. For that reason, we agree with the district court that, “[w]hile the

children may initially have a difficult transition period, termination of parental rights is clearly in their best interests.”

We affirm the termination of the mother’s and father’s parental rights to their three children.

AFFIRMED.