

IN THE COURT OF APPEALS OF IOWA

No. 2-752 / 12-1096
Filed September 19, 2012

**IN THE INTEREST OF N.S.W. and N.M.W.,
Minor Children,**

S.W., Mother,
Appellant,

G.G., Father of N.M.W.,
Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

The mother of N.S.W. and N.M.W. and the father of N.M.W. appeal the
termination of their parental rights. **AFFIRMED.**

Edward Crowell, Cedar Rapids, for appellant-mother.

Kristin L. Denniger, Cedar Rapids, for appellant-father of N.M.W.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Jerry Vander Sanden, County Attorney, and Kelly J. Kaufman,
Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

The mother of N.S.W. and N.M.W. and the father of N.M.W. appeal the termination of their parental rights.¹ N.S.W. was born in December 2006 and N.M.W. was born in July 2009. The mother contends the juvenile court erred in finding the children could not be safely returned to her care,² the State failed to make reasonable efforts to support reunification, and termination was not in the best interest of the children due to the closeness of her bond with them. The father of N.M.W. argues the juvenile court erred in finding that N.M.W. could not safely be returned to his custody.³ He further challenges the finding that termination was in the best interest of N.M.W. and asserts an exception should have applied to prevent termination due to the closeness of the parent-child relationship. We conclude reasonable services have been provided to the mother; notwithstanding, her mental health issues and drug usage prevent her from safely parenting the children. The father of N.M.W. has only recently been released from prison, has not been a part of the child's life, and was not capable of parenting the child at the time of the termination hearing. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

A child in need of assistance (CINA) petition regarding N.S.W. was filed on July 30, 2008. At that time neither parent was providing care for N.S.W. The

¹ The father of N.S.W. did not participate in the appeal.

² She asserts a safety plan would adequately address risks posed by her mental health status.

³ He challenges the court's determination both in light of his efforts after release on probation in the two months before the termination hearing and with regard to the court's reliance on his substance abuse issues to demonstrate that he is unfit.

mother left N.S.W. in the care of one of her friends for approximately two months and did not maintain contact during that time. Following stipulation by all parties, the court adjudicated N.S.W. a CINA pursuant to Iowa Code sections 232.2(6)(c)(2)⁴ and 232.2(6)(n)⁵ (2007) on September 10, 2008. In October and November 2008, the mother tested positive for cocaine.⁶

N.S.W.'s mother has significant mental health issues that interfere with her ability to provide consistent, safe care.⁷ The mother's diagnoses include: bipolar disorder, obsessive/compulsive disorder, generalized anxiety disorder with a history of major depressive disorder, and borderline personality disorder. She does not consistently take her medication or participate in recommended therapy. The juvenile court observed the mother's

difficulty in maintaining stable housing and employment, her use of illegal substances and her difficulty in being able to provide day in, day out care to her children is very likely related to her mental health conditions. Her inconsistency in receiving treatment for her mental health makes it very unlikely that she will be successful in remedying these problem areas in the reasonably near future.

At the time of a dispositional review hearing held in April 2009, the mother reported that she was living with G.G., who has a history of substance abuse, criminal convictions, and was determined to be the perpetrator of sexual abuse of a child at age fourteen. The Department of Human Services (DHS) told the

⁴ Section 232.2(6)(c)(2) provides that a child is a CINA if the unmarried child has suffered or is imminently likely to suffer harmful effects as a result of the failure of the child's parent to exercise a reasonable degree of care in supervising the child.

⁵ Section 232.2(6)(n) provides that a child is a CINA if the unmarried child's parent's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.

⁶ After November 2008, she did not participate consistently with drug testing.

⁷ N.S.W.'s father also has significant mental health issues. He was under a mental health commitment order throughout the proceedings.

mother that G.G. was to have no contact with N.S.W. The mother was not participating in treatment as recommended and refused referrals to shelter facilities. By June 2009, the mother was pregnant with G.G.'s child and G.G. was in jail with pending charges for burglary and possession of precursors for the manufacturing of methamphetamine.

N.M.W. was born on July 22, 2009. By August 2009, the mother completed substance abuse treatment, began cooperating consistently with drug testing, participated in individual counseling, and obtained her high school diploma. The State filed a CINA petition on behalf of N.M.W. on October 13, 2009, but the petition was subsequently dismissed due to the mother's increased stability and the anticipation of G.G.'s prolonged absence after he received a fifteen-year prison sentence.

On November 22, 2009, DHS placed N.S.W. with her mother on a trial home placement.⁸ The juvenile court returned legal custody of N.S.W. to the mother on January 28, 2010, with plans to dismiss the proceedings at the next review if the mother continued to demonstrate stability. However, soon after, she became inconsistent with drug testing and participation in services. The mother abandoned N.S.W. and N.M.W., leaving them in the care of others, in May 2010.

The children were again removed from the mother's custody on May 24, 2010. The mother

acknowledged that her mental health had deteriorated and that she was not taking her prescription medication. [She] testified that she had been awake for approximately two weeks, in a "manic" state, and that she could not care for the children so she left them with

⁸ The mother was living in an apartment paid for by her father.

friends. [She] admitted to ongoing use of marijuana and alcohol. When N.S.W. and N.M.W. were placed in the custody of the Department, they received drug tests and both tested positive for ingestion of cocaine. [The mother] denied using cocaine and surmised that the children must have been exposed to the cocaine while in the care of her friends.

At a June 3, 2010 review hearing, the mother was hospitalized due to her mental health and substance abuse issues. G.G. was in prison. The mother stipulated that N.M.W. should be adjudicated a CINA. G.G. stipulated to the CINA adjudication on September 8, 2010.

The mother was discharged from the hospital and entered a dual diagnosis residential treatment program, which was expected to last at least three months. She left after six weeks and admitted to using marijuana while in the program.

On September 8, 2010, the court placed the children with N.M.W.'s paternal aunt and uncle. The girls have lived with that family since June 2010. There were no trial home placements or extended visitation with any parent after the May 24, 2010 removal.

At the termination hearing held February 21 and 22, 2012, the mother continued to demonstrate difficulty in maintaining stability in her mental health, obtaining housing, and abstaining from illegal substances. She testified she was not taking her prescription medication. While she told DHS workers she was living with her brother, she was actually living with G.G. and his mother. She admitted to a substance abuse relapse in fall and early winter 2010, but reported that she was abstaining at the time of the hearing. She was not receiving any

treatment or involved with a substance abuse support group. She remained unemployed.

G.G. was released from prison on parole on December 5, 2011. He was incarcerated just before N.M.W. was born, and had only a couple of visits with her at the Linn County jail. Immediately after his release, he asked for visitation. He consistently attended the supervised visits. He completed substance abuse and mental health evaluations.

By February 2012 G.G. was participating in aftercare services but was not taking prescribed psychiatric medication due to lack of financial resources. He submitted to drug tests that indicated no drug use. However, his parole officer indicated that his “follow through” with assignments and referrals in the community needed to improve. G.G. denied that he was responsible for sexual abuse of a child but was willing to undergo any required counseling. The court observed he “seems to have only a vague memory of that incident and the Department’s investigation into that allegation.”

At the time of the termination hearing, the children had been in the custody of DHS for almost two years. Extensive services⁹ were provided to the family from 2008 forward, and the juvenile court noted “[t]here were no requests for additional services made by either parent that were not addressed by the Department of Human Services or the court.” Although the parents had been

⁹ Services provided included drug testing, substance abuse evaluations, substance abuse treatment, parenting instruction, supervised visitation, drop-in supervision, FSRP in-home services, services through the Department of Corrections, services through Workforce Development, funding for mental health services from Linn County MH/DD services, mental health treatment services through the Abbe Center, and residential mental health treatment through different agencies.

given an extension of time in which to reunify with the children, they were not able to demonstrate that they could successfully resume care of the children at the time of the termination hearing or in the near future.

The court found that the children's "need for permanency, security, safety and their physical, emotional and intellectual health dictate that it is in their best interests to have parental rights terminated . . . rather than wait any longer for a parent to be ready to resume full time responsibility for their care."¹⁰

Finally, the court found none of the exceptions to termination in Iowa Code section 232.116(3) applied to prevent termination. While the court acknowledged a bond between the girls and their mother, it observed that she "continues to struggle with maintaining her mental health. While she has had periods of improvement, she has not been able to maintain the improvement. [N.S.W.] has been removed from her mother's custody twice and [N.M.W.] once as a result of [the mother]'s inability to maintain progress." With respect to the father, the court noted he

has only recently been released from prison. He has a significant history of substance abuse, criminal activity and a founded report of child sexual abuse. His relationship with [N.M.W.] has been disrupted by his incarceration for most of her life. While [the father] is currently on parole, the letter provided from his parole officer creates concern as to whether [he] will be successful in maintaining his parole status.

The girls had developed a parent-child bond with the relatives with whom they had been placed.

¹⁰ The court terminated the mother's rights pursuant to Iowa Code sections 232.116(1)(f), (l) (2011) as to N.S.W. and (h), (l) as to N.M.W. The court terminated G.G.'s rights pursuant to sections 232.116(1)(h) and (l).

II. Standard of Review.

We conduct a de novo review of termination of parental rights proceedings. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Discussion.

Iowa Code chapter 232 governing termination of parental rights follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

A. Grounds for Termination.

The mother's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(f),¹¹ (l)¹² as to N.S.W. and 232.116(1)(h),¹³ (l) as to N.M.W. We need only find termination proper under one ground to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). We find clear and convincing evidence that grounds for termination exist under section 232.116(1)(f) as to N.S.W. and 232.116(1)(h) as to N.M.W.

N.S.W. was five years old and could not be returned to her mother's care at the time of the termination hearing. Her mother stipulated to her adjudication as a CINA on September 10, 2008. Her most recent removal from the mother's care occurred May 24, 2010.

N.M.W. was two years old and could not be returned to her mother's care at the time of the termination hearing. She was removed from her mother's care on May 24, 2010, and her mother stipulated to her adjudication as a CINA on June 3, 2010.

¹¹ Section 232.116(1)(f) provides termination may be ordered when there is clear and convincing evidence a child four years of age or older who has been adjudicated a CINA and removed from the parent's care for at least twelve of the last eighteen months cannot be returned to the parent's custody at the time of the termination hearing.

¹² Section 232.116(1)(l) provides that grounds for termination exist if the child has been adjudicated a CINA, the parent has a severe substance-related disorder and presents a danger to self or others as evidenced by prior acts, and there is clear and convincing evidence that the parent's prognosis indicates the child will not be able to be returned to the custody of the parent within a reasonable time considering the child's age and need for permanency.

¹³ Section 232.116(1)(h) is substantively identical to 232.116(1)(f) with the exception of the age of the child and duration of removal requirements. The child must be three years of age or younger and must only have been removed for six of the last twelve months or six consecutive months.

The mother argues a safety plan to address her mental health issues would adequately protect the children. However, evidence of a parent's past performance may be indicative of the quality of future care. *In re A.B.*, 815 N.W.2d 764, 778 (Iowa 2012). The mother has failed to demonstrate any prolonged period of stability during the course of the proceedings. She failed to consistently comply with recommended treatment and drug testing, and failed to consistently take prescription medication to control the mental illness, which she asserts is the cause of her substance abuse. Her choices during the course of the proceedings do not demonstrate that a safety plan would adequately protect the children if they were returned to her care.

G.G.'s parental rights were terminated pursuant to Iowa Code sections 232.116(1)(h) and (l). Again, we need only find termination proper under one ground to affirm. *A.J.*, 553 N.W.2d at 911. We find clear and convincing evidence that grounds for termination exist under section 232.116(h).

N.M.W. was two years old and could not be returned to her father's care at the time of the termination hearing. She was removed from parental custody on May 24, 2010 while G.G. was still incarcerated. G.G. stipulated to her adjudication as a CINA on September 8, 2010.

Despite the mother's contentions to the contrary, we find the State provided reasonable services to reunite the family or eliminate the need for removal in this case.¹⁴ The mother contends she was unable to show her consistency in parenting because she was not granted increased visitation prior

¹⁴ See *supra* note 9.

to termination. However, in May 2011 she was granted six additional months of services including visitation, but due to positive drug screens and missed visits, her visitation was decreased.

B. Factors in Termination.

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interests, this court's primary considerations are "the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." *Id.*

The father contends termination was not in the best interest of N.M.W. because he participated in aftercare services and consistently attended supervised visitation after his release from prison. He had less than three months to demonstrate that he was a suitable placement for N.M.W. after his release. However, this short period was the result of his own criminal actions and he has only visited with N.M.W. approximately ten times in her life because of his incarceration.

Conviction of a crime resulting in incarceration does not invariably result in termination. *In re M.M.S.*, 502 N.W.2d 4, 7-8 (Iowa 1993). However, G.G. cannot use his incarceration as a justification for his lack of a relationship with N.M.W. *Id.* at 8. We cannot gamble with the children's future by asking them to continue to wait for a stable biological parent. *In re D.W.*, 385 N.W.2d 570, 578 (Iowa 1986); see also *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) ("Children simply

cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable.”). “It is simply not in the best interests of children to continue to keep them in temporary foster homes while the natural parents get their lives together.” *In re A.B.*, 815 N.W.2d 764, 778 (Iowa 2012) (quoting *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997)).

As noted by the juvenile court, “[t]he parents were provided an extended time to reunify with the children but despite the extension of time, the children cannot be safely placed in their care.” The extended time has been granted due to the mother’s mental health issues and the father’s incarceration. It would be detrimental to the children’s physical, mental, and emotional condition to grant any further extensions or maintain these parent-child relationships.

C. Exceptions or Factors Against Termination.

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. A court may opt not to terminate parental rights 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.” Iowa Code § 232.116(3)(c). Both the mother and N.M.W.’s father, G.G., argue that their parental bond weighs against termination.

The children do have a strong bond with their mother, but the father has been unable to develop any significant bond due to his incarceration. The children are still quite young and have lived outside of their parental home the majority of their lives. In the nearly two years between their removal and the termination hearing, they developed a bond with the paternal relatives with whom

they were placed. We agree with the juvenile court's conclusion that "[t]he children could not be returned to parental custody now or in the reasonably near future without continuing to be at significant risk of harm." Termination will allow the children to achieve permanent placement in the safe and stable home of the paternal relatives where they have thrived. We find no exception set forth in section 232.116(3) applies to prevent termination.

Upon our de novo review, we find no reason to disturb the juvenile court's ruling.

IV. Conclusion.

The State made reasonable efforts to support reunification. Clear and convincing evidence that grounds for termination of parental rights exists under sections 232.116(1)(f) and (h), termination of parental rights is in the children's best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion.

AFFIRMED.