

IN THE COURT OF APPEALS OF IOWA

No. 3-461 / 13-0441
Filed May 15, 2013

**IN THE INTEREST OF H.B.,
Minor Child,**

**N.D., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise M. Jacobs,
District Associate Judge.

A mother appeals the order terminating her parental rights. **AFFIRMED.**

Andrea M. Flanagan of Sporer & Flanagan, P.L.L.C., Des Moines, for
appellant mother.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Annette Taylor,
Assistant County Attorney, for appellee State.

John Audlehelm of Audlehelm Law Office, Des Moines, for father.

Michael Sorci of the Youth Law Center, Des Moines, attorney and
guardian ad litem for minor child.

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

DOYLE, P.J.

A mother appeals from the juvenile court's order terminating her parental rights to five-year-old H.B.¹ We affirm.

I. Background Facts and Proceedings

This family most recently came to the attention of the Iowa Department of Human Services in April 2011, following reports of the parents' continued substance abuse (methamphetamine),² eviction from their housing,³ and cessation of compliance with DHS services. H.B. was removed from her parents' care and placed in the care of her paternal grandmother. Caseworkers noted concerns about the child's bond with the parents and observed the child "did not appear to be upset about the removal from [the] parents." On May 16, 2011, the child was adjudicated to be in need of assistance.

The mother continued to receive an array of rehabilitative services. In September 2011, she began treatment at the House of Mercy. Despite her struggles in the program, DHS caseworkers had nearly completed a transition plan to reunite her with H.B. when she was unsuccessfully discharged in November 2011.

Within a few months, the mother began treatment at Clearview Recovery. H.B. was placed with the mother at the program in February 2012. The placement was short-lived; in July 2012, the mother was unsuccessfully

¹ The parental rights of the child's father were also terminated. He has not appealed.

² The mother's involvement with DHS began in 2003. Her parental rights to her older two children were terminated in 2004 and 2007, respectively. For the year prior to the most recent concerns, this family had been receiving services through DHS to address domestic violence and substance abuse concerns.

³ The family was reportedly living in a "drug house." Upon their eviction, the family went "missing" approximately one month. There was a warrant out for the father's arrest at that time. DHS later found the mother and child living in a homeless shelter.

discharged from the program, following her use of a cell phone against the program's rules. The mother had used the phone in attempt to contact and renew her relationship with the father; when he rejected her, she began cutting herself. Clearview providers did not believe they could assure her safety and meet her "more significant" mental health needs. In addition to her history of self-destructive behavior, the mother had been diagnosed with bi-polar disorder.⁴

The child was placed with her maternal great-grandmother. Because the maternal great-grandmother was not able to adopt H.B., H.B. was later placed with her maternal cousin. The maternal cousin is able and willing to adopt H.B.; the child has remained in her care since November 2012.

The mother did not return to treatment until September 2012, when she began out-patient treatment at Broadlawns Medical Center. She successfully completed the program.⁵ At discharge, it was recommended that she attend NA or AA, obtain a sponsor, and continue seeing her mental health therapist. The mother has not followed through with the recommendations, aside from seeing the therapist once in November 2012 and once in January 2013.

The State filed a petition to terminate the mother's parental rights on December 5, 2012. The termination hearing was held on January 31, 2013. The record before the juvenile court indicated the mother had made recent efforts to establish sobriety, but concerns remained regarding her ability to provide positive parenting and a safe environment for the child on any sort of long-term basis.

⁴ She treats her bipolar disorder with medication inconsistently. She disagrees with the diagnosis.

⁵ The program did not include drug screens.

Following the termination hearing, the court entered its order terminating the mother's parental rights pursuant to Iowa Code sections 232.116(1)(d), (f), (g), (i), and (l). The mother appeals.

II. Scope and Standard of Review

Our review of termination decisions is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the district court's findings of fact even though we are not bound by them. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We especially give weight to the district court's findings when assessing witness credibility. *Id.* We will uphold an order terminating parental rights where there is clear and convincing evidence the grounds for termination under section 232.116 have been proved. *Id.* Evidence is clear and convincing where there are no serious doubts as to the correctness of conclusions of law drawn from the evidence. *Id.*

III. Discussion

A. Grounds for Termination. The court must initially determine whether a ground for termination under section 232.116(1) is established. See *P.L.*, 778 N.W.2d at 39. Here, the mother contends statutory grounds under sections 232.116(1)(d), (f), (g), (i), and (l) have not been proved by clear and convincing evidence. "We only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm its ruling." *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000). We focus our analysis on section 232.116(1)(f), which provides that termination may be ordered when there is clear and convincing evidence a child age four or older, who has been adjudicated CINA and removed from the parents' care for the last twelve

consecutive months, cannot be returned to the parents' custody at the time of the termination hearing.

There is no dispute the first three elements of section 232.116(1)(f) have been met. At the time of termination, H.B. was over four years of age. See Iowa Code § 232.116(1)(f)(1). H.B. was adjudicated CINA in May 2011 and has been out of the mother's custody for more than twelve consecutive months. See *id.* § 232.116(1)(f)(2)-(3).

The mother disputes the fourth element. See *id.* § 232.116(1)(f)(4) ("There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents . . ."). She contends the child "could have safely been returned to [her care] on the date of the termination hearing." At the termination hearing, the mother testified she had "grown and matured" during her past eleven years of DHS involvement, and was learning to "make [her]self a better person today."

We commend the mother's most recent progress. However, we are troubled by the fact that the mother has had periods of sobriety and stability in the past, which have always culminated in "everything [being] completely disrupted again when [she] chooses not to follow the rules or recommendations" of DHS and her treatment providers. With regard to whether the child can be returned to the mother's care, we cannot ignore the mother's history of instability, significant unresolved mental health issues, and admitted drug addiction. As the DHS caseworker's report to the court indicated:

[The mother] has been able to comply with services successfully for a few months at a time and then everything is completely disrupted again when [she] chooses not to follow the rules or

recommendations. [The mother] has not adequately addressed her mental health needs or the domestic violence and relationship issues. [She] has a job and housing currently, but does not believe that she will be able to maintain those things long term. T[h]is worker believes that it is very likely that her grandmother [] is the one financially supporting [her] and she has always needed her assistance during this case. If [the mother] had not had the enormous amount of help that she has had from [her grandmother], this worker doubts that she would have gotten this far.

The guardian ad litem testified similarly at the termination hearing:

I, obviously, have been involved in prior cases involving this family, and I would indicate that in all of these cases there has been a significant period of time when the mother is appropriate and can form behaviors and environment to make an absolutely fair, safe environment for her children. And I have been always in favor of children being reunified at those times. Unfortunately, in this case and in prior cases there has always come a period of time of instability for the children, and that has occurred again in this case. And it is sad that the child has been removed from the mother. I believe that when children are removed from their parents it causes harm, and we've had a couple of occasions in this particular case when that has occurred. And at this point in time it appears we're not in a position for reunification, and that's a sad situation.

We agree with these findings. Under these facts and circumstances, we conclude there is clear and convincing evidence that grounds for termination exist under section 232.116(1)(f).

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.*

We agree with the juvenile court's finding that termination of the mother's parental rights would best provide for the children's long-term nurturing and growth.⁶ As the court observed:

The child's safety is the Court's primary consideration. There are ongoing concerns about the safety of [the child] if returned to the care and custody of either parent. The child needs a long-term commitment by an adult who can be appropriately nurturing, supportive of her growth and development, and who can appropriately meet her physical, mental, and emotional needs. The child is currently placed with a relative who reportedly meets such criteria. [H.B.] is placed with a maternal cousin who is committed to adopting the child and providing her with a permanent home.

See *id.* at 38–39 (discussing the importance of “providing a stable, loving home life for a child as soon as possible”). Since her removal, the child has been in three out-of-home placements. As the DHS caseworker reported, the child “deserves the chance to grow up in a safe, stable, drug and violence free home,” and she “needs and rightfully deserves permanency now.” The caseworker stated she did “not believe that [the mother] can provide this long term” and the child “cannot continue to go through the instability that [her mother] will put her through.” The caseworker believed “termination of parental right would be less detrimental than the harm that [the mother] can continue to cause to her over the rest of her childhood with [her] unresolved issues” and recommended parental rights be terminated and that H.B. be adopted by her maternal cousin.

“It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child.” *Id.* at 41; see also *In re C.K.*, 558 N.W.2d 170, 172 (Iowa

⁶ We review this factor despite the State's error preservation concerns.

1997) (finding that when considering what the future holds if the child is returned to the parent, we must look to a parent's past behavior because it is indicative of the quality of care the parent is capable of providing in the future). Children are not equipped with pause buttons. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987).

C. Factors Against Termination. If the statutory best interests 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. *P.L.*, 778 N.W.2d at 39. The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

The mother contends termination of her parental rights is not necessary because the child is placed with a relative. See Iowa Code § 232.116(3)(a). Although we acknowledge the child's placement with her maternal cousin, under the facts and circumstances of this case, we choose not to apply the exception to maintain the mother's relationship with the child where there exists only a possibility the mother will become a responsible parent sometime in the unknown future. We conclude no exception or factor in section 232.116(3) applies to make termination unnecessary.

IV. Conclusion

There is clear and convincing evidence that grounds for termination exist under section 232.116(1)(f); termination of parental rights is in the child'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. Accordingly, we affirm termination of the mother's parental rights.

AFFIRMED.