

**IN THE COURT OF APPEALS OF IOWA**

No. 3-660 / 13-0787

Filed July 24, 2013

**IN THE INTEREST OF L.K.W. and  
J.C.W. JR.,  
Minor Children,**

**F.M.B., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Pottawattamie County, Craig M. Dreismeier, District Associate Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Sara E. Benson or Rouwenhorst & Rouwenhorst, P.C., Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn Landon, Assistant County Attorney, for appellee

Roberta Megel, State Public Defender Office, for father.

Marti Nerenstone, Council Bluffs, attorney and guardian ad litem for minor child.

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

**DANILSON, J.**

A mother appeals the termination of her parental rights to her children, L.K.W. and J.C.W., Jr.<sup>1</sup> The children were removed from her custody after they were found to be suffering from neglect. Since that time, the mother has not shown that she is any more prepared to or able to properly care for the children after reasonable services have been provided to her. We affirm.

**I. Background Facts and Proceedings.**

L.K.W. was born in December 2010 and was two years old at the time of the termination hearing. J.C.W., Jr. was born in May 2009 and was three years old at the time of the hearing.

The children were removed from their parents' custody on June 1, 2012.<sup>2</sup> At the time of removal, L.K.W. was hospitalized. She was behind on her immunizations and was later diagnosed with scurvy, a rare disease with possibly serious consequences<sup>3</sup> which is caused by malnourishment. At the time of removal L.K.W. had regressed and was no longer able to roll over or stand. After L.K.W.'s admittance to the hospital, a social worker visited the mother's home which she shared with the children's grandmother and other family members. At the time of the visit, J.C.W. Jr. was found naked in the garage with another family member living in the house; his body was very dirty. He exhibited developmental and behavioral issues. The social worker found the home itself to be unsanitary.

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<sup>1</sup> The father's parental rights were also terminated. He does not appeal.

<sup>2</sup> The father was already absent in the children's lives by the time they were removed from parental custody.

<sup>3</sup> L.K.W.'s doctor cited the possibility of loss of teeth, jaundice, suppurating wounds, fever, neuropathy, and death.

It was “cluttered with dirty clothing, blankets, dishes, paper, toys, garbage and other debris. . . . The kitchen smelled terrible of garbage. The sink was overflowing with dirty dishes.” A marijuana pipe was also found in the home. When asked where the clean clothes for the children were kept, the social worker was told they were “working on it.” At the time there was little food in the home. The family was also in the process of being evicted. The mother did not have a job and did not have a place to move to. She disclosed that she had been suffering from depression and anxiety for a number of years.

On August 1, 2012, both children were adjudicated a child in need of assistance. The court noted that the children’s father no longer had contact with them. It also noted that the mother did not have employment, income, or any place to reside after being evicted. The court ordered the family to participate in family safety, risk, and permanency services and required the mother to complete both a substance abuse evaluation and a psychological evaluation.

At the dispositional hearing on August 27, 2012, the court observed:

[The mother] has been noted to struggle during visitation with regard to engaging the children in appropriate play. She has struggled with being able to keep track of both children despite the very limited and controlled environment that the visits occur in. She struggles with understanding the issues that exist with the children, often making comments that the children were both fine before they entered care.

The court also noted that the mother had been inconsistent in attending medical appointments for the children although her attendance was “very important” because she needed “to be able to understand and recognize the developmental, social, and medical needs” of the children.

In early December 2012, the mother gave birth to another child. Once discharged from the hospital, that child was also removed from the mother's care and was placed with L.K.W. and J.C.W., Jr. in foster care.<sup>4</sup>

A December 2012 report made by the court appointed special advocate (CASA) indicated that very little progress had been made since the dispositional hearing. It stated:

[The mother] has been consistent with her visitation however she continues to struggle during visitation with regard to engaging and interacting appropriately with the children. The professionals involved in these appointments have indicated that the children appear to not be bonded with her. [The mother] has displayed little verbal or physical interaction with the children and they are often left during visits to entertain and play by themselves.

The report also stated that the mother admitted she had begun the court-ordered outpatient treatment for chemical dependency but had quit the program without completing it after the birth of her third child. Dr. Thurman, who was paid by the Iowa Department of Human Services (DHS) to complete a psychological and parenting assessment on the mother, indicated the mother may not be able to make more significant changes to more adequately parent the children since she appeared to be defensive and persisted in her belief that DHS had unjustly accused her.

The report filed with the juvenile court on January 30, 2013 expressed concern regarding the mother's apparent inability to meet the children's needs. It stated:

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<sup>4</sup> The mother's parental rights to the third child have not been terminated as of April 22, 2013, the time of the termination hearing for L.K.W. and J.C.W., Jr.

It is clear in observing the interactions between [the mother] and the children that she has made little progress in regard to understanding the children's needs and how to appropriately interact with them outside the clinical setting despite modeling and suggestions being provided. This is particularly concerning because it would indicate that unless there is someone watching the situation and providing twenty-four hour supervision to [the mother] and the children that it is unlikely that [she] would attend to the children's needs.

At the time, the mother was still unemployed and without suitable housing. She also had not completed court-ordered treatment for chemical dependency.

A petition to terminate parental rights was filed on March 14, 2013, and the termination hearing was held on April 22, 2013. The juvenile court found that the mother had failed to follow through with substance abuse treatment and that she could not care for the children without supervision. It also found that she lacked an appreciation for the special medical and developmental needs of the children which medical professionals attributed to the "neglectful situation the children faced at home." The mother's parental rights were then terminated pursuant to Iowa Code sections 232.116(1)(d), (e), (h), and (i) (2013). She appeals.

## **II. 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 juvenile court's findings, especially assessing witness credibility, although we are not bound by them. *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 "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 termination of parental rights follows a three-step analysis. *P.L.*, 778 N.W.2d at 39. The court must first determine whether a ground for termination under section 232.116(1) has been established. *Id.* If a ground for termination has been established, the court must apply the best-interest framework set out in section 232.116(2) to decide if the ground for termination should result in termination of parental rights. *Id.* Finally, if the statutory best-interest framework supports termination of parental rights, the court must consider if any of the statutory exceptions set out in section 232.116(3) weigh against the termination of parental rights. *Id.*

#### **A. Grounds for Termination.**

When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the order on any ground we find supported by the record. *D.W.*, 791 N.W.2d at 707. Iowa Code section 232.116(1)(h) provides that termination may be ordered when there is clear and convincing evidence the child is three years or age or younger, has been adjudicated a child in need of assistance, has been removed from the physical custody of the parent for at least six of the last twelve months, and cannot be returned to the parent’s custody at the time of the termination hearing.

In this case, the mother claims there was not “clear and convincing” evidence that her parental rights should be terminated under 232.116(1)(h). She does not dispute that the children were age three years or younger, had each been

adjudicated a child in need of assistance, and had been removed from her custody for at least six of the last twelve months. As she did at trial, the mother focuses on the facts that she had almost completed court-ordered treatment for substance abuse and was following through with services for mental health issues and medication management. She also relies on the fact that she expected to have suitable housing approximately two or three weeks after the hearing.

Even if the mother would have housing within three weeks time, the question before the court was whether the children could be returned to their mother's custody at the time of the termination hearing, Furthermore, even though the mother was participating in the multitude of court-ordered services, she had not successfully completed any of them at the time of the termination hearing. The court observed:

Services have been offered to correct this situation however, it is clear . . . that [the mother] does not appreciate the severity of her prior actions nor the medical conditions both children faced and is unable to safely parent them despite given services to assist her in addressing these issues. It is clear . . . that the circumstances which led to the adjudication of the children still exist.

The district court specifically noted that the mother "continues to struggle significantly with understanding and meeting the needs of the children even in the most basic settings of her regular supervised visitation." Her ability to learn and implement the skills necessary to parent the children has been very slow. Because the children could not be returned to their mother's custody at the time of the termination hearing without twenty-four hour supervision, we agree with the juvenile court that clear and convincing evidence exists to terminate parental rights under section 232.116(h).

**B. Best Interest of the Child.**

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 interest of the child, we 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 conditions and needs of the child.” See Iowa Code § 232.116(2).

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

The court noted:

Interactions between the children and their mother show no meaningful bond exists between either child and their mother. Given the length of time the children have been in placement, this Court finds that the children have bonded to their current foster care providers. Those foster parents have turned the lives of those children around and have put them in a position of health and development which was not contemplated at the time of removal.

The children had been living with the same foster family since June 2012. The foster parents were prepared to adopt and raise the children if the mother’s parental rights were terminated. Both medical professionals and case workers have been impressed with the developmental steps each child has made while living with the foster parents.

The mother claims reunification would have been possible if the court allowed her time to obtain suitable housing and to complete the court-ordered services. However, she had almost a year before the termination hearing. “The legislature has determined . . . the interval for which such patience for parents may last. This period must be reasonably limited because patience on behalf of the parent can



quickly translate into intolerable hardship for the children.” *In re of R.J.*, 436 N.W.2d 630, 636 (Iowa 1989) (internal citations omitted).

The mother also argues that terminating her parental rights is not in the children’s best interests because it would stop them from having contact with their younger sibling. This is unsupported. At the time of the termination hearing, the children in question and their younger sibling lived together with the same foster parents. Furthermore, even if the younger sibling is reunited with the mother, the foster parents have expressed their willingness to allow the mother an ongoing relationship with her children. Although we strive to keep siblings together whenever possible, “the paramount concern in these cases must be the child[ren]’s best interests.” *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). We agree with the juvenile court that it is in the children’s best interest to terminate the mother’s parental rights.

### **C. Exceptions or Facts against Termination.**

Finally, we consider whether any exception or factor in section 232.116(3) weighs 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 facts in the 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 of the closeness of the parent-child relationship between each of the children and herself. See § 232.116(3)(c). She claims the children are bonded to

her and that she has maintained as much contact as allowed for by DHS. Although the record does show that the mother rarely missed a scheduled visitation session, it does not support the assertion that either child is so bonded to their mother that termination of her parental rights would be detrimental. The reports submitted to the court repeatedly observe how little the children and mother engaged with each other during visits. They also described times when neither child exhibited emotion when it was time to leave their mother. We conclude no exception or factor in section 232.116(3) applies to make termination unnecessary.

#### **IV. Conclusion.**

There is clear and convincing evidence the grounds for termination exist under section 232.116(1)(h), 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.**