

IN THE COURT OF APPEALS OF IOWA

No. 3-695 / 13-0818

Filed July 24, 2013

**IN THE INTEREST OF M.B. JR., T.S., AND E.W.,
Minor Children,**

**K.B., Mother,
Appellant,**

**M.B. SR., Father of M.B. JR.,
Appellant.**

Appeal from the Iowa District Court for Cherokee County, Mary L. Timko,
Associate Juvenile Judge.

A mother and father separately appeal from the termination of their
parental rights. **AFFIRMED.**

Marvin W. Miller Jr., Cherokee, for appellant mother.

John M. Loughlin of Laughlin Law Firm, Cherokee, for appellant father.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, Ryan Koplín, County Attorney, and Kristal L. Phillips, Assistant
County Attorney, for appellee State.

Lesley Rynell, Sioux City, attorney and guardian ad litem for minor
children.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

A mother and father appeal from the termination of their parental rights. The mother appeals from the termination of her parental rights to M.B. Jr., T.S., and E.W.¹ The father of M.B. Jr., M.B. Sr., appeals the termination of his parental rights to that child only. He argues clear and convincing evidence did not support the termination of his parental rights to M.B., the trial court improperly denied his request for an extension of time prior to termination, and termination was not in M.B.'s best interests. The mother argues the court erred in not allowing her additional time towards reunification with the children, in finding termination was proper under the code, and termination was not in the best interests of the children. We affirm.

I. Facts and Proceedings.

The mother and M.B. Sr. have a long history of domestic abuse. The mother has several other children; her parental rights have been terminated previously to some of those children. A confirmed abuse report was made in 2007 after one of the children was injured as a result of a domestic abuse incident between the mother and M.B. Sr. Various other incidents of child abuse or neglect were reported, including one that the mother was giving the children inappropriate medication. In January of 2009, the mother and M.B. Sr. were convicted of animal neglect and cruelty after local police were forced to destroy several severely malnourished horses. A June 2009 abuse report was unfounded after the mother refused to cooperate with an investigation.

¹ The parental rights of the fathers of T.S. and E.W. were terminated, but they do not appeal.

In October of 2009, M.B. Jr. and T.S. wandered to a neighbor's house a half-mile away; M.B. was dressed only in a diaper. Both parents were home. The mother claimed M.B. Sr. was drunk and failed to watch the children. The police officer dispatched to the house found M.B. Sr. was not intoxicated. Further investigation showed E.W. exhibited severe behavioral problems requiring psychiatric medication; however, the parents were unreliable in providing it to her so the school took over supplying her with the medication. After this incident, the State filed a petition to adjudicate the children to be children in need of assistance (CINA). The children were adjudicated CINA in January of 2010, but remained with their mother.

A dispositional hearing was held in April of 2010. The court noted the mother stated her intent to divorce M.B. Sr., but that she wanted him to continue to live with her to maintain contact with their child. In May of 2010, allegations arose that M.B. Sr. was hitting T.S., leaving marks.

A review hearing was held in October of 2010. The mother told the court that so long as M.B. Sr. was not drinking, he should have contact with M.B. Jr. A founded child abuse report against the children's paternal grandfather was also brought to the court's attention; the children were locked in the back of a pickup topper, resulting in E.W. becoming ill and requiring an emergency room visit.

In December 2010, a dispositional review hearing was held. M.B. Sr. had obtained a substance abuse evaluation, which resulted in the recommendation he attend individual treatment. E.W.'s behavior had worsened to the point she was defecating in her closet and in a public park. She and T.S. also engaged in fights with neighborhood children. The two also started a fire in a bedroom.

E.W. had also started other fires. The mother regularly left the younger children in the care of E.W. The court ordered that M.B. Sr. not be left alone with the children until his substance abuse treatment was completed, and that he not reside in, spend evenings in, or enter the children's home without notifying the Iowa Department of Human Services (DHS). The court continued custody with the mother, and continued to order the mother and M.B. Sr. to obtain couple's counseling. M.B. Sr. began residing with his father, M.B. Jr.'s paternal grandfather.

In March of 2011, the State filed a motion for modification after T.S. and M.B. Jr. were left unsupervised and were attacked by a neighbor child. Later, a Boys and Girls Club worker visited the home and found T.S. and M.B. Jr. wandering about unsupervised. E.W. was committed to a mental health facility after she struck T.S. in the head with a ball and was cutting herself with a needle. The State requested the children be removed from the home. In April, the court ordered E.W. removed from the home. The other two children remained placed with their mother. A June 2011 shelter care review hearing noted the mother had obtained a restraining order against M.B. Sr. An October 6, 2011 hearing continued the removal of E.W. The court noted M.B. Sr. and the mother routinely violated the restraining order, and service providers spoke of the extreme instability of the home when M.B. Sr. and the mother were together. The court noted the family experienced stability marked by moments of extreme chaos.

M.B. Jr. and T.S. were removed in December of 2011, after the mother was arrested for harassment for telling a bus driver she was going to kill him. Initially, the children were placed by the mother in the custody of a man unrelated

to the children, who in turn placed the children with M.B. Sr. and paternal grandfather—both of whom were not to have contact with the children due to past abuse. The children were placed in foster care on December 16. An emergency removal hearing was held February 14. After the hearing, the two younger children were returned to their mother's care.

E.W. was placed in foster care February 9, moving from the medical care unit where she had resided since June of 2011. She struggled with stealing and defiant behavior but improved over the course of the CINA proceedings, at time having dips in behavior after visits with her mother. In July of 2012, an emergency removal hearing for T.S. and M.B. Jr. was held after a domestic abuse incident where the mother claimed M.B. Sr. threatened her with a knife. The court noted the prior removals, and the seeming unwillingness of the mother to stay away from M.B. Sr. even after the knife incident. The court was concerned the proposed family treatment plans involved the requirement that the children remove themselves to a neighbor's house when they felt domestic violence was about to occur. The court removed the two younger children from the mother's home once again. After this hearing, the mother began residing with a registered sex offender, who would transport the mother to her visits with the children.

M.B. Jr. and T.S. were placed in foster care in August of 2012, though they remained in that home only a week after beating the family cat. M.B. Jr. and T.S. were placed with another foster care family in September—this time successfully. M.B. Sr. received a second substance abuse evaluation in August, and continued to live with his father.

A review hearing was held November 20, 2012. The district court noted it was difficult to believe reports by the mother, as she “continue[d] to hide who she has in her home” and “focus[ed] on what the foster parents were doing rather than on the children.” The court acknowledged M.B. Sr.’s attendance at AA meetings, employment, and work on anger management; however, it also noted his continued residence with his father and that he had only one visit with M.B. Jr. since the child was moved to foster care two months before, although he had been visiting him weekly before the foster care placement. M.B. Sr.’s visits were supervised for two to three hours at a time. The court continued out of home placement.

A petition for the termination of the parents’ rights was filed in December of 2012. A hearing on the petition was held in February of 2013. Present for the hearing were the children’s guardian ad litem (GAL),² the mother and M.B. Sr., and several service providers including the family’s DHS representative and two workers from Boys’ Town. The fathers of T.S. and E.W. were not present. Several service providers, the mother and M.B. Sr., and friends of the mother testified at the hearing.

In its thorough opinion, the court detailed the many concerns with the children’s behavior over the years since the children came to DHS’s attention. It noted the continued volatility between the mother and M.B. Sr.—especially the repeated incidents of domestic abuse and inability to follow through with no-contact orders, coupled with the parents’ limited participation in services. It also found disturbing the mother’s bizarre string of untruths about various people

² The GAL joins the State’s position on appeal that the termination orders be affirmed.

living in her home and her alleged pregnancy with the sex offender's baby. The court found the mother "still has no compunction about lying under oath." Neither the mother nor M.B. Sr. admitted to any responsibility for the children's mental problems and bad behavior.

While both the mother and M.B. Sr. testified they had not seen each other since the children were removed in June of 2012, they continued to be married and M.B. Sr. still paid many of the mother's bills. They had not resolved their tendencies to resort to violence when in each other's presence. The court questioned whether M.B. Sr. had actually been sober for a year as he testified, as his actions in committing assault and violating the no-contact orders showed otherwise. He also failed to follow through with recommended counseling until a few months prior to termination, and continued to live with his father who was not allowed contact with the children. He also had not lived with M.B. Jr. since the mother requested he move in 2010 and had only limited visitation—one supervised visit for two or three hours each week. The court especially emphasized how long the CINA proceeding had continued. The court concluded by terminating the parental rights of both the mother (as to all three children) and M.B. Sr. (as to M.B. Jr.), along with the rights of the absentee biological fathers of T.S. and E.W. Both the mother and M.B. Sr. appeal.

II. Analysis

We review all termination of parental rights decisions de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

A. *M.B. Sr.'s appeal.*

1. Clear and convincing evidence for termination and best interests.

M.B. Sr. argues clear and convincing evidence did not support the termination of his rights under Iowa Code section 232.116 (1)(d) and (i) (2011), and termination was not in the best interests of M.B. Jr.

The first step in our analysis is to determine if a ground for termination exists under section 232.116(1). . . . The second step in the analysis is to consider the factors under section 232.116(2). 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.” Iowa Code § 232.116(2).

Id. The framework for considering whether termination is in the best interests of the child is encompassed by section 232.116(2). *Id.* at 39.

M.B. Sr.’s rights to M.B. Jr. were terminated under Iowa Code section 232.116(1)(d) and (i). Subsection (d) requires the circumstances leading to the child’s adjudication as CINA must continue to exist after the offer or receipt of services. Iowa Code § 232.116(1)(d). Subsection (i) requires “clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child” and “the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.” *Id.* at § 232.116(1)(i).

M.B. Sr. argues he made significant improvements in stabilizing his life and visiting with M.B. Jr. However, he did not obtain necessary housing where M.B. Jr. could visit, and has not spent enough time with M.B. Jr. to show he will not neglect or assault the child. He also has been offered services for two years

and failed to take advantage of some which were required for him to address his substance abuse issues and domestic violence. He and the mother are still married and have failed to resolve their violent tendencies when around each other. We agree that clear and convincing evidence exists for termination under these sections.

Next, M.B. Sr. argues termination is not in M.B. Jr.'s best interests. He argues a bond exists between him and M.B. Jr. M.B. Jr. has not resided with M.B. Sr. for years and has only had minimal visitation with the M.B. Sr. In contrast, M.B. Jr. refers to his foster parents as mom and dad, and has adjusted well to his school system. His mental and emotional conditions have greatly improved. It is in M.B. Jr.'s best interests for his father's rights to be terminated. See *id.* at § 232.116(2).

2. Additional time.

M.B. Sr. next argues he should be allowed additional time for reunification with M.B. Jr. A court may continue placement for an additional six months after a permanency hearing. *Id.* § 232.104(2). If this extension is allowed, the court "shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis" for the extension such that the need for removal will not exist at the end of the six months. *Id.* The CINA proceedings began in October of 2009. By the time M.B. Sr.'s rights were terminated, over two years had passed. M.B. Sr. cites his participation in two substance abuse evaluations as indicative of his progress. However, he was told the problems with placing M.B. Jr. in his care go far beyond substance abuse evaluation and participation in Alcoholics Anonymous. M.B. Sr. points us to case law urging patience,

however, given the extended amount of time he has had to correct the problems identified by the court and the minimal progress he has made over the years, the court properly denied M.B. Sr.'s request for a six-month delay.

B. Mother's appeal.

1. Additional time.

The mother also argues the court improperly failed to grant her six months' additional time towards reunification. The mother's problems run even deeper than that of M.B. Sr. The district court noted her continued involvement with a sex offender and apparently false claims to have cut off contact with M.B. Sr. She has not assumed responsibility for her children's behaviors. She claims on appeal that "The primary reason for removal of the children from [her] care was the disruptive actions of [M.B. Sr.]." In granting a request for an extension, the court must find the "need for removal would no longer exist after a six-month extension." *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa Ct. App. 2005). Not only was the initial need for removal not abated, but the mother has now created a host of new problems including cohabiting with a sex offender. The court correctly denied her request for a six-month extension.

2. Grounds for termination.

The mother argues the original circumstances for removal no longer exist to warrant termination under 232.116(1)(d), and that the court improperly found the offer or receipt of services would not correct the conditions which led to the CINA adjudication under 232.116(1)(i). We may affirm the termination of her rights under either section. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("We need only find grounds to terminate under one of the sections cited

by the juvenile court to affirm”). The children cannot wait indefinitely for their mother to become a parent. See *In re Dameron*, 306 N.W.2d 743, 747 (Iowa 1981). These three children need and deserve permanency and a stable home. See *id.* For the reasons stated above we affirm under section 232.116(1)(i).

3. Best interests of the children.

In our evaluation of whether termination is in the best interests of the children, 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 condition and needs of the child.” Iowa Code § 232.116(2). Prior to removal, all three children exhibited alarming behavioral problems and mental instability, including torturing pets, lighting fires, and defecating in public. Since their removal they have successfully resolved many of their problems exhibited while in their mother’s home and have had some success at school. The mother does not claim any bond with the children, instead she puts forth that she has reliable transportation, a safe home, and has taken advantage of services. Meanwhile, she has yet to divorce the man at the source of years of domestic violence (or to participate in appropriate counseling) and has become involved with a sex offender. Termination of the mother’s parental rights is in the children’s best interests.

AFFIRMED.