

IN THE COURT OF APPEALS OF IOWA

No. 3-696 / 13-0788

Filed July 24, 2013

**IN THE INTEREST OF J.B., B.B., B.B., AND A.C.,
Minor Children,**

**K.M., Mother,
Appellant,**

**B.B., Father of J.B., B.B., AND B.B.,
Appellant.**

Appeal from the Iowa District Court for Scott County, Cheryl E. Traum,
District Associate Judge.

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

Martha L. Cox, Bettendorf, for appellant mother.

Nathan W. Tucker of Tucker Law Firm, Davenport, for appellant father.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, Michael J. Walton, County Attorney, and Julie Walton,
Assistant County Attorney, for appellee State.

Randall L. McNaughton, Davenport, for appellee father.

Jack E. Dusthimer, Davenport, attorney and guardian ad litem for minor
children.

Considered by Eisenhauer, C.J., and Vaitheswaran and Doyle, JJ.

DOYLE, J.

A mother and father separately appeal from the order terminating their parental rights. Upon our de novo review, see *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010), we affirm on both appeals.

I. Background Facts and Proceedings.

K.M. is the mother of four children, ranging in age from three- to nine-years-old at the time of the termination-of-parental-rights hearing. B.B. is the father of the three youngest children.¹ The father has a criminal history, including a charge for drug possession, third offense, as recent as 2011. The mother has a history of involvement with the Iowa Department of Human Services (Department) concerning her care of the children. In 2010, the Department determined the mother was responsible for causing injury to the oldest child after the mother hit the child and the child suffered a bloody nose and a swollen lip. The mother and father have had an on-again, off-again relationship.

In May 2011, the children again came to the attention of the Department due to reports that the children, including the youngest child, then two years of age, were frequently observed unsupervised outside in the mother's apartment complex. The oldest child, then eight, was not enrolled in school. The Department also learned of a recent incident of domestic violence between the mother and father, wherein the mother was severely beaten by the father while the children were present at the home. Following a 911 call, the mother was taken to the hospital by ambulance for treatment, and a warrant was issued for

¹ For simplicity, we will refer to B.B. as "the father" in this opinion, though we recognize he is not the father of the oldest child, A.C. The parental rights of A.C.'s father, G.C., are not at issue in this appeal.

the father's arrest. Thereafter, the mother denied that any incident occurred, though five tenants reported hearing the fight and verified the children were present. The mother refused to obtain an order of protection.

Despite the Department's involvement in the parents' and children's lives, the Department continued to receive numerous accounts of the children unsupervised outside for hours at a time. The children were observed by a pond "in danger of drowning." They were also observed running in the street. Additionally, the Department learned three of the four children have significant special needs; only one of the children was on-target developmentally and thriving at school. The youngest child has clubfoot, and he was also significantly delayed in his overall meeting of milestones. Two of the children have asthma and significant breathing issues. The children exhibited significant behavioral concerns, and the oldest child had essentially taken on the role of the caretaker of the younger children. Due to continuing safety concerns, as well as the mother not addressing the children's special needs, the children were placed in foster homes in October 2011. That December, two of the children were moved to the same foster home of the other two children so that all four children could be placed together. They have since remained in that foster home.

The parents were offered services throughout the duration of the case. The parents made some parenting improvements, and their visitation with the children progressed to partially-supervised. Minimal concerns were identified at that time regarding the parents' parenting, and when those concerns were brought to the parents' attention, they were able and willing to respond appropriately to make necessary changes.

During the case, the children have been engaged in extensive services. Three of the children participate regularly in therapy. Two of the children are seen by an agency that provides physical, occupational, and speech therapy for the children. Three of the children have Individual Education Plans in place due to their behavioral and learning issues. One of the children suffers from asthma and requires breathing treatments on occasion. At one point, the mother was asked, on a trial basis, to coordinate all of the various professional appointments for all of the children so she could gain awareness of what the expectations were for her if the children were to be returned to her. Ultimately, the trial period was not successful. There were times the mother did not have a phone to schedule and confirm appointments, and there were other times where appointments were not made, resulting in gaps in services for the children. Throughout the pendency of this case, except for the brief trial period, it is the foster parents who have monitored the children's needs, confirmed the children's appointments, and made sure they attended all of their professional appointments.

In September 2012, the mother and father separated, and the mother abruptly relocated to another town to get away from the father. The distance placed a significant hardship on all parties involved, and the stability of the visits decreased. Following a permanency hearing, the court on October 10, 2012, entered its order granting the parents an additional three months to work on the requirements in the case plan for reunification with their children. The court recognized the children had been out of the mother's home for almost a full year, but it found the parents' progress warranted some additional time. During this timeframe, the parents were to engage and be more active in services, which

was to be demonstrated by the parents' level of compliance in cooperation with the service providers. They were also to follow through with suggestions and recommendations pertaining to their parenting, as well as the children's therapeutic and medical needs. It was expected the parents would be more involved in demonstrating their roles as active parents, rather than expecting the provider to assume the position of a parent.

Unfortunately, that was not the case. The parents' reunited, but their relationship was rocky, and they began arguing during their visits with the children. Concerns again arose about the mother's supervision of the children, and the children began to exhibit increased behavioral issues. This resulted in overall discord during the visits, which the mother was not able to resolve without intervention of the service provider. The father then started to disengage from both visitation and services. When he did attend visits, service providers noticed he lacked participation. The father continued to leave all discipline to the mother, and at times simply left the visitation when the going got tough. This in turn caused more chaos for the mother.

There was also continued difficulty in engaging the mother because she felt everyone was against her, rather than working with her. The mother moved back to Muscatine and obtained an apartment, though the apartment was not large enough to permit all of the children to live there with her. Additionally, although the Department initially moved visitation to the mother's home, the youngest child suffered significant respiratory stress many times after being in the home for any length of time. The mother was asked not to allow persons to smoke in the home, and she denied that was happening. However, service

providers smelled smoke and observed ashtrays with ashes in them at her home. As a result, visits had to be moved from the mother's home.

In January 2013, the children's guardian ad litem filed a petition for termination of the parents' termination rights. Following a hearing on the petition, the juvenile court entered its order terminating both parents' termination rights. The parents now appeal.

II. Discussion.

On appeal, the mother contends the juvenile court erred in finding (1) the State proved by clear and convincing evidence the grounds for termination; (2) termination was in the children's best interests; and (3) termination was warranted "based solely on the mother's low mental functioning." The father also appeals the grounds for termination found by the juvenile court, requesting additional time for reunification. We address their arguments in turn.

A. Mother's Appeal.

1. Grounds for Termination and Mother's Mental Functioning.

The mother's parental rights were terminated pursuant to Iowa Code section 232.116(1) paragraphs (d), (f), and (h) (2013). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). We choose to focus upon paragraph (h) for the youngest child, and (f) for the three older children. These two grounds for termination are essentially the same but for the applicable age of the child and the amount of time the child has been out of the home. See Iowa Code § 232.116(1)(f) ("The child is four years of age or older" and "has been removed . . . for at least twelve of the last eighteen months"), (h) ("The child is

three years of age or younger” and “has been removed . . . for at least six months of the last twelve months”). Both paragraphs (f) and (h) require the State to prove, by clear and convincing evidence, “the child cannot be returned to the custody of the child’s parents as provided . . . at the present time.” See *id.* § 232.116(1)(f)(4), (h)(4). It is the later element of those paragraphs that the mother challenges here. Upon our de novo review, we find the State has met its burden.

While the law requires a “full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,” this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). Our supreme court has stated that “the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights.” *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code section 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

Upon our de novo review, we agree with the juvenile court’s conclusion that the State proved the children still could not be returned to the mother’s care at the time of the termination hearing. We note that although there was evidence the mother had lower-than-average mental functioning; we do not find the juvenile court relied solely upon that evidence as the basis for termination of the mother’s parental rights. In any event, we review the record de novo, and without taking into consideration the mother’s mental functioning, we find the

evidence produced at trial demonstrated the children could not be returned to the mother's care at the time the termination hearing.

Here, there was overwhelming evidence the mother loves her children. Service providers testified the mother had not missed any visits with the children, family team meeting, or court hearings. When a service provider was present at the visitation, the mother was generally able to meet the children's needs. The mother prepared healthy meals for the children at her visits. The mother attended the children's appointments. There were no incidents of domestic violence reported. Nevertheless, despite two years of continued extensive services, these children still could not be returned to the mother's care at the time of the termination hearing. Most telling was the opinion of the therapist, who treated three of the children regularly. She explained:

This therapist continues to have many concerns about the safety of these children. In the waiting area, [the] parents have not been able to display control of, or discipline of the children. [The oldest child] is the one who attempts to take control of the siblings and manage their behavior. As a child this is not his responsibility. . . . Fears and worry about necessary and adequate food, rest, and safety, has been a reoccurring theme throughout play therapy and treatment for all three children. This is their concern if they are to live with their biological parents. Another concern is if their mother can provide a consistent home for the children, as she does not recognize the needs of her children. This therapist has many strong concerns that emotionally these children do not feel safe or taken care of in the presence of their biological parents. It is the professional opinion of this therapist that it is not in the best interest of the children to be returned to their biological parents.

Additionally, the caseworker testified that although the Department had provided two years of services and its staff had "attempted everything [it] could think of . . . in a team approach to try to give [the parents] the skills and

information and opportunity to exhibit and demonstrate those [skills],” those skills were not consistently demonstrated to allow the children to be reunited with the parents. The caseworker testified the mother continued to present a risk of physical abuse to the children, and she did not believe the mother knew what services the children needed. She testified the mother continued to be resistant to the recommendations of the Department, she did not show any consistency in her ability to safely parent the children away from service providers.

Upon our de novo review of the record, we agree the State proved grounds pursuant to (f) and (h) for termination of the mother’s parental rights. Accordingly, we affirm on this issue

2. Best Interests.

For the reasons stated above in finding the children could not be returned to the mother’s care at the time of the termination hearing, we find the best-interests framework in Iowa Code section 232.116(2) supports termination of the mother’s parental rights. In that section, the legislature highlighted as primary considerations: the children’s safety, the best placement for furthering the long-term nurturing and growth of the children, and the physical, mental, and emotional condition and needs of the children. *P.L.*, 778 N.W.2d 37; *see also* Iowa Code § 232.116(2). “A child’s safety and the need for a permanent home are now the primary concerns when determining a child’s best interests.” *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Those best interests are to be determined by looking at the children’s long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the children if the children are returned to

their parents. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493–94 (Iowa 1990).

Under the facts and circumstances in this case and considering the children's long-term and immediate best interests, we agree with the juvenile court that termination of the mother's parental rights is in the children's best interests. We do not doubt the mother's love for her children, but lacking a pause button, a child's crucial days of childhood cannot be suspended while waiting for a parent to remedy a lack of parenting skills. "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." *P.L.*, 778 N.W.2d at 41. "At some point, the rights and needs of the child rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by P.L.*, 778 N.W.2d at 39; *see also P.L.*, 778 N.W.2d at 39-40. Despite the Department's involvement in her and her children's lives over the years, the mother has not demonstrated her ability to meet the ongoing needs of the children, and they could not be returned to her care at the time of the hearing. The caseworker testified she believed the oldest child was bonded with the mother, but she testified she could not say the same for the other three children. The caseworker also testified the children were in need of permanency, and the children are doing well in their foster home. She testified the foster parents wish to adopt all four children. We therefore affirm on this issue.

B. The Father's Appeal.

The father's parental rights were terminated upon the same statutory grounds as the mother's rights were terminated. After our de novo review, we concur with the juvenile court's decision not to grant the father additional time. Here, the father testified that at the visits, the children "get out of control a little bit, but that's kids." When asked if he was able to discipline them and maintain control, he testified, "No, I leave that to [the mother]." He also testified he had not finished the recommended batterer's education program, nor had he taken any anger management classes. The father testified he did not have a permanent residence and had been staying with relatives and on occasion the mother. He conceded the children could not be placed with him that day.

As we stated above, these children are in need of permanency. Further delay in permanency would also be contrary to the legislature's intent that "termination proceedings must be viewed with a sense of urgency." See *C.B.*, 611 N.W.2d at 495. Unfortunately, the record here does not establish that additional time would yield any different result, and these children cannot be deprived of permanency after the State has proved a ground for termination under section 232.116(1) by hoping the father will someday learn to be a parent and be able to provide a stable home for these children. See *P.L.*, 778 N.W.2d at 41. Under the facts and circumstances of this case, we agree with the juvenile court's decision not to grant the father additional time for reunification.

III. Conclusion.

For the foregoing reasons, we affirm the juvenile court order terminating the parents' parental rights.

AFFIRMED ON BOTH APPEALS.