

IN THE COURT OF APPEALS OF IOWA

No. 9-398 / 09-0412
Filed June 17, 2009

**IN THE INTEREST OF
D.J., H.R., A.J., and A.J., Minor Children,**

A.N.J., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
District Associate Judge.

A mother appeals from a juvenile court order terminating her parental
rights to her children. **AFFIRMED.**

Sara Linn Smith, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Robert Hruska, Assistant
County Attorney, for appellee.

Robert Davison, Cedar Rapids, for father.

Angela Railsback, Cedar Rapids, guardian ad litem and attorney for minor
children.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

MILLER, J.

Airee is the mother of eight-year-old, seven-year-old, three-year-old, and two-year-old children. She appeals from a March 2009 ruling terminating her parental rights to these children.¹ We affirm.

In June 2006, police officers executed a search warrant at the home where Airee and her three oldest children were residing. Cocaine residue, marijuana residue, and drug paraphernalia were found in the home. Airee, who was on probation for a forgery offense, admitted to the police that she had been using cocaine. She was charged with keeping a disorderly house and evicted from her residence. Hair stat testing later revealed that the youngest of the three children had been exposed to and possibly ingested cocaine.

The three children were removed from their mother's care and placed in the legal custody of the Iowa Department of Human Services (DHS) for placement in family foster care. They were adjudicated children in need of assistance (CINA) in September 2006 pursuant to Iowa Code sections 232.2(6)(c)(2), (n), and (o) (2005).

Airee began participating in substance abuse treatment and providing negative drug screens after her children were removed from her care. She successfully completed extended outpatient treatment in February 2007 and gave birth to a fourth child shortly thereafter. He was allowed to remain in her care, and a trial home placement was planned for her three oldest children. Before the trial home placement began, cocaine was discovered in the apartment

¹ The order also terminated the parental rights of the children's fathers. They have not appealed the termination of their parental rights.

Airee shared with Antonio, the father of her two youngest children. Antonio was arrested, and Airee moved into her grandmother's house.

In June 2007, after Airee found another apartment to live in, the three oldest children were returned to her care for the trial home placement. Antonio also lived with the family intermittently. Airee was evicted from that apartment in December 2007 because she did not pay her rent. She and the children moved back in with her grandmother.

In January 2008, police officers executed a search warrant at Airee's grandmother's home. Airee, her four children, and eight other individuals were present in the home. The police discovered marijuana and drug paraphernalia throughout the residence within reach of the children. Airee's sister and her mother were arrested. Airee agreed to take her children and leave her grandmother's house. She spent one night in a motel, the next night with her sister, and then she returned to her grandmother's house with the children.

When DHS learned Airee went back to her grandmother's house, the trial home placement ended and the children were removed from Airee's physical custody. The youngest of the four was placed in the legal custody of DHS for placement in family foster care, where he and his siblings have since remained. Hair stat testing later revealed the next-to-youngest child had been exposed to cocaine and the youngest child had been exposed to cocaine and marijuana while in their mother's care. The youngest child was adjudicated a CINA in February 2008 pursuant to Iowa Code section 232.2(6)(b) (2007).

Airee gave birth to her fifth child in April 2008. Antonio is also the father of that child. After the baby was born, Airee lived in an apartment that was paid for by a friend for few months. Airee and Antonio eventually located an apartment together where they lived with the baby until November 2008 when the heat in the building was shut off. The family stayed in the apartment for several days with no heat. A temporary removal order was obtained, but before it could be executed Airee asked Antonio's mother to take the baby to Illinois to live with a relative. Airee refused to tell DHS where the baby was staying until a contempt action was filed against her. The baby was eventually returned to Iowa after being gone for more than thirty days.

The State filed a petition to terminate parental rights to Airee's four oldest children in June 2008. Following a hearing, the juvenile court entered an order terminating Airee's parental rights to the older two children pursuant to Iowa Code section 232.116(1)(f) and to the younger two pursuant to section 232.116(1)(h). Airee appeals.²

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Airee claims the juvenile court erred in finding there was clear and convincing evidence that the children could not be returned to her care at the

² The State asserts the mother waived her claims on appeal because she did not argue or cite authority in support of those claims. See Iowa R. App. P. 6.903(2)(g)(3). We elect, however, to proceed to the merits of her claims.

time of the termination hearing. As the first three elements of sections 232.116(1)(f) and (h) are clearly met, her claim implicates only the fourth element of those sections. This element is proved when the evidence shows the children cannot be returned to the parent without remaining CINA. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supported the children's removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

Airee acknowledged at the termination hearing that none of her children could be returned to her care at that time. There is clear and convincing evidence present in the record to support her honest admission. Despite Airee's apparent success in overcoming her substance abuse problems, she struggled to maintain stable housing and employment. She was unemployed for most of the juvenile court proceedings. She eventually obtained a job with a temporary agency in the summer of 2008, but did not receive reliable hours. Airee lived in at least six different locations during these proceedings and experienced several periods of homelessness during which she would live with family or friends—many of whom used drugs. At the time of the termination hearing, she was residing with Antonio's mother.

Due to Airee's unstable housing situation, visits with her children often took place at a facility. When visits did occur in her home, they were chaotic. Service providers reported that Airee was not able to adequately supervise all four children at once. The oldest child ran away during several of the visits, and

on one visit, the two youngest children were found alone on the second-story deck of Airee's apartment. During the trial home placement, the oldest child got into Airee's car, put it into reverse, and hit a storage garage. He and the second-oldest child missed twenty days of school when they were in their mother's care for the trial home placement, and the youngest two children were exposed to illegal substances. After the children's unsuccessful trial period at home, Airee's visits with them did not progress beyond supervised.

Although the service providers reported that there was a strong bond between Airee and her children, she did not consistently visit with them. In the months leading up to the termination hearing, Airee missed several visits and was late to several others. She relied on Antonio for transportation and continued to maintain a relationship with him despite reporting that he was physically abusive to her. A service provider suspected that Antonio, who has been convicted of several drug-related offenses including delivery of crack cocaine, was possibly selling drugs out of an apartment he shared with Airee due to the number of people that were in and out of the home during visits.

In light of the foregoing, we conclude the children could not be returned to Airee's care at the time of the termination hearing without being subject to the threat of neglect or other harm that would cause them to remain CINA. See Iowa Code §§ 232.116(1)(f), (h). Our supreme court has recognized that children "should not be forced to endlessly await the maturity of a natural parent." *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It

must be constant, responsible, and reliable.” *Id.* With these principles in mind, we deny Airee’s next claim that an additional period of time would have allowed her to correct the shortcomings and deficiencies that led to the children’s adjudication as CINA.

A parent does not have unlimited time in which to correct her deficiencies. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). “At some point, the rights and needs of the child rise above the rights and needs of the parent[.]” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). We agree with the juvenile court that while the children in this case “are very bonded to each other and to their mother, . . . their need for permanency outweighs this bond.”

“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). These children have been out of Airee’s legal custody and care for a significant amount of time. The three oldest children have been in foster care for over two and a half years, with the exception of their short-lived trial period at home, while the youngest child has been in foster care for more than a year. Although the children are doing well in their foster home placements, they need and deserve permanency. “Long-term foster care is not preferred to termination of parental rights.” *In re R.L.*, 541 N.W.2d 900, 903 (Iowa Ct. App. 1995). Children “should not be forced to endlessly suffer the parentless limbo of foster care.” *Id.*

As Airee candidly admitted at the termination hearing, she was not ready to resume caring for her children at that time. Nor did it appear that she would be

ready in the reasonably foreseeable future. Termination will provide these children with the safety, security, and permanency they are entitled to. We conclude, as the juvenile court did, that termination of Airee's parental rights is in the children's best interests. We accordingly affirm the judgment of the juvenile court.

AFFIRMED.