

**IN THE COURT OF APPEALS OF IOWA**

No. 17-1558  
Filed December 20, 2017

**IN THE INTEREST OF T.H. and S.B.,  
Minor Children,**

**A.B., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Plymouth County, Robert J. Dull,  
District Associate Judge.

A mother appeals the termination of her parental rights pursuant to Iowa  
Code chapter 232 (2017). **AFFIRMED.**

Robert B. Brock II of Law Office of Robert B. Brock II, P.C., Le Mars, for  
appellant mother.

Thomas J. Miller, Attorney General, and Ana Dixit, Assistant Attorney  
General, for appellee State.

Meret Thali of Juvenile Law Center, Sioux City, guardian ad litem for minor  
children.

Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ.

**MCDONALD, Judge.**

Abby pursues this appeal from an order terminating her parental rights in her two children, T.H. (born 2010) and S.B. (born 2013). Abby does not challenge the sufficiency of the evidence supporting the statutory ground authorizing the termination of her parental rights. Instead, she argues termination of her parental rights is not in the best interest of her children. As part of the same argument, she also seems to argue the department of human services failed to make reasonable efforts to reunite the family, termination is inappropriate because the children are in the care of relatives, and the prospect of a guardianship makes termination unnecessary.

Our review is de novo. See *In re A.M.*, 843 N.W.2d 100, 110 (Iowa 2014). The statutory framework authorizing termination of parental rights is well-established, and we need not repeat it in full herein. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (setting forth three-part framework). As part of its case, the State must prove termination of the parent's rights is in the best interest of the child. See *In re M.W.*, 876 N.W.2d 212, 219–20 (Iowa 2016).

This family came to the attention of the Iowa Department of Human Services (IDHS) after it was reported Abby and her husband Justin were using methamphetamine while caring for the children. Justin tested positive for methamphetamine. Abby tested negative for any controlled substances. Initially, the children remained in the home, and Justin agreed to participate in substance-abuse counseling. After Justin tested positive again, he was asked to leave the family home in February 2016. The children continued to reside with Abby during this time, although IDHS noted concerns with Abby's mental health, minimization

of Justin's drug usage, and difficulty keeping appointments. Abby was ordered to participate in mental-health services and drug testing, among other things.

In July 2016, after already receiving a warning, Abby admitted she was allowing Justin to see the children outside of supervised visitation even though Justin was using methamphetamine daily. After Abby's admission, the children were removed from her care. T.H. was placed with his biological father, David. S.B. was initially placed in foster care but ultimately was placed with T.H.'s biological father to keep the siblings together.

After removal, Abby's conduct began to deteriorate. In August, Abby was arrested for possession of drug paraphernalia, including a glass pipe and a baggie with methamphetamine residue. She entered substance-abuse treatment, but she unsuccessfully discharged in September. After her discharge from treatment, Abby failed to comply with random drug testing. She was inconsistent in attending appointments and in visiting the children.

Abby continued to struggle throughout 2017. She stopped her mental-health treatment. She did not participate in drug testing. She was inconsistent in attending substance-abuse treatment. She also continued to defend her contact with Justin despite his methamphetamine use. The nadir occurred in February 2017 when Abby was arrested for possession of drug paraphernalia, driving with a suspended license, and possession of methamphetamine. At that point, the juvenile court directed the State to file a petition to terminate parental rights, which the juvenile court granted following a contested hearing.

The primary concern in a termination proceeding is the best interest of the children. See *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). In

determining what is in the best interest of the children, we consider both the immediate and long-term interest of the children. See *In re L.M.F.*, 490 N.W.2d 66, 67 (Iowa Ct. App. 1992). “Insight for the determination of the child’s long-range best interests can be gleaned from ‘evidence of the parent’s past performance for that performance may be indicative of the quality of the future care that parent is capable of providing.’” *In re A.B.*, 815 N.W.2d 764, 778 (Iowa 2012) (citation omitted). As a general rule, “the needs of a child are promoted by termination of parental rights’ if the grounds for termination of parental rights exist.” *L.M.F.*, 490 N.W.2d at 68 (citation omitted).

Preservation of the parent-child relationship is not in the best interest of the children. Abby cannot meet the physical needs of her children. She lacked employment and stable housing. See, e.g., *In re J.C.*, No. 17-0750, 2017 WL 3283395, at \*3 (Iowa Ct. App. Aug. 3, 2017); *In re M.T.*, No. 03-1417, 2003 WL 22346539, at \*2 (Iowa Ct. App. Oct. 15, 2003) (considering mother’s inability to find employment or stable housing when determining children could not be returned to her care); *In re K.H.*, No. 03-0671, 2003 WL 21459582, at \*2 (Iowa Ct. App. June 25, 2003) (concluding the children would be at a continued risk for harm when the father did not have stable employment or housing); *In re B.T.*, No. 01-0920, 2002 WL 985533, at \*1 (Iowa Ct. App. May 15, 2002) (noting mother only secured stable housing shortly before termination hearing and only had a job for three months prior).

Abby also cannot provide acceptable supervision and care for the children. She has not addressed her substance abuse, having twice been arrested for possession during the course of these proceedings. See, e.g., *J.C.*, 2017 WL

3283395, at \*3 (citing mother's inability to resolve substance-abuse issue as a factor in supporting the termination of parental rights). Abby did not address her mental-health conditions. She failed to exercise visitation with the children on a regular basis. "We do not 'gamble with the children's future' by asking them to continuously wait for a stable biological parent, particularly at such tender ages." *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010) (citation omitted).

Abby appears to indirectly raise a challenge IDHS's efforts to reunite the family. She argues the "department set her up for failure" by canceling visits when she was late when they knew she had unreliable transportation. To the extent she makes a reasonable-efforts challenge, it is unavailing. Abby made no objection to the services she received and thus failed to preserve error. See Iowa Code § 232.99(3) (2017) ("The court shall advise the parties that failure to identify a deficiency in services or to request additional services may preclude the party from challenging the sufficiency of the services in a termination of parent-child relationship proceeding."); *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). Even if the issue had been preserved for appellate review, the department's efforts were not inadequate under the circumstances. The department provided Abby with significant resources, including substance-abuse evaluation and treatment; mental-health evaluation and treatment; visitation; drug screening; and family safety, risk, and permanency services; among others. This is not a case in which IDHS failed to provide services. Instead, the mother failed to use the services offered to her.

Abby also argues termination was inappropriate because the children were to be placed with relatives. She cites Iowa Code section 232.116(3)(a) in support

of this argument. Iowa Code section 232.116(3)(a) is inapplicable here. That section applies only where a relative has legal custody of the children. See *A.M.*, 843 N.W.2d at 113. Even if applicable, “[t]he factors weighing against termination in section 232.116(3) are permissive, not mandatory.” See *D.S.*, 806 N.W.2d at 474–75. We find no reason to exercise permissive authority to preserve the parent-child relationship in this case.

Finally, Abby appears to argue termination was improper because guardianship is an option here. Placement of a child with a relative under a permanency order is not a legally preferable alternative to termination of parental rights. See *L.M.F.*, 490 N.W.2d at 67–68; *In re N.M.*, No. 17-0054, 2017 WL 1088119, at \*3 (Iowa Ct. App. Mar. 22, 2017). “An appropriate determination to terminate a parent-child relationship is not to be countermanded by the ability and willingness of a family relative to take the child.” *In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997). We find Abby’s argument unpersuasive.

For the above-stated reasons, we affirm the juvenile court’s order terminating the mother’s parental rights in her two children.

**AFFIRMED.**