

**IN THE COURT OF APPEALS OF IOWA**

No. 0-050 / 09-1826  
Filed February 10, 2010

**IN THE INTEREST OF J.M. and D.M.-K.,  
Minor Children,**

**S.M., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

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

Linda A. Hall of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen A. Hahn, Assistant County Attorney, for appellee.

Timothy Baldwin, Waterloo, attorney and guardian ad litem for minor children.

Considered by Sackett, C.J., Doyle and Danilson, JJ.

**SACKETT, C.J.**

A mother appeals from the juvenile court order terminating her parental rights to her two children. She contends there was insufficient evidence termination was in the children's best interests. She also contends there was insufficient evidence reunification would be detrimental to the children or that they could not be returned to the mother's care within a reasonable time. She further contends reasonable efforts toward reunification were not made. We affirm.

**Background.** The children were born in January of 2008 and February of 2009. The older child tested positive for cocaine at birth and in July of 2008 the mother voluntarily placed her in foster care. At the time, there was a warrant for the mother's arrest for violation of probation from a 2006 methamphetamine possession charge. She had no contact with her child until November of 2008. In October, the court found the child to be in need of assistance. During the latter part of December of 2008 the mother was in jail after turning herself in for the probation violation. She exercised supervised visitation with the child and participated in some services, but was resistant to substance abuse evaluation and treatment.

In February of 2009, the younger child was born and removed from the mother's care immediately. At the end of May, the court held a combined adjudicatory and permanency hearing.<sup>1</sup> The court found the younger child to be in need of assistance. It continued foster placement for both children. It ordered

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<sup>1</sup> The adjudicatory portion related to the younger child. The permanency portion related to the older child.

the continuation of child welfare and other at-risk services to the mother and children. It also deferred permanency to allow the mother more time to make the changes necessary so the children could be returned to her care.

In August, the court held a combined dispositional and permanency hearing. By that time, the mother had lost her housing and was living part-time with friends and part-time with the paternal grandmother of the younger child. In its August 24 order, the court noted the “mother has a history of substance abuse, transient living conditions, and limited parenting skills.” It found the department “continues to exercise all reasonable efforts,” including substance abuse and mental health evaluation and counseling, medication management, supervised visitation, co-parenting programming, and a variety of community-based services.

In mid-October the court held a hearing on the State’s petition to terminate parental rights. In its November termination order, the court found:

[The mother] says she wants to parent the children in interest, however, her actions speak otherwise. [She] has been unable to demonstrate the minimal parenting skills necessary to care for the children in interest. [She] has failed to follow through with mental health treatment and take her prescribed medications. [The mother] has not been able to maintain a stable home for her or the children in interest. [She] currently resides with “friends,” [whom] she is unable to identify. [She] has failed to consistently attend visitation with the children or meet consistently with professionals working with her in her reported desire for reunification.

[The mother] has been diagnosed with ADHD and Depressive Disorder. Despite her diagnoses and daily difficulties, [she] has not consistently followed through with her mental health counseling or taken prescribed medications as recommended. [The mother] has been unwilling or is unable to engage in many of the services which have been implemented to assist her in the return of her children to her care. [lengthy list of services omitted]

Professionals working with [her] have utilized techniques [such] as modeling, writing, providing reading materials, verbal prompts, summarization and simplification in order to assist [her] in acquiring the minimal skills to parent the children. Despite all of the services and assistance, the family has not progressed to even semi-supervised visitation.

The court has previously deferred permanency in hopes that [the mother] would be able to utilize the additional time and services in her goal for reunification. [She] responded by absenting herself from services and visitation for nearly six weeks. [The mother] has been unable to demonstrate that she has internalized the skills necessary to effect meaningful change in her behaviors which would allow the children to be returned to her care.

The court terminated the mother's parental rights under Iowa Code sections 232.116(1)(e) and (h) (2009). It also terminated the parental rights of all fathers, but they are not at issue in this appeal.

**Scope and Standards of Review.** Our review of termination-of-parental-rights proceedings is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We review the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the juvenile court's factual findings but are not bound by them. *In re E.H., III*, 578 N.W.2d 243, 248 (Iowa 1998).

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). When the juvenile court terminates a parent's rights, we affirm if clear and convincing evidence supports the termination under the cited statutory provision. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The State has the burden of proving the allegations by clear and convincing evidence. See Iowa Code § 232.117. "Clear and convincing evidence" is evidence leaving "no

serious or substantial doubt about the correctness of the conclusion drawn from it.” *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002).

**Grounds for Termination.** The mother contends “[t]here was insufficient evidence to support a finding that the children could not be returned to their mother *within a reasonable period of time*,” or that “reunification would be detrimental to the children if patience were exercised *to allow the mother additional time* to remedy any deficiencies.” (Emphasis added.) The juvenile court terminated the mother’s parental rights under Iowa Code sections 232.116(1)(e) and (h). There is no dispute concerning the first three elements of subsection (h). The language of section 232.116(1)(h)(4) requires “clear and convincing evidence that the child cannot be returned to the custody of the child’s parents as provided in section 232.102 *at the present time*.” (Emphasis added.)

In early June of 2009, following a hearing in late May, the court entered a combined order finding the younger child to be in need of assistance and giving the mother additional time to make the changes necessary so that “the children can be returned to her care.” It set forth “factors, conditions, and other expected behavioral changes.” These included following through with mental health counseling and medications, attending all visitations, attending all appointments with professionals working with her toward reunification, maintaining a safe and stable home for herself and the children, abstaining from all illegal substances, and participating in random drug tests.

At the termination hearing the mother agreed she was “asking the court today to grant [her] additional time in which to work toward bringing [her] children

back home to [her].” At that time the mother had been out of contact with the department and her children for much of the preceding two months despite repeated efforts of the department and service providers to contact her.<sup>2</sup> This resulted in termination of some services. A hair stat test was returned positive for cocaine. The mother was not employed and had no residence. She was not taking the medications for her depression or ADHD as prescribed. Although her visitations with the children had been proceeding well, she had not yet progressed beyond fully-supervised visitation and she had missed several visits. The mother had not complied with the “factors, conditions, and other expected behavioral changes” set forth by the court when it gave her additional time to work toward reunification. We agree with the juvenile court’s finding the children could not be returned to the mother’s custody at the time of the termination hearing. Clear and convincing evidence supports the grounds for termination in section 232.116(1)(h).<sup>3</sup>

**Reasonable Efforts.** The mother contends the State failed to make reasonable efforts toward reunification “because court-ordered I.Q. testing, which would have identified needed services and targeted case management, was never completed by the time of the permanency hearing.” Following a hearing on

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<sup>2</sup> These efforts included repeated phone calls, phone messages, personal messages with people who knew the mother, personal visits, letters, and taping letters and business cards to the mother’s door.

<sup>3</sup> The mother has not challenged the termination of her parental rights under section 232.116(1)(e) and we could affirm on that basis. Having concluded termination is proper under section 232.116(1)(h), however, we need not address section 232.116(1)(e). See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (“When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.”).

August 4, the court issued a dispositional order on August 21, ordering in relevant part:

The Iowa Department of Human Services shall work cooperatively with the mother and service providers and evaluators in order to assist the mother's participation in a mental health assessment which shall include IQ testing. The Department of Human Services shall work with the mother insuring adult services through targeted case management if available.

The department promptly scheduled the mental health assessment and IQ testing, and on August 24 sent the mother a letter expressing concern that it could not locate the mother and she had not shown up for visits and sessions the preceding week. The letter listed the "scheduled IQ testing and adaptive functioning testing" appointment on September 8, stated the department would pick the mother up to take her to the appointment, and asked, "since we have not had any contact with you in the past week please call one of us" at the phone numbers listed. Also on August 24, a service provider sent the mother a letter, with a copy to the department, detailing unsuccessful attempts to contact the mother by phone and in person on August 7, 19, 21, and 24, and advising the mother that services would be terminated if the mother did not make contact by August 28. The mother had provided a number where she could be reached, but the man who answered the phone said he had not seen the mother for several days.

On October 13, two days before the scheduled termination hearing, the mother filed a motion for continuance. She alleged the first appointment was canceled "due to mis-communication." She also alleged "it is critical to the court's decision to know the results of the mother's IQ testing," contending the

court “would not have ordered the testing if it had not considered the testing as an important component of the court’s decision in this matter.”

At the beginning of the termination hearing on October 15, the mother argued the motion:

So we come into court today without the court-ordered IQ testing being done. We are asking that, because this was previously ordered by the court and would obviously be helpful to the court’s determination, that this matter be continued to a later date to allow the IQ testing to occur so that the court has before it a report indicating the results of that testing.

The State resisted, arguing the evidence would show “that services were, in fact, tailored to [the mother’s] abilities—services were offered.” In denying the motion, the court noted the mother’s unavailability for the first scheduled testing and concluded “certainly it is not in the children’s best interests to delay these proceedings any longer and certainly especially when given how much of the IQ testing would benefit the court or assist the court in making its decision.” The court also supported its denial by noting the order setting the hearing provided that no continuances would be granted.

At the termination hearing, the mother testified about the IQ testing appointment that “I wasn’t really aware that I had to contact them to let them know. It said on the letter that they would be there to pick me up and take me to and from the appointment.” When asked if she had called the department, the mother testified she called the morning of the appointment and left a voice message. She did not make contact with the case worker until September 22 or 23. In her brief, she argues her lack of contact with the department between the August 4 hearing and the team meeting on September 23 was because the SIM



card in her phone was stolen and she could not afford another cell phone. Yet at the termination hearing, she testified the SIM card was stolen from her phone just two days before the September 23 team meeting. She gave no explanation for the other six weeks she was out of contact.

From our review of the record, it is clear the department and service providers were aware the mother may be low-functioning and tailored their services and instruction to her needs and abilities. Directions were expressed in simple, concrete terms, repeated as necessary, and frequently demonstrated for the mother, who was given opportunities to practice the actions and skills, such as bathing a child, repeatedly before applying them with her children. We agree with the juvenile court's determination that the results of IQ testing would be of limited benefit to the court. We conclude the many services provided to the mother fulfilled the requirement that the State make reasonable efforts toward reunification. See Iowa Code § 232.102(10).

The mother also argues the court should have continued the hearing to allow time for her to participate in IQ testing. We find no abuse of discretion in the court's denial under the circumstances before it. See *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). Granting the continuance would only have delayed permanency for these children. There is no indication in the record it would have changed the services provided or the efforts made toward reunification. The juvenile court did not believe the results of the IQ testing would be of any significant benefit to it in its determination of the issues before it.

**Best Interests.** The mother contends there was “insufficient evidence to support that termination of the mother’s parental rights was in the long term best interest of the children.” She argues the children are bonded with her and with each other, she complied with all expectations of the department concerning mental health and substance abuse, and she was able to provide the children with a safe and stable home.

The older child has been out of the mother’s care for most of the child’s life. The younger child has never been in the mother’s care. The evidence does not reveal a parent-child bond that would support avoiding termination of the mother’s parental rights because it would be detrimental to the children. See Iowa Code § 232.116(3)(c). Although the preference is to keep siblings together, we note that the potential adoptive parents have agreed to allow continued contact between the children. The mother’s lack of participation in visitation and services, her positive drug test, her lack of compliance in taking prescribed medications to address her mental health concerns, and her lack of any stable residence belie her arguments she has complied with the department’s expectations and is able to provide the children with a safe and stable home.

The juvenile court found:

Because of the children’s ages and the mother’s limited internalization of services offered, lack of safe and sanitary housing, abandonment by the father, history of chaotic lifestyle choices, substance abuse and mental health issues . . . it is clearly in the children’s best interests” [to terminate parental rights].

We agree with the juvenile court’s determination that termination of the mother’s parental rights was in the best interest of the children.

**AFFIRMED.**