

IN THE COURT OF APPEALS OF IOWA

No. 0-339 / 10-0544
Filed May 26, 2010

**IN THE INTEREST OF V.R.H., Q.M.H., and C.L.S.,
Minor Children,**

P.C.H., Jr., Father,
Appellant,

A.W., Mother,
Appellant.

Appeal from the Iowa District Court for Montgomery County, Susan Larson Christensen, District Associate Judge.

A mother and father separately appeal from the district court's order terminating parental rights to their children. **AFFIRMED AS TO BOTH APPEALS.**

C. Kenneth Whitacre of Swenson & Whitacre, P.C., Glenwood, for appellant mother.

Josiah C. Wearin of Stamets & Wearin, P.C., Red Oak, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Bruce E. Swanson, County Attorney, for appellee State.

Charles Richard of Richards Law Office, Red Oak, for minor children.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

VOGEL, P.J.

Alma appeals the termination of her parental rights to her three children, C.L.S., born June 2000,¹ Q.M.H., born October 2003, and V.R.H., born February 2005. Paul, the father of Q.M.H. and V.R.H., also appeals the termination of his parental rights. We affirm as to both appeals.

Our review of termination of parental rights cases is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

The children were removed from the parents' care in March 2008 and have largely been out of the home since that time. The Iowa Department of Human Services (DHS) attempted a trial home placement at the end of July 2009, but the children were removed shortly thereafter, and have not been in either Alma or Paul's care since August 2009. The district court terminated Alma and Paul's rights under Iowa Code section 232.116(1)(f) (2009) (child four or older, adjudicated CINA, removed from home for twelve of last eighteen months, and child cannot be returned home). Paul's rights were also terminated under section (b) (abandonment).

Alma challenges the termination of her parental rights, generally asserting the State failed to prove the children could not be returned to her care.² Central to Alma's inability to safely care for the children is her ongoing struggle with mental health problems. While she participated in a mental health evaluation,

¹ C.L.M.'s father's parental rights were terminated, and he does not appeal.

² Alma also argued her constitutional rights were violated by the court's consideration of her mental illness, but she failed to assert this in district court and therefore failed to preserve error. *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) ("Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.").

she was not receptive to recommended treatment. In addition, DHS offered Alma other services to promote reunification with her children such as protective day care when the children were in her care, transportation, and grant money for housing, but she failed to utilize the services offered such that her ability to care for the children improved. At the termination hearing, the DHS social worker testified, "We've attempted reunification twice, and it's been unsuccessful. To date, Alma continues to be homeless. . . . Alma just had a very difficult time taking care of herself, let alone all three kids." While Alma claims the State failed to prove she could not assume her parental role, she confirmed at the termination hearing that she was not currently in a position to parent her children, due to her housing and employment situations. We find clear and convincing evidence to support the district court's termination of Alma's parental rights.

Paul does not argue in this appeal that the State failed to prove the statutory elements under either section 232.116(1)(b) or (f). Rather, he asserts DHS failed to provide him reasonable services geared to help him with his "limited mental capacity." During the pendency of this case the district court repeatedly inquired of both Alma and Paul as to the sufficiency of the services being provided and whether additional services were needed to facilitate the safe return of the children. Paul failed to identify a deficiency in services or request additional services. When a parent fails to demand services other than those provided, the issue of whether services provided were adequate has not been preserved for appellate review. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). We therefore affirm the district court's termination of Paul's parental rights.

Although neither parent specifically asserts that termination is not in the children's best interests, we briefly review this finding of the district court. Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of Iowa Code section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 37, 40 (Iowa 2010). We consider the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. *Id.* The record demonstrates that neither parent is able to provide a safe and nurturing home for the children. All three children suffer from the chaotic environment previously provided by the parents, but have improved in the stability of the current foster home. We conclude termination of Alma and Paul's parental rights was in C.L.S., Q.M.H., and V.R.H.'s best interests as set forth under the factors in section 232.116(2).³

AFFIRMED AS TO BOTH APPEALS.

³ Before terminating parental rights, the court must consider Iowa Code section 232.116(3). See *In re P.L.*, 778 N.W.2d at 39. The only subsection that could apply to the facts of this case is (c), providing: "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Neither party suggested that parental rights need not be terminated under Iowa Code section 232.116(3)(c), and we find this section inapplicable.