

IN THE COURT OF APPEALS OF IOWA

No. 0-532 / 10-1000
Filed August 25, 2010

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

**M.D.C., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A mother appeals the termination of her parental rights to three children.

AFFIRMED.

Jesse A. Macro, Jr., West Des Moines, for appellant mother.

Edward Bull of Bull Law Office, P.C., Des Moines, for appellee father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee State.

Nathaniel A. Tagtow of Nelissen & Juckette, P.C., Des Moines, for minor children.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

VAITHESWARAN, P.J.

A mother appeals the termination of her parental rights to three children, born in 2004, 2006, and 2009. She contends (1) the record lacks clear and convincing evidence to support the grounds for termination cited by the juvenile court and (2) termination was not in the best interests of the children.

I. The juvenile court terminated the mother's parental rights to all three children pursuant to Iowa Code section 232.116(1)(d) (2009) (requiring proof of several elements, including proof that the children's parents were offered or received services to correct the circumstances that led to the adjudication and, despite that offer or receipt of services, the circumstances that led to the adjudication still exist).¹ The record supports this ground for termination.

The mother, who was just twenty-one years old at the time of the termination hearing, had a history of drug use and a criminal record, which included a burglary conviction. She was raised by her maternal grandmother, who adopted her in 1997 after her own mother's parental rights were terminated based on an addiction to crack cocaine.

When the first child was born, the grandmother housed and cared for both mother and child. The grandmother continued to care for the first child until the grandmother died, shortly before this child-in-need-of-assistance action was filed. At that time, the first child was moved to the home of a paternal aunt.

¹ The juvenile court also terminated the mother's parental rights to the younger two children pursuant to Iowa Code section 232.116(1)(h) but did not invoke this provision or the related provision applying to older children in terminating the mother's parental rights to the oldest child. Therefore, we decline to rely on this provision.

The second child was in the mother's care for only the first five months of his life. At that point, the mother was jailed, and this child was transferred to the care of his paternal great-grandmother. He remained in her care throughout the proceedings.

The youngest child was born in 2009 with marijuana in her system. She was eventually placed with the paternal aunt who was caring for the first child.

At the time of the termination hearings, the mother was living at an in-patient drug treatment facility as a condition of probation. Although she testified that she had remained sober for approximately thirteen months, a service provider stated that the mother was not "accepting recovery; that her mindset or thought process is not in what we would call a recovery thinking."

Meanwhile, the mother had not cared for her youngest child for months, had not cared for her second child for more than two years, and had not cared for her oldest child for well over a year. She had never cared for the older two children without her grandmother's assistance. Moreover, she was expecting a fourth child a month after the first termination hearing. Although she stated she was ready to have the three children transferred to her care at the drug treatment facility, she acknowledged it was difficult to manage all of them during visits. When her visits were expanded following the first termination hearing, the mother declined to participate in two Sunday sessions.

The mother was also unwilling to sever her ties with the father of her youngest child, a man who struggled with his own addictions and had relapsed as recently as November 2009. Notably, she allowed him to have contact with the first and third child after the Department of Human Services approved

overnight visits at the mother's cousin's house. The department quickly rescinded its approval of these visits.

We are persuaded that, despite the mother's significant progress towards sobriety, she did not show similar strides in her ability to parent all three children. Accordingly, we conclude the circumstances that led to the adjudication continued to exist at the time of the termination hearing.

II. We turn to the question of what was in the children's best interests. On this question, we are guided by the analysis articulated in *In re P.L.*, 778 N.W.2d 33, 40–41 (Iowa 2010).

There is no question that the mother made efforts to address her drug use. In addition to participating in the intensive drug-treatment programs provided at the facility and moving to "level 2" compliance out of three levels, she also became involved in the family drug court program. However, when she was allowed to have overnight visits outside the confines of the facility, she failed to ensure the safety of her children. Based on this episode, we are not convinced the mother was in a position to protect her children. Additionally, the mother conceded that the caretaker of her second child was the best person to care for him and that all she wanted was a chance to be a part of his life. This concession raises serious doubts about her present assertion that it is in this child's best interests to be with her.

We recognize that a service provider testified positively about the mother's ability to meet the children's basic needs. While this provider appeared to favor reunification at the drug-treatment facility, the juvenile court found the mother had "frustrated" the possibility of having the children transferred to her there and had

“not made the progress necessary to parent these children fulltime without further harm to them.” Based on our de novo review of the record, we agree with these findings.

We affirm the termination of the mother’s parental rights to her children, born in 2004, 2006, and 2009.

AFFIRMED.