

**IN THE COURT OF APPEALS OF IOWA**

No. 0-533 / 10-0876  
Filed August 11, 2010

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

**P.J.M., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Buena Vista County, Mary L. Timko, Associate Juvenile Judge.

A mother appeals from the termination of her parental rights. **AFFIRMED.**

M. W. Miller Jr., Cherokee, for appellant.

Thomas J. Miller, Attorney General, Diane M. Stahle, Assistant Attorney General, Dave Patton, County Attorney, and James M. McHugh, Assistant County Attorney, for appellee State.

Karla J. Henderson of Forristal & Henderson, Holstein, for minor children.

Mark Cornish of Stern, Diehl, Cornish & Jensen, Storm Lake, for father of H.M.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

**POTTERFIELD, J.**

P.M. appeals<sup>1</sup> from the termination of her parental rights to her three children, Tp.M., born June 2000, Tm.M., born in October 2002, and H.M., born September 2008. We affirm the ruling of the juvenile court that P.M. failed to make progress on her anger outbursts and that physical abuse of her children remained a likelihood after sixteen months of services.

All termination decisions are reviewed de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the district court's findings of fact, especially when considering credibility of witnesses, though we are not bound by them. *Id.*

The Iowa Department of Human Services (DHS) received five abuse reports<sup>2</sup> on this family beginning in 2002. The children have resided in foster care since November 2008, following the fifth child abuse report based upon P.M. having slapped Tm.M. in the face, leaving a handprint. P.M. was taken into custody on a charge of child endangerment. When the children were told they were being placed into foster care, Tm.M. expressed relief that he would no longer be hit.

Although P.M. rejected a voluntary placement of the children into foster care upon her arrest, she later stipulated removal was necessary to ensure the children's health and safety. She further stipulated the State could prove by clear

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<sup>1</sup> The fathers of the children do not appeal.

<sup>2</sup> The first report was founded, the second unfounded, the third not confirmed. The fourth report was based on Tp.M.'s report that scratches on her fingers were from her mother beating her. She also reported that the right side of her head hurt because her mother threw a cup at her. However, the report was unconfirmed due to the fact that no physical injury was present.

and convincing evidence that the children were children in need of assistance (CINA). On March 18, 2009, the juvenile court adjudicated the three children CINA.

During the course of the CINA proceedings, P.M. has been provided Family Safety Risk and Permanency services, supervised visitation, parent skill development, anger management assistance, budgeting assistance, a psychological assessment, and therapy sessions. She initially made efforts to cooperate with services, but inevitably would get upset or annoyed with a service provider and would no longer cooperate. She has had angry outbursts that included yelling, swearing, and hitting papers from CASA (Court Appointed Special Advocate) coordinator's hands.

Despite the receipt of services for ten months after the children were placed in foster care, P.M. hit her children even under supervision. Christine Enderlin, who first supervised visits between P.M. and the children, reported that on September 25, 2009, P.M. slapped H.M.'s hand when H.M. accidentally pinched P.M. P.M. again slapped H.M.'s hand on October 9, 2009. On October 23, 2009, in the course of a temper outburst directed at Enderlin, P.M. shoved a table, hitting P.M. in the stomach.

A petition to terminate parental rights was filed on January 6, 2010. Hearing was set for January 19. However, because P.M. had made some progress with employment and transportation, and was attempting to make her house safe enough for children, the parties agreed to allow an additional three months for P.M. to work toward reunification. The court specified its expectations of P.M., which included among other things, cooperating with all service

providers and following all recommendations, making herself available for any parenting sessions arranged, being able to demonstrate an ability to maintain her temper and demonstrate appropriate parenting skills, continuing to work with the services already being provided and cooperate with all service providers, and securing appropriate caretakers for the children.

P.M. began attending therapy sessions in January 2010, which had been recommended in July 2009. But she did not sign a release of information to allow DHS to speak with her therapist or to allow DHS to provide the results of her psychological testing to her therapist. Consequently, her social worker, David Jaehrling, reported in an April 8, 2010 addendum report that he was unable to determine what was occurring in P.M.'s therapy sessions and whether she was making any progress on her anger management or mental health issues. (At the termination hearing, P.M. testified it was at her counselor's request that she not release information about the sessions.)

Cheri Krout replaced Enderlin as case coordinator and visitation supervisor in December 2009. In a February 4, 2010 case progress report, Krout noted she had been seeing P.M. on a weekly basis to work on anger management issues. Krout reported that P.M. "has been receptive to this type of format for learning about the anger cycles and what they consist of and how to handle them in a positive way."

In an April 10, 2010 case progress report by Krout, it was reported that P.M. had become upset with Krout because of a miscommunication about a visit on March 12. On March 16, P.M. met with Krout and went through lessons including problem solving, handling stress, understanding and expressing anger,

and parenting information. P.M. was asked if any of the training was helping and P.M. became very emotional, stated she has had all of this before, and informed Krout she did not trust anyone. P.M. later told Krout she was “only jumping through the hoops.” Krout wrote:

[P.M.] has not been receptive of the parenting classes and the anger management classes. She appears to be irritated and very emotional by this whole process of classes offered to her. [P.M.] does act differently when she is with her children. She enjoys her visits with the children. [P.M.] was telling her children to be of good cheer.

The children were reluctant to attend the supervised visits with their mother. On March 30, 2010, the youngest child “threw a big fit and hid behind” her foster mother at the sight of the worker who came to pick her up for visitation. Tm.M. cried when it was time to go to visits and had trouble sleeping or complained of headaches following visits. On April 12, 2010, the eldest was so stressed about the thought of going back to her mother that she wet her pants.

At the time of the termination hearing on April 26, 2010, the concerns about the safety of P.M.’s house remained. Moreover, the court noted “the area of most concern” is P.M.’s

lack of temper control, her lack of ability to interact appropriately with persons with whom she may have a disagreement, including her children, and her inability to recognize that her anger and inability to control her emotions are even a problem. [P.M.] also has a difficult time dividing her attention among her children during visits, which leaves [Tp.M.] going off by herself and [Tm.M.] begging for attention. The persons who supervise the visits between [P.M.] and the children report that visits start out fine but eventually P.M. becomes overwhelmed by the children as the visits go on. Visits have remained supervised.

The court expressed its concern about what would happen to the children if returned to P.M., given that the mother loses her temper while in a supervised

setting. The court found that if returned to the parental home, the children would remain CINA as originally adjudicated.

The juvenile court terminated P.M.'s parental rights to Tp.M. and Tm.M. pursuant to Iowa Code section 232.116(1)(d) (child previously adjudicated CINA, parent offered services and circumstances continue to exist despite offer of services) and (f) (2009) (child four years or older, adjudicated CINA, removed from parent's physical custody for at least twelve of last eighteen months, and child cannot be returned at present time). The court terminated P.M.'s parental rights to H.M. pursuant to section 232.116(1)(d) and (h) (child three years or younger, adjudicated CINA, removed from parent's physical custody for at least six of last twelve months, and child cannot be returned at present time).

P.M. appeals, arguing the State failed to use reasonable efforts and provide services to promote reunification, and the statutory grounds have not been met by clear and convincing evidence.

DHS has an obligation to "show reasonable efforts as part of its ultimate proof the child cannot be safely returned to the care of the parent." *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Our focus is on the services provided by the State and the response by P.M. *See id.* While we question whether P.M. has adequately preserved this issue, *see id.* at 493-94 (noting importance for a parent to object to services early in the process so appropriate changes can be made), our de novo review confirms that DHS has shown reasonable efforts have been made to allow reunification. Not only did DHS provide a multitude of services, it also gave P.M. an additional three months to make progress toward reunification.

We also reject P.M.'s claim that the grounds for termination have not been shown by clear and convincing evidence. See *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (noting it is the State's burden of proving the grounds for termination by clear and convincing evidence). "Clear and convincing evidence" means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *In re C.B.*, 611 N.W.2d at 492. Upon our de novo review, we find clear and convincing evidence supports termination of parental rights with respect to Tm.M. and Tp.M. under Iowa Code section 232.116(1)(f) (children four years and older), and with respect to H.M., under section 232.116(1)(h) (child three years and younger). 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.").

At the time of the termination hearing, the children had previously been adjudicated CINA, had been out of P.M.'s custody for more than sixteen months, and could not then be returned to P.M. Visits had not progressed beyond supervised visitation in those months. Anger management issues remained with respect to the children, even during supervised visits. Moreover, P.M. herself testified her house is "not fully appropriate" for the children yet because safety issues remain.

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). While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the

statutory scheme of chapter 232. *C.B.*, 611 N.W.2d at 494. Once the statutory limitation period lapses, “termination proceedings must be viewed with a sense of urgency.” *Id.*

The children are all together in a pre-adoptive home at this time. They need and deserve permanency. Tp.M. is receiving needed counseling. Considering the best placement for furthering the long-term nurturing and growth of these children, and to the physical, mental, and emotional condition and needs of these children, termination is in their best interests. Iowa Code § 232.116(2). The mother does not assert any of the exceptions contained in section 232.116(3). We therefore affirm termination of P.M.’s parental rights.

**AFFIRMED.**