

IN THE COURT OF APPEALS OF IOWA

No. 0-534 / 10-1003
Filed August 25, 2010

**IN THE INTEREST OF R.W. and T.W.,
Minor Children,**

T.W., Mother,
Appellant.

Appeal from the Iowa District Court for Butler County, Peter B. Newell,
District Associate Judge.

A mother appeals from the district court's order terminating her parental
rights to her children. **AFFIRMED.**

Michael J. Cross, Hampton, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Greg Lievens, County Attorney, and Martin Peterson, Assistant
County Attorney, for appellee, State.

Patrick G. Vickers of Vickers Law Office, Greene, for minor children.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

VOGEL, P.J.

Tina appeals the termination of her parental rights to two of her children, R.W., born May 2001, and T.W., born June 2002.¹ We affirm.

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 Tina's care in September 2008, and have not returned to her care since that time. In June 2010, the district court ordered the termination of Tina's parental 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 at the present time child cannot be returned home).

Tina challenges the termination, asserting the State failed to prove the children could not be returned to her care. Much of the testimony and evidence admitted at the termination hearing involved Tina's poor parenting skills, related in part to her association with inappropriate men. While Tina was married to the girls' father, Jeff, she suffered physical and mental abuse, some of which was witnessed by the girls. Although she divorced Jeff, she then chose to marry a registered sex offender. Tina failed to recognize and appreciate the negative repercussions these relationships had on her children. She has not put the safety and protection of her children first. DHS social worker Alicia Skurdal testified to the risks Tina posed to her children: "poor decision-making, choices that she makes that do not benefit the children; the physical abuse allegations

¹ The parental rights of the biological father were previously terminated. A son born in 2003 was adjudicated in need of assistance, but is in Tina's care, with services and supervision by DHS.

... ; Tina's frustration when things don't go just as she would like during visitation."

While Tina is low functioning, she was offered appropriate services to promote reunification with her children. She was unable to sufficiently utilize those services in order for DHS to even attempt a trial home placement. The district court found "Tina [] has the desire to parent her children, but does not have the intellectual capacity or the emotional maturity to do so. These girls, in Tina's [] home, would be exposed to ongoing dangers and potential victimization." We affirm these findings.

Tina also challenges the district court's denial of additional cross-examination of Skurdal by Tina's counsel. After direct and cross examination of Skurdal, Tina's counsel later re-called her to the stand:

THE COURT: Mr. Petersen [State], do you wish to present additional evidence?

MR. PETERSEN: Your Honor, Mr. Cross has requested that he be allowed to have some brief testimony from Ms. Skurdal right away this morning, and so—if that's okay.

THE COURT: Do you wish to have that?

MR. CROSS: I realize this is a little out of normal practice, Your Honor, but after I had cross examined Ms. Skurdal and then cross examined Ms. Nelson, there were some issues I thought I needed to bring up again with Ms. Skurdal before cross exam of further witnesses.

BY MR. CROSS:

Q: Now, in your earlier testimony, you opined that you felt termination of these two daughters was in the best interests of the children? A: Yes.

Q: Of those two children. When you reached that opinion, did you rely on the reports of others? A: Yes.

Q: And whose reports did you rely on? A: Ms. Waddell's, Ms. Nelson's, Ms. Hedican's, Ms. Debois'.

THE COURT: Mr. Cross [Tina's counsel], you know, this seems to be kind of reharping what you asked last time.

Do you have some kind of new questions that you want to ask her on cross examination?

MR. CROSS: What I'm trying to find out, Your Honor, is what in the reports that were submitted that she is relying on in her opinion so I can cross examine those witnesses that we—will be called by the State.

THE COURT: You will have a chance to cross examine the new witnesses after they testify.

Let's do this. I'm going to go ahead and have you step down, Ms. Skurdal.

On appeal, Tina asserts the district court's curtailing of further cross examination of Skurdal resulted in a denial of a fair trial. While she now asserts due process and equal protection violations, she failed to raise any constitutional claim on this issue during the trial. An issue which is not raised at the trial court may not be raised for the first time on appeal. *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.").

Even if error were preserved, we would not find the court abused its discretion in failing to allow Tina to continue questioning Skurdal. See *In re Marriage of Ihle*, 577 N.W.2d 64, 67 (Iowa Ct. App. 1998) (explaining that matters relating to course and conduct of trial are within discretion of the trial judge). Tina was given the opportunity to cross-examine two of those witnesses that Skurdal had earlier mentioned in her testimony in making her recommendations. Emily Nelson, a family support worker, and Dalonie Waddell, a remedial service provider, both employed with Lutheran Services in Iowa were called to testify as to their interaction with Tina and the girls, and as to reports they had created. Any weaknesses in Skurdal's reliance on Nelson's or Waddell's information would have been tested through Tina's cross examination of these witnesses.

Further, Tina did not attempt to re-call Skurdal after Nelson and Wadell had testified.

Finally, while Tina does not challenge the district court's best interests finding, even if a statutory ground for termination is met, we must 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." Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d 33, 37, 40 (Iowa 2010). The record demonstrates that Tina is not able to provide a safe and nurturing home for the girls. The district court found "[T]he children are bonded to each other and are bonded to the foster family. The children have been integrated into the foster family, and [R.W.] has expressed a preference to remain in that foster home."

We find clear and convincing evidence to support the district court's termination of Tina's parental rights and conclude termination was in R.W. and T.W.'s best interests as set forth under the factors in section 232.116(2).

AFFIRMED.