

**IN THE COURT OF APPEALS OF IOWA**

No. 0-535 / 10-0984  
Filed August 11, 2010

**IN THE INTEREST OF M.V. and I.V.,  
Minor Children,**

**L.M.V., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar, Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Dennis M. Guernsey, Waterloo, for appellant mother.

Mary E. Kennedy, Waterloo, for father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen A. Hahn, Assistant County Attorney, for appellee State.

Kelly Jo Smith, Waterloo, for minor child.

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

**DOYLE, J.**

A mother appeals the termination of her parental rights to her children, ages seven and three. She contends the State failed to prove the grounds for termination by clear and convincing evidence. She also contends termination is not in the children's best interests. We review these claims de novo. *In re N.E.*, 752 N.W.2d 1, 6 (Iowa 2008).

The mother's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(f), (h), (k), and (l) (2009). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(f) where:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Similarly, section 232.116(h) provides termination is appropriate where:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is 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.

There is no dispute the first three elements of these sections have been proved. However, the mother contends there is insufficient evidence to show the children cannot be returned to her care at the present time.

M.V. came to the attention of the Iowa Department of Human Services in 2004 due to the mother's substance abuse issues. M.V. later tested positive for methamphetamines, and the mother admitted to drug use in the presence of the child. She was three years of age at the time.

Although the mother made strides in attending to her mental health needs and sobriety during her pregnancy with I.V., the mother ultimately relapsed in 2007. The mother had taken Xanax with alcohol, and she overdosed in front of the children. The mother was again offered services to address her substance abuse and her mental health issues, but she failed to regularly participate. Although over two years have passed, the mother has failed to adequately address these concerns. At the time of the termination trial, she had again relapsed and admitted use of marijuana and Vicodin. Accordingly, the grounds for termination have been proved.

The mother also contends termination is not in the children's best interests. Specifically, she notes the children are in a relative placement and therefore the court "need not terminate" her parental rights. See Iowa Code § 232.116(1)(3)(a). The grandmother has stated she would like to adopt the children.

In determining best interests, this court's primary considerations are "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.” *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010) (citing Iowa Code § 232.116(1)(2)). Considering the aforementioned factors, we conclude termination is in the children’s best interests. The mother has mental health and substance abuse issues that remain unresolved. She failed to cooperate with the services offered her. Insight into the children’s future if returned to the mother’s custody can be gained from evidence of her past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989). Given the gravity of the problems the mother suffers from and her resistance to addressing them and past relapses, the children’s safety and physical, mental, and emotional needs necessitate termination. We agree with the juvenile court that termination of the mother’s parental rights is in the children’s best interests.

Accordingly, we affirm the termination of the mother’s parental rights.

**AFFIRMED.**