

**IN THE COURT OF APPEALS OF IOWA**

No. 0-651 / 10-1149  
Filed September 9, 2010

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

**K.C., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Constance Cohen,  
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Jesse A. Macro Jr. of Gaudineer, Comito & George, L.L.P., West Des  
Moines, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, John P. Sarcone, County Attorney, and Andrea S. Vitzthum,  
Assistant County Attorney, for appellee State.

John Jellineck, Des Moines, for minor children.

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

**DANILSON, J.**

A mother appeals the termination of her parental rights to her children. She contends the State failed to prove the grounds for termination by clear and convincing evidence and that termination is not in the children's best interest. Given the mother's history of chronic and severe substance abuse problems and ongoing safety concerns regarding her violent relationships, we conclude there is clear and convincing evidence the circumstances that formed the basis for the children's adjudication continue to exist. We affirm termination of parental rights.

**Discussion.**

In February 2010, the mother consented to the removal of her children, born in September 2002 and July 2004, following a domestic violence incident where police found the mother in her home naked and highly intoxicated. The children were present in the home, and the mother was combative with police. The mother did not contest the children's adjudication as children in need of assistance (CINA) in March 2010. Given the mother's history of substance abuse, domestic violence, and prior involvement with the Iowa Department of Human Services (DHS),<sup>1</sup> the mother's paramour was ordered to have no contact with the children, and any contact with the father was to occur in a therapeutic setting. The mother was offered services to eliminate the need for removal, including drug screens, substance abuse evaluation and treatment, individual

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<sup>1</sup> A previous juvenile case was opened on the children between 2004 and 2006 because of the parents' use of methamphetamine and history of domestic violence. The children also came to the attention of DHS in October 2009, due to domestic violence and substance abuse.

therapy, family safety risk and permanency services, family team meetings, and family contact. The children have remained in the custody of their maternal aunt.

The court determined the mother's ongoing relationship with the paramour posed a risk to the children's safety and well-being. An arrest warrant was issued for the paramour after a March 2010 assault on the mother. He was arrested and a no-contact order was issued. Notwithstanding, the paramour continued to reside with the mother, and he was later arrested again on her property. The mother was repeatedly dishonest with caseworkers and providers, informing them that she was no longer involved with her paramour, even though his car was regularly seen parked at her apartment. The mother has stated that she still loves him despite the fact that he had domestically abused her and she would continue to love him until it killed her. She has been in a relationship with her paramour for two and one-half years. To her credit, she states that she understands the relationship causes harm to her children. During the termination hearing, she contended that she ended the relationship two weeks before the hearing because she did not want to lose her children.

The mother tested positive for a high level of methamphetamine in April 2010, despite her reports that she has not used methamphetamine or marijuana for approximately six years. The mother also admitted she was found drunk and wandering around Army Post Road in April 2010. She admitted to being an alcoholic, drinking about a pint of rum between three to five times per week. The mother entered a treatment program through Broadlawns Medical Center in April 2010, and testified that she has been sober since that time. The mother has completed four substance abuse programs in the past, but relapsed each time.

The State filed its petition to terminate parental rights in April 2010. Following a hearing in June 2010, the juvenile court entered its order terminating the mother's parental rights pursuant to Iowa Code sections 232.116(1)(d), (g), and (j) (2009).<sup>2</sup> The mother appeals. We review her claims de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007).

We need only find termination proper under one ground to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). Termination under section 232.116(1)(d), requires the State to prove the child has been adjudicated a CINA after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of the parent. The mother does not dispute this fact. This section also requires that after the adjudication, the parent was "offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer and receipt of services." The mother argues the State failed to meet its burden on this element.

The mother asserts she has made progress by obtaining employment, entering a substance abuse treatment program, and maintaining sobriety. She states that she has ended her relationship with her paramour and has suitable housing for the children.<sup>3</sup> But the mother has demonstrated a pattern of substance abuse and involvement in domestically violent relationships for a

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<sup>2</sup> The father's parental rights were terminated, but he does not appeal.

<sup>3</sup> We acknowledge that the mother was not given a great deal of time to turn her life around prior to the termination hearing. The State sought an order to waive reasonable efforts, but the request was denied in the dispositional order filed May 19, 2010. However, the evidence suggests that although the mother engaged in services, her dishonesty, failure to take the services seriously, and past history made any further delay only harmful to the children.

period of at least five years. Given the mother's history of chronic and severe substance abuse problems, dishonesty with treatment providers, and ongoing safety concerns regarding the mother's violent relationships, we conclude there is clear and convincing evidence the circumstances that formed the basis for the adjudication continue to exist. The children are not safe in her care. As the juvenile court stated:

There is no reason to believe that [the mother] will stop repeating her patterns of substance abuse, deception, and unsafe relationships. Although she has demonstrated that she can maintain sobriety for short periods of time, she has always relapsed and has required further treatment. Although she may now appear willing to protect her children from violence and substance abuse, it is clear that it is too little, too late to entrust their safety, well-being, and permanency to her. They should not have to wait indefinitely for their mother to be in a position to prioritize their well being.

Past performance of a parent may be indicative of the quality of future care the parent is capable of providing. *In re C.W.*, 554 N.W.2d 279, 283 (Iowa Ct. App. 1996). Because the State has proved the grounds for termination under section 232.116(1)(d) by clear and convincing evidence, we affirm.

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 (Iowa 2010). 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." *Id.* Taking these factors into account, we conclude the children's best interests require termination of the mother's parental rights. The children are settled into the placement with their maternal aunt and are able to stay connected to extended

family in a positive way. The children are not safe in the mother's care, nor is she able to provide for their long-term nurturing and growth. It would be a detriment to the children's physical, mental, and emotional condition to maintain the parent-child relationship with the mother.

We affirm the termination of the mother's parental rights.

**AFFIRMED.**