

IN THE COURT OF APPEALS OF IOWA

No. 0-756 / 10-1433
Filed October 20, 2010

**IN THE INTEREST OF H.N.C. and A.N.E.E.,
Minor Children,**

R.E.C., n/k/a R.E.S.,
Appellant.

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

A mother appeals the district court's order terminating her parental rights.

AFFIRMED.

Joseph W. Kertels of the Juvenile Law Center, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Patrick Jennings, County Attorney, and Diane Richardson,
Assistant County Attorney.

Angela Kayl, Sioux City, attorney and guardian ad litem for minor children.

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

VOGEL, P.J.

Ruth appeals the termination of her parental rights to her two children, A.E., born March 2007, and H.C., born January 2009.¹ The district court terminated Ruth's rights under Iowa Code sections 232.116(1)(d) (adjudicated CINA for physical abuse or neglect, circumstances continue despite services); (e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child); and (h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home) (2009). 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). When the district court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996).

The children were removed from Ruth's care in February 2009, after she failed to provide proper nutrition to then infant, H.C., causing him to exhibit signs of failure to thrive. Iowa Department of Human Services (DHS) child protective worker, Kris Callahan, in finding a denial of critical care, reported "it is of great concern that Ruth does not have the ability to comprehend the basic needs of caring for an infant." The children were adjudicated children in need of

¹ The parental rights of the biological father of each child were also terminated and neither father appealed.

assistance (CINA) on April 13, 2009, pursuant to Iowa Code sections 232.2(6)(a), (b), (c)(2), and (n).

Ruth entered the House of Mercy in May 2009. While at the House of Mercy, although given substantial resources, Ruth struggled to prepare and provide for the basic needs of her children prior to their visits, such as obtaining food and diapers. Services offered to Ruth at the House of Mercy included individual counseling and individual guidance in learning parenting skills. She was also offered assistance to help her sign up for a variety of community support services, but failed to follow through with necessary paperwork. Following some improvement, in August 2009 the children joined Ruth and began living with her at the House of Mercy. However, Ruth continued to struggle to parent the children adequately; additionally, she was involved in numerous inappropriate male relationships, including maintaining contact with A.E.'s father, a registered sexual offender.

In November, staff at the House of Mercy recommended the children be again removed from Ruth's care, as Ruth was not receptive to the round-the-clock services offered and not making any measurable progress in learning basic parenting skills. Ruth signed a voluntary placement agreement and the children were returned to their previous foster home. The children have not been returned to Ruth's care since that time. Ruth was unsuccessfully discharged from the House of Mercy in December 2009. A termination of parental rights hearing was held in June and July 2010, and an order terminating Ruth's parental rights was filed September 17, 2010.

Ruth claims that by suspending her visitation after December 2009, reasonable efforts were not made to reunite her with the children. DHS case worker, Kathy Norris, responded as to why visitation was suspended after December 2009. She testified that

I was pretty clear with Ruth that when she left the House of Mercy that that was the most intense possible service available, and she could not demonstrate parenting skills in an inpatient environment. Her room was often dirty, things were laying around that were harmful to the children. Both children came back ill with pinkeye and ear infection. She never set up a primary care physician for the children.

After December, Ruth requested no additional services, and the goal of DHS became permanency for the children in the form of termination of Ruth's parental rights. The district court found, "the record is abundantly clear that Ruth received every service available," but failed to utilize these services. Further, "despite being told in December 2009, Ruth had not yet located employment or housing; she had not engaged in counseling services and had not maintained regular contact with DHS or her attorney."

Ruth also argues the district court should have deferred termination for an additional six months. Norris testified that rather than granting six additional months, termination was the proper decision:

Because I feel she has not addressed her issue of codependency, which was told to her the day before she left House of Mercy in November when the children were removed. That has been an ongoing issue, and she did not get into therapy for that for six months. And, again, she has not addressed the issue to show that she could parent her children without relying or having someone else assist her.

The district court recognized that prior to the termination hearing, Ruth married a man "who appears to be very loving toward Ruth," and while he was

willing to be a father to Ruth's children, "Ruth had only just begun to look at ways to address concerns raised throughout the course of these proceedings." "While Ruth is a likeable and sympathetic person, she is not mature enough to make personal life changes and continues to make the same poor choices over and over again despite, or perhaps, in spite of, services already offered/received." We gain insight into the child's prospects by reviewing evidence of the parent's past performance—for it may be indicative of the parent's future capabilities. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989). We find Ruth's last-minute effort to fix her problems prior to the termination hearing was insufficient to demonstrate she could provide for the care of A.E. and H.C. The record supports that reasonable services were provided to Ruth, and additional time would not improve Ruth's ability to learn to care for her children such that they could be returned to her care. We affirm the district court's finding under section 232.116(1)(h).

Finally, while Ruth 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 Ruth is not able to provide a consistent, safe, and nurturing home for the children. The district court found "[The children] are flourishing in their foster home;" A.E. has received therapeutic services, and has resolved many past issues; H.C. is receiving physical therapy and is a "happy, healthy toddler."

We find clear and convincing evidence to support the district court's termination of Ruth's parental rights and conclude termination was in A.C. and H.C.'s best interests as set forth under the factors in section 232.116(2).

AFFIRMED.