

IN THE COURT OF APPEALS OF IOWA

No. 0-832 / 10-1519
Filed November 24, 2010

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

K.D.H., Father,
Appellant,

M.D.J., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

A mother and father appeal separately from the order terminating their
parental rights. **AFFIRMED.**

Thomas G. Crabb, Des Moines, for appellant father.

Chira L. Corwin of Hope Law Firm, P.L.C., Des Moines, for appellant
mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Annette Taylor,
Assistant County Attorney, for appellee State.

M. Kathryn Miller of the Juvenile Public Defender's Office, Des Moines, for
minor children.

Considered by Danilson, P.J., Tabor, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MAHAN, S.J.**I. Background Facts & Proceedings**

Kenneth and Misty are the parents of three children: Kimberly, born in 2004; Kaylin, born in 2006; and Dylan, born in 2007. Kenneth has a lengthy history of substance abuse, domestic violence, and criminal behavior. Kenneth lived with the family until February 2009, and he has had no contact with the children since that time. He has been incarcerated since March 2009 on drug charges.

Misty's new boyfriend, Ray, moved into the home later in February 2009. Ray also has a history of substance abuse and criminal behavior. Kimberly alleged Ray touched her private parts. Kimberly and Kaylin also alleged Misty and Ray threw them down the basement stairs and then locked the door. Misty agreed not to allow Ray access to the children. Misty and Ray married, however, on June 14, 2009. On June 18, 2009, police officers came to Misty's home to tell her the children had gotten outside without her knowledge and were playing in the street. The next day, when Iowa Department of Human Services workers came to the home, they discovered Ray hiding in the basement. The children were removed from the home at that time and were placed in foster care.

The children were adjudicated to be in need of assistance (CINA) on July 21, 2009. Misty participated in supervised visitation. A social worker evaluating a visit between Misty and the children stated, "Misty sees the children as an inconvenience, and leaves them to self-supervise." Misty did not attend all visitation opportunities.

Misty reported she had used illegal drugs with Ray in July 2009. A hair test at the time was negative for Misty, but positive for Ray. Ray was arrested for operating while intoxicated, and later had a drug test that was positive for methamphetamine. Misty and Ray did not always provide drug screens as requested. Ray successfully completed a relapse prevention program. Misty and Ray completed parenting classes. Misty attended individual counseling.

When Kimberly started kindergarten in the fall of 2009, she did not know any of her colors, letters, or numbers, or how to follow simple directions. Her teacher stated, “[s]he did not understand that a letter or number was a different category than an animal, shape, or even a color.” Her teacher believed this was due to “lack of exposure to academics” at home. Kimberly quickly made strides once she started school. Kimberly attends therapy to help her deal with issues of abuse in the past. Kaylin often had temper tantrums at the time of removal, but soon developed better behavior. She also attends therapy. Dylan has been diagnosed with asthma and food allergies.

The State filed a petition for termination of parental rights on June 10, 2010. The juvenile court entered an order on September 8, 2010, terminating the parental rights of Kenneth under sections 232.116(1)(b) (abandonment), (d) (child CINA for neglect, circumstances continue despite the receipt of services), (e) (parent has not maintained significant and meaningful contact with child), (f) (Kimberly) (child four or older, CINA, removed at least twelve months, and cannot be safely returned home), (h) (Kaylin and Dylan) (child three or younger, CINA, removed at least six months, and cannot be safely returned home), and (i) (child was in imminent danger and services would not correct conditions). Misty’s

parental rights were terminated under sections 232.116(1)(d), (f) (Kimberly), (h) (Kaylin and Dylan), and (i). The court concluded termination of the parents' rights was in the children's best interests. Kenneth and Misty each appeal the juvenile court's order.

II. Standard of Review

The scope of review in termination cases is *de novo*. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Clear and convincing evidence is needed to establish the grounds for termination. *In re T.P.*, 757 N.W.2d 267, 269 (Iowa Ct. App. 2008). Our primary concern in termination cases is the best interests of the children. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

III. Kenneth

Kenneth contends the State did not provide reasonable services to him because the Department did not follow up on his suggestion to have the children placed with his aunt. He states the children could have been placed with a relative while he was in prison, and then he could have worked on reunification after he was released from prison.

The juvenile court did not address this issue, and Kenneth did not file a post-trial motion seeking a ruling on it. "Under our rules of civil procedure, an issue which is not raised at the trial court may not be raised for the first time on appeal." *In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa Ct. App. 1997). This rule also applies in juvenile court proceedings. *In re A.R.*, 316 N.W.2d 887, 889 (Iowa 1982). We conclude Kenneth has failed to preserve error on this issue.

Furthermore, the record shows Kenneth has not addressed his problems with substance abuse or domestic violence. The children should not be forced to

wait until Kenneth is released from prison and then begins to address his problems. See *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997) (noting patience with parents can lead to intolerable hardship for the children). We affirm the juvenile court's decision terminating Kenneth's parental rights.

IV. Misty

A. Misty appeals the termination of her parental rights under sections 232.116(1)(d) and (i). However, her parental rights were also terminated under sections 232.116(1)(f) and (h). The failure to cite authority in support of an issue may be deemed waiver of that issue. Iowa R. App. P. 6.903(2)(g)(3). Because we may affirm on only one of the grounds cited by the juvenile court, we may affirm on those grounds not raised on appeal. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Therefore, we may affirm the termination of Misty's parental rights based on sections 232.116(1)(f) and (h).

Even if Misty had appealed the termination under sections 232.116(1)(f) and (h), we would affirm the termination on those grounds. There is clear and convincing evidence the children cannot be safely returned to Misty's care. As the juvenile court noted, "She does not demonstrate that she understands the protective concerns about allowing drug users/abusers around children." The juvenile court also found "Misty demonstrates only a simplistic understanding of how to protect her children from sexual abuse." Additionally, she had neglected the children by not preparing them for school, and this neglect was also apparent when the children got out of the home without Misty's knowledge.¹

¹ Although not necessary to this decision, we conclude the termination of Misty's parental rights under section 232.116(1)(d) and (i) was also appropriate.

B. Misty asserts the State did not engage in reasonable efforts to reunite her with the children. She claims the foster parents coached the children to dislike her. She also states she should have been given unsupervised, or at least semi-supervised, visitation.

There is a requirement that reasonable services be offered to preserve the family unit. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). The State has the obligation to make reasonable efforts, but it is the parent's responsibility to demand services if they are not offered prior to the termination hearing. *Id.* The record does not show Misty raised the issue regarding the foster parents prior to the termination hearing. We conclude this issue has not been preserved for our review.

As to the issue of visitation, we note Misty did not take advantage of all of the visitation offered to her. We determine the State acted reasonably in not extending even further visitation. *See in re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996) (noting the nature and extent of visitation is controlled by the best interests of the children). Misty has not shown the State did not engage in reasonable efforts to reunite her with her children.

C. Misty claims the juvenile court should have granted her additional time to progress with services. She admits she did not become involved in services until shortly before the termination hearing, but states this is because it took her awhile to "warm up" to the service providers. She asks for an additional six months to show she is making progress.

We conclude it is not in the children's best interests to give Misty additional time. The children need stability, and they should not be required to

wait while Misty takes steps to become a responsible parent. As noted above, patience with parents can lead to intolerable hardship for their children. See *C.K.*, 558 N.W.2d at 175. Children should be placed in a permanent stable home as soon as possible. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010).

D. Finally, Misty claims termination of her parental rights is not in the best interests of the children. She states she has a very strong bond with the children. We conclude termination of Misty's parental rights is in the children's best interests. See *id.* We, like the juvenile court, have considered the children's safety; the best placement for furthering their long-term nurturing and growth; and their physical, mental, and emotional condition and needs. *Id.* In addressing this issue, the juvenile court stated, the "biological parents are unable or unwilling to gain the necessary skills to assume such a parental role."

We affirm the decision of the juvenile court terminating Misty's parental rights.

AFFIRMED.