

**IN THE COURT OF APPEALS OF IOWA**

No. 1-133 / 11-0001  
Filed March 7, 2011

**IN THE INTEREST OF S.C., M.C., and K.C.,  
Minor Children,**

**L.M.D., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Pottawattamie County, Mark J. Eveloff, Judge.

A mother appeals an order terminating her parental rights to three children. **AFFIRMED.**

John P. Heithoff, Council Bluffs, for appellant mother.

Roberta Megel, Council Bluffs, for father of M.C. and K.C.

Brian Rhoten, Council Bluffs, for father of S.C.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Eric Strovers, Assistant County Attorney, for appellee State.

Tricia McSorley and Sara Thalman, Council Bluffs, for minor children.

Considered by Sackett, C.J., and Potterfield and Mansfield, JJ.

**MANSFIELD, J.**

A mother appeals from the order terminating her parental rights to her three children under Iowa Code sections 232.116(1)(d), (e), and (h) (2009).<sup>1</sup> She contends there was insufficient evidence to establish the statutory grounds for termination and termination was not in the children's best interests. Upon our de novo review, see *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (review of termination of parental rights is de novo), we affirm.

Lynn is the mother of K.C. (born 2007), M.C. (born 2008), and S.C. (born 2010). Lynn has a lengthy history of substance abuse, including a relapse during her pregnancy with S.C. In December 2009, while she was on bed rest due to that pregnancy, Lynn placed K.C. and M.C. into the care of maternal relatives. However, after S.C.'s birth, Lynn remained inconsistent in her housing and her care for the children and continued to rely on her maternal relatives to meet the children's needs.

On February 17, 2010, Lynn tested positive for methamphetamine during a meeting with her probation officer.<sup>2</sup> As a result, the children were legally removed from Lynn's care, and their placement was confirmed with the maternal relatives.<sup>3</sup> A subsequent child protective assessment was founded for denial of critical care and failure to provide adequate supervision. The children were adjudicated children in need of assistance (CINA) under Iowa Code sections 232.2(6)(c)(2), (g), and (n) on May 17, 2010.

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<sup>1</sup> The district court also terminated the parental rights of the father of K.C. and M.C. and the father of S.C. The fathers have not appealed.

<sup>2</sup> Lynn was on probation for a second-degree burglary charge.

<sup>3</sup> S.C. was subsequently placed in foster family care.

Following the children's removal, because Lynn had violated the terms of her probation, she was placed in a women's residential correctional facility. However, on May 9, 2010, Lynn was discharged from the facility after she tested positive for illegal substances. Lynn went to jail for a short time, but bonded out after two days and began residing with S.C.'s father, who himself had substance abuse problems and was later incarcerated.

On June 8, 2010, Lynn's last visit with the children took place. Thereafter, the Iowa Department of Human Services (DHS) had difficulty locating Lynn, who did not accept DHS's offers of visitation.<sup>4</sup> On July 7, 2010, Lynn was arrested and subsequently sentenced to 180 days in jail for violating her terms of probation. Her expected release date was January 25, 2011.

During this case, Lynn was offered weekly scheduled visits with the children through the family case manager as well as the opportunity to arrange additional visits by contacting her relatives. As noted, Lynn has not seen or interacted with any of her children since June 8, 2010.

On October 21, 2010, the State filed a petition for the termination of parental rights. The petition came on for a hearing on November 30, 2010. The guardian ad litem for the children favored termination. The DHS caseworker testified that she did not believe Lynn would be in a position to care for the children even after her anticipated January 25 release from jail. Before her incarceration, the caseworker noted, Lynn had been unable to provide clean drug

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<sup>4</sup> There are indications in the record that Lynn did not attend visitation because she was afraid of being arrested for violating her probation.

screens and had neither suitable housing nor employment. Also, Lynn had not consistently exercised visitation.

Lynn did not testify at the hearing. On December 22, 2010, the district court entered an order terminating Lynn's parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), and (h). Lynn appeals.

When the district court terminates parental rights on more than one statutory ground, we need only find termination appropriate under one of the grounds to affirm. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010). We find termination to be proper under section 232.116(1)(h).

At the time of the termination hearing, all of the children were three years of age or younger, had been adjudicated CINA, and had been removed from Lynn's custody for at least six of the last twelve months. Iowa Code § 232.116(1)(h)(1)-(3). The State further showed clear and convincing evidence that the children could not be returned to Lynn's custody because she was incarcerated. *Id.* § 232.116(1)(h)(4). Accordingly, the requirements of section 232.116(1)(h) were met.

Even though a statutory ground for termination exists, we still must determine whether termination is in the children's best interests. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). In evaluating this issue, we "give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." *Id.* (quoting Iowa Code § 232.116(2)).

Lynn's history of substance abuse presents a clear safety risk to her children. Lynn has not successfully addressed this concern. See *In re N.F.*, 579

N.W.2d 338, 341 (Iowa Ct. App. 1998) (“Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.”). In addition, by the time of the termination hearing, Lynn had not seen her children in over five months, and has shown no ability to effectively administer to her children’s needs. The children are currently in pre-adoptive placements and deserve safety and permanency. It is in the children’s best interests to terminate Lynn’s parental rights.

Accordingly, we affirm the judgment of the district court.

**AFFIRMED.**