

IN THE COURT OF APPEALS OF IOWA

No. 1-248 / 11-0302
Filed May 11, 2011

**IN THE INTEREST OF T.N. and X.M.,
Minor Children,**

**A.N.N., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A mother appeals the termination of her parental rights to two children.

AFFIRMED.

Annette F. Martin, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Jerry Vander Sanden, County Attorney, and Lance J. Heeren,
Assistant County Attorney, for appellee State.

Melody J. Butz of Butz Law Offices, P.L.C., Cedar Rapids, attorney and
guardian ad litem for minor children.

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

VAITHESWARAN, P.J.

A mother appeals the termination of her parental rights to her two children, born in 2007 and 2009. She contends (1) the State failed to prove the ground for termination cited by the juvenile court and (2) termination is not in the children's best interests.

I. The Department of Human Services initially became involved with the family in the spring of 2009 based on the condition of the mother's apartment. Specifically, the department expressed concern about "garbage and dirt piles on the floor" and "dirty dishes and old food sitting around and stacked on the counters." The children were taken to the home of a family friend until the mother cleaned the apartment.

In August 2009, police were called to the apartment to deal with domestic violence between the mother and the younger child's father. The mother and children went to a shelter and the mother agreed to stay away from this father. She also agreed to cooperate with a family support worker in cleaning and maintaining the condition of the apartment.

Although a worker was assigned to the mother, the apartment remained "a mess" as of December 2009. At that time, the mother was assigned a new family support worker who was unable to make contact with her until late January 2010. This worker commented that the apartment "was very messy" and the children "appeared dirty." The mother was advised that if she did not clean up the apartment, the children might be removed from her custody. At a visit two weeks later, the family support worker again noted that the children were dirty, the

kitchen and living room floors were dirty, and there were “random food items on the floors.”

In February 2010, a department social worker visited the home and found the living room “covered in garbage, cigarette butts, newspapers, food crumbs, dirty diapers, food containers, toys, wrappers, etc.” She found cockroaches “all over the walls, cupboards, fridge and floor” of the kitchen. There was also evidence that the younger child’s father had been living in the apartment. The children were removed from the mother’s custody.

The following month, cocaine was detected in the hair of one of the children. The mother stated it was possible the children were left in the care of friends who used the drug.

In the ensuing months, the mother made efforts to comply with department expectations. She asked for a family support worker to help her with cleaning, initiated mental health treatment, and occasionally attempted to provide urine samples for drug testing.¹ However, her attendance at visits was sporadic and the condition of her apartment, although improved, remained an issue.

In September 2010, the family support worker told the mother her parental rights might be terminated in light of the numerous missed visits. Following this discussion, the mother regularly participated in visits at her home, regularly provided urine samples, and made efforts to keep her apartment clean. By this time, however, nineteen months had elapsed since the department first became involved with the family.

¹ The mother testified she was unable to provide a urine sample while being watched.

In November 2010, the State filed a petition to terminate the mother's parental rights, and the case proceeded to a termination hearing. At the hearing, a department social worker testified that the children could not be returned to the mother based on "[s]ubstance abuse concerns, mental health concerns, and stability and consistency of a clean apartment or home." She stated:

We've been involved for almost a year. Prior to that, the Department was involved for approximately a year. I think she's been provided every service that could possibly be provided for her to learn the things that she needs to maintain a safe, nurturing environment for her children, and she's not been able to do that.

The mother concedes her compliance with reunification services was initially unsatisfactory but notes that it improved significantly in the months preceding the hearing. The record supports these assertions.² But, despite her progress, the mother was not in a position to assume the care of her children. After two years of intensive services, even a supportive service provider was unwilling to recommend reunification. She acknowledged that the mother's participation with her children had "gotten progressively better" and she was now exercising semi-supervised visits in her apartment but she nonetheless expressed concern about the mother's judgment regarding "what is safe and isn't safe." She stated "decisions about what is appropriate for her children, be it hazards in the home or people she's exposing them to, are in question to me."

On our de novo review of the record, we conclude the State proved the children

² The juvenile court found the mother's testimony "not credible" on these and other issues. At least with respect to the matters cited above, we find that the department's reports and the testimony of its representative and a service provider support the mother's assertions. For example, a review report dated December 19, 2010, noted the mother's participation in visits, negative urine tests, attendance at mental health appointments and the absence of a requirement that she take medications, and her completion of a parent partner orientation meeting as well as meetings with family support workers.

could not be returned to the mother's custody. See Iowa Code § 232.116(1)(h) (2009) (requiring proof of several elements in order to terminate parental rights, including that the children cannot be returned to the parent's custody).

II. The mother next contends "[i]t is within the Court's discretion not to terminate the rights of a parent, even where the Court concludes the grounds for termination have been met." This argument implicates the standards set forth in Iowa Code section 232.116(2) and (3).

The juvenile court stated the following on this issue:

The children were in a deplorable situation when the Department of Human Services intervened and moved them from their mother's custody. They were developmentally delayed and had not received appropriate medical care. They were living in unsafe, unclean surroundings and not receiving appropriate supervision. While their mother has made some recent effort to comply with case plan expectations, the evidence presented does not convince the court that there has been real change, such that the children could safely and permanently be returned to her care, either now or in the reasonably near future.

We agree with this assessment. The mother did not make a concerted effort to address reunification expectations until she was told that termination proceedings were imminent. For that reason, we conclude the safety of the children was still at risk if the children were returned to her custody and termination of the mother's parental rights was in the children's best interests.

We affirm the termination of the mother's parental rights to her children.

AFFIRMED.