

IN THE COURT OF APPEALS OF IOWA

No. 1-288 / 11-0267
Filed April 27, 2011

**IN THE INTEREST OF S.S. Jr. and A.S.,
Minor Children,**

A.D., Mother,
Appellant.

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

A mother appeals the juvenile court's ruling terminating her parental rights.

AFFIRMED.

Nancy L. Pietz of Pietz Law Office, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John P. Sarcone, County Attorney, and Stephanie Brown, Assistant
County Attorney, for appellee State.

Barbara O. Hoffman, Des Moines, for appellee father.

Michael R. Sorci of Youth Law Center, Des Moines, attorney and guardian
ad litem for minor children.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

Andrea appeals the juvenile court's ruling terminating her parental rights to two children, ages 8 months and 20 months at the time of termination. She has a history of involvement with the Iowa Department of Human Services (DHS), including the termination of her parental rights to older children, due in large part to her continued involvement in abusive relationships. A previous case regarding the older child at issue in this case was closed on April 9, 2010, after Andrea assured the court and DHS she had ended a relationship with her boyfriend, Shane, who was abusive and addicted to methamphetamine.

However, Andrea and Shane continued their relationship during the earlier case, and their younger child was born in June 2010, two months after the case involving the older child was closed.

On September 24, 2010, the police were called to Andrea's home and Shane was arrested for domestic assault. Shane was put in jail at this time and remained in jail throughout the pendency of these proceedings.¹ An application for order of temporary removal of the two young children was filed September 27, 2010. The State put in place a no-contact order between Andrea and Shane regarding the domestic violence charges. The juvenile court granted the temporary removal of the children and set a hearing on the matter. On September 29, 2010, the State filed a child in need of assistance (CINA) petition based on the incident of domestic violence and the parents' history of substance and domestic abuse.

¹ Only Andrea's parental rights are at issue on appeal.

At the removal hearing, which took place October 1 and October 13, 2010, Andrea asked the judge to recuse herself, asserting that at a previous hearing, the judge had told Andrea that if she saw her again in the courtroom, she would remove her children. The judge denied the motion to recuse at the removal hearing and in a written order filed October 4, 2010. On October 14, 2010, the juvenile court confirmed the removal based on concerns regarding Andrea's failure to make "the necessary changes in her lifestyle to demonstrate that she will not again place her children in danger."

On November 19, 2010, the State filed a petition to terminate Andrea's parental rights because of Andrea's failure to demonstrate an ability to keep her children safe despite intensive DHS and court involvement.

A hearing on the CINA petition was held November 23 and December 9, 2010. On December 9, 2010, the juvenile court adjudicated the children CINA for the reasons stated in the removal order. The court also noted Andrea admitted to having lied previously when she said she did not post bond for Shane.

After a hearing on December 20, 2010, on the petition to terminate, the juvenile court filed an order February 8, 2011, terminating Andrea's parental rights pursuant to Iowa Code section 232.116(1)(d) and (g) (2009). Andrea now appeals, arguing: (1) the juvenile court erred in confirming the removal of the children from her custody; (2) the court erred in denying her motion to recuse; (3) the court erred in adjudicating the children CINA; (4) the State failed to prove statutory grounds to support termination; (5) the court erred in determining DHS made reasonable efforts; (6) the time between adjudication and termination was inadequate and violated her due process rights; and (7) termination is not in the

children's best interests given their bond with Andrea. After a de novo review, we affirm. See *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

II. Removal and Statutory Grounds

Andrea failed to cite authority to support her arguments that (1) the district court erred in confirming the removal of the children and (2) the State did not prove statutory grounds to support termination. Accordingly, we find these issues to be waived. See Iowa R. App. P. 6.903(2)(g)(3).

III. Motion to Recuse

We review the denial of Andrea's motion to recuse for an abuse of discretion. *State v. Fami*, 325 N.W.2d 107, 110 (Iowa 1982). Andrea must do more than raise the possibility of judicial bias. See *In re A.B.*, 445 N.W.2d 783, 784 (Iowa 1989) ("[T]o change judicial officers whenever a party claimed there was an appearance of impropriety would cause an unmanageable disruption in the functioning of our judicial system."). Actual prejudice must be shown before recusal is required. *In re C.W.*, 522 N.W.2d 113, 117 (Iowa Ct. App. 1994). The judge stated she had no bias against Andrea and had in fact previously returned Andrea's child to her and closed the case. We conclude Andrea has not shown prejudice.

IV. CINA Adjudication

Andrea contends there was insufficient evidence to support the CINA adjudication. Andrea testified at the removal hearing that the domestic violence in the home was dangerous to the children and put the children at risk of harm. At the time of adjudication, Andrea had a history of involvement in violent relationships, which she consistently chose over providing for the safety of her

children. We conclude there was sufficient evidence to support the CINA adjudication.

V. Reasonable Efforts and Due Process

The record shows Andrea was offered sufficient services. Andrea received family safety, risk and permanency services, individual therapy, and supervised visits. Further, the record shows Andrea's failure to respond to services offered. Though Andrea exhibited good parenting skills, she consistently involved herself in abusive relationships that were a danger to herself and to her children. Despite participation in services over several years, Andrea failed to remedy the problem and returned to her abusive relationship with Shane even during his incarceration for domestic violence against her. See *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988) (finding a parent must acknowledge and recognize abuse before any meaningful change can occur in meeting the child's needs). Andrea was offered substance abuse and mental health treatment. The record is unclear as to her participation or investment in either service. We conclude reasonable efforts were made, but Andrea failed to respond to them.

We further conclude Andrea was afforded sufficient time to request and comply with services. The children were removed from the home on September 27, 2010. In the months that followed, Andrea continued in secret her relationship with Shane and continued her communications with him while at least sometimes ignoring her children's needs. Despite a no-contact order put in place by the State, Andrea and Shane communicated for hours by phone while Shane was in jail, and Andrea posted bond for Shane. In addition, Andrea had

an ongoing history with the juvenile court and DHS because of domestic violence in her relationships that threatened the safety of two older children for whom she had previously lost her parental rights. Despite extensive services offered over several years, Andrea continued her relationship with an abusive man whom she acknowledged put the children at risk of harm. See Iowa Code § 232.102(10)(a)(1) (stating that in determining whether reasonable efforts have been made, the court shall consider the type, duration, and intensity of services provided); *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) (noting that the best predictor of future behavior is a parent's past conduct). We conclude Andrea was given ample time to comply with services.

VI. Best Interests of the Children

Using the framework provided in section 232.116(2), we conclude a termination of Andrea's parental rights best provides for the children's safety, long-term growth, and physical, mental, and emotional needs. We further find the court did not abuse its discretion in determining none of the permissive factors in section 232.116(3) justified continuing Andrea's parental rights.

AFFIRMED.