

IN THE COURT OF APPEALS OF IOWA

No. 1-411 / 11-0590

Filed June 29, 2011

**IN THE INTEREST OF R.S.T.B. and A.J.S.B.,
Minor Children,**

S.W., Mother,
Appellant,

A.B., Father,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Craig M. Dreismeier, District Associate Judge.

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

Roberta J. Megel, Council Bluffs, for appellant mother.

William F. McGinn of McGinn, McGinn, Springer & Noethe, Council Bluffs, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn Landon, Assistant County Attorney, for appellee State.

Marti D. Nerenstone, Council Bluffs, for minor children.

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

EISENHAUER, P.J.

A mother and father appeal the termination of their parental rights to their children. They contend the State failed to prove the grounds for termination by clear and convincing evidence. They also contend termination is not in the children's best interests. We review their claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

Both the mother and father have significant histories of drug abuse and addiction. The mother has seven children including the two at issue. The father has at least six children, including R.S.T.B. and A.J.S.B. Their parental rights to all the children have been either terminated or the children have been voluntarily placed for adoption, with the exception of the father's fifteen-year-old son, who had been removed from his care at the time of termination.

The juvenile court terminated the mother's parental rights pursuant to Iowa Code sections 232.116(1)(e), (g), (h), (i), and (l) (2011). The father's parental rights were terminated pursuant to sections 232.116(1)(d), (e), (g), (h), (i), and (l). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(h) where clear and convincing evidence shows:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

There is no dispute the first three elements required for termination under section 232.116(1)(h) have been proved. Upon de novo review of the record, we also conclude there is clear and convincing evidence the children cannot be safely returned to the mother or father's custody. Both parents have extensive histories of substance abuse and several of the mother's children tested positive for methamphetamine at birth, including twins born in September 2010. Neither parent consistently participated in treatment for their drug abuse, nor were they able to demonstrate any significant period of sobriety. Both were unemployed and homeless at the time of termination. The father planned to turn himself into authorities for a ninety-day jail term for failure to pay child support.

We likewise find termination is in the children's best interests. Evidence of a parent's past performance signals the future quality of care a parent is capable of providing. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). Neither parent made consistent efforts at treatment for their substance abuse or with participation in visitation. The parents had their rights to several other children terminated for similar failures. The likelihood they will ever be able to provide adequate care to their children is slim. Although A.J.S.B. has adapted well to his relative placement, we find the provisions of section 232.116(3)(a) (stating the court need not terminate parental rights were a relative has legal custody of the child) should not be applied under the facts of this case.

The father contends he should be allowed additional time to reunite with the children. Given his poor prognosis for future sobriety, we disagree. Children should not be forced to endlessly await the maturity of a natural parent. *Id.* at

494. At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

To the extent either parent claims the State failed to make reasonable efforts to reunify them with the children, we find the issue has not been preserved for our review. See *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994) (holding a challenge to the sufficiency of such services should be raised when the services are offered).

AFFIRMED.