

IN THE COURT OF APPEALS OF IOWA

No. 1-513 / 11-0661

Filed July 27, 2011

**IN THE INTEREST OF M.B., S.B., C.J. III, and S.J.,
Minor Children,**

L.J., Mother,
Appellant,

C.J. Jr., father of C.J. and S.J.,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

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

Colista K. Schmitt of Reynolds & Kenline, L.L.P., Dubuque, for appellant mother.

Steven J. Drahozal of Drahozal Law Office, P.C., Dubuque, for appellant father.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Mary Kelley, Dubuque, for minor child.

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. The mother contends the State failed to prove the grounds for termination by clear and convincing evidence and further contends termination is not in the children's best interests. The father contends the State failed to make reasonable efforts to reunify him with his children. We review these claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

There are four children at issue in this appeal: M.B. and S.B., who were ten years of age at the time of termination; C.J., who was eight years of age; and S.J., who was seven. The father is only the father of C.J and S.J.

The family first came to the attention of the Iowa Department of Human Services (DHS) in October 2008 when an older sibling suffered a perforated eardrum after being struck by the father. The family again came to the attention of the DHS in May 2009 when it was reported the children were left in the care of the father, who was using crack cocaine, while the mother was hospitalized. The two oldest children tested positive for cocaine. The children were removed and placed in foster care.

In May 2010, the children were returned to the mother's care for a trial home placement. However, they were again removed in August 2010 after all four children tested positive for cocaine. The mother admitted she allowed the father into the home in violation of court orders and the DHS's safety plans. She continued to allow the father into her home, allowing him to live there for a period of thirty days on one occasion. The mother also allowed others to live in her home, including individuals with histories of drug abuse.

The mother's parental rights were terminated pursuant to Iowa Code section 232.116(1)(f) (2011). In order to terminate under this section, the State must show the children are four years of age or older, have been adjudicated in need of assistance, and have been removed from the parents' care for at least twelve of the last eighteen months. Iowa Code § 232.116(1)(f). There is no dispute these three elements have been met. Instead the mother contends the State failed to prove by clear and convincing evidence the final element—that the children cannot be returned to her custody as provided in section 232.102. See *id.*

We conclude the evidence shows the children cannot be safely returned to the mother's care. The mother allowed inappropriate individuals to be around the children in violation of the court's order. These actions exposed the children to cocaine. The mother continues to allow unsafe individuals into her home and has informed workers she loves the father and cannot force him to stay away. She does not recognize the need for her behavior to change, which puts the children at risk of continued exposure to danger if returned to her care. The mother never progressed beyond supervised visitation after the children's August 2010 removal because of concerns about her behavior. Because the children cannot be safely returned to her care, we conclude the grounds for termination have been proved.

We likewise find termination to be in the children's best interests. In determining best interests, we must consider the children's safety, the best placement for furthering the long-term nurturing and growth of the children, and the physical, mental, and emotional condition and needs of the children. *P.L.*,

778 N.W.2d at 37. The mother continues to engage in behavior that puts the children's safety at risk. Although the oldest two children are strongly bonded to their mother and desire to be returned to her care, the evidence shows these children have already been negatively affected by their mother's behavior; M.B. suffers physical symptoms as a result of anxiety, and S.B. has put herself in the position of being her mother's caretaker. Both girls have made improvements in foster care. Given the amount of time the mother has been given to correct her deficiencies as a parent and the lack of progress she has shown, we conclude termination is in the children's best interests. See *In re C.S.*, 776 N.W.2d 297, 300 (Iowa Ct. App. 2009) (recognizing that at some point, the rights and needs of the children rise above the rights and needs of the parent).

The father contends the State failed to make reasonable efforts to reunify him with the children as required by section 232.102(7). However, the reasonable efforts requirement is not a strict substantive requirement for termination. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Instead, the services provided by DHS to reunify parent and child after removal impacts the State's burden of proving the child cannot be safely returned to the care of a parent. *Id.* From the time of the first removal of the children until the termination trial, the father's drug use has been an issue. Initially, an attempt was made to leave the children in the home if the father could remain drug free. He refused testing and ordered the department workers out of his home. The court addressed the father's claim of denial of services and said:

The evidence presented at the termination hearing did not support father's claim that he was denied reasonable efforts. Rather, the evidence establishes that father was very difficult to contact and was

in and out of the area. After spending time in Arkansas, [the father] also spent time in Colorado and Chicago. He did not maintain contact with Department in the summer of 2010 and it was unknown where he was residing.

At the time of termination, the father was unemployed and homeless. He had a sixty-day prison sentence to serve in Arkansas. He has severe substance abuse problems and admits to using marijuana just weeks before the termination hearing. Having made himself unavailable to the receipt of services, he cannot now claim additional services should have been offered to avoid termination of his parental rights.

AFFIRMED.