

IN THE COURT OF APPEALS OF IOWA

No. 1-775 / 11-1279
Filed November 9, 2011

**IN THE INTEREST OF M.B., M.B., and M.B.,
Minor Children,**

**M.E.B., Mother,
Appellant.**

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

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Karen A. Taylor of Taylor Law Offices, Des Moines, for appellant mother.

Todd Babich of Babich, Goldman, Cashatt & Renzo, P.C., for appellee
father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Stephanie Brown,
Assistant County Attorney, for appellee State.

Karl Wolle, Des Moines, for minor children.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

EISENHAUER, P.J.

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

These children came to the attention of the Iowa Department of Human Services in March 2010 following the mother's relapse into methamphetamine abuse. The children had previously been adjudicated in need of assistance (CINA) and were under the supervision of the department from 2003 to 2005 because of the mother's methamphetamine abuse, but the cases were closed and the children were reunited with the mother when she began living a sober lifestyle. However, sometime between December 2009 and February 2010 the mother began using methamphetamine daily. Custody of the children was transferred to the father, from whom the mother is divorced, in February 2010.

Services were offered to the mother to address her substance abuse issues. The mother maintained a brief period of sobriety before relapsing in May 2010. She entered treatment in July 2010. The mother abstained from methamphetamine use until a relapse around Thanksgiving 2010. Although the mother claims she stopped using on December 24, 2010, she was arrested for possession of methamphetamine on December 28, 2010. Because the mother has been inconsistent in participating in drug screens, her abstinence could not be confirmed.

The mother's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d), (e), and (f) (2011). 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)(d) where there is clear and convincing evidence of the following:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

The mother does not dispute the first element was proved, but contends the State failed to prove the circumstances that led to the CINA adjudication continue to exist.

Upon our de novo review, we find clear and convincing evidence shows the circumstances that led to the CINA adjudication continue to exist. There is no evidence to support the mother's claims that she has now achieved sobriety or sobriety will be maintained. The mother previously underwent treatment for her addiction and relapsed just a few months later. The mother's therapist testified the mother was beginning to be accountable, and her substance abuse counselor concurred the mother was making good progress at the time of termination. However, as the district court found:

It is also significant that [the mother] failed to engage in therapy until after the Petition to Terminate Parental Rights was filed. She admitted in her testimony that therapy and substance

abuse treatment were requirements of her probation officer in order to avoid a prison sentence. Her motivation is very clearly external. She is now taking medications as prescribed and following through with homework assignments in therapy, but because of her delay in starting these services, it is too soon to tell whether her attendance and progress will be consistent. There is, obviously, a heightened sense of skepticism with this being the second time these children have been removed from their mother's care for the same presenting problems.

In addition to the mother's substance abuse issues, there are unresolved domestic abuse concerns. The mother's substance abuse and abusive relationship with a paramour resulted in the mother being arrested four times since August 2010.

The mother contends termination is unnecessary because the children are in the custody of their father. Under section 232.116(3)(a), the court need not terminate parental rights where a relative has legal custody of the child. This section is permissive, not mandatory. *Id.* The court must consider a child's long-range and immediate best interests based upon the unique circumstances before it when determining whether to apply this section. *Id.* The mother argues termination is not in the children's best interests. In considering whether to terminate the rights of a parent, the court gives 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. Iowa Code § 232.116(2); *In re H.S.*, No. 11-0305 (Iowa Sept. 2, 2011)

We find clear and convincing evidence shows the children's best interests are served by terminating the mother's parental rights. At the time of trial, these children were teenagers and were able to relay their wishes to the court. All

three children wished to remain in the care of their father and to have his wife adopt them. They do not feel safe with their mother and do not want to have further contact with her. The crucial days of childhood cannot be suspended while the mother experiments with ways to face up to her own problems. See *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). 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).

We affirm the termination of the mother's parental rights.

AFFIRMED.