IN THE COURT OF APPEALS OF IOWA

No. 2-002 / 11-1876
Filed January 19, 2012

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

M.M., Mother,
Appellant.

Appeal from the Iowa District Court for Wapello County, William S. Owens, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights. **AFFIRMED.**

Sarah Wenke, Ottumwa, for appellant mother.

John Silko of Silko Law Office, Bloomfield, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, and Lisa Holl, County Attorney, for appellee State.

Robert E. Breckenridge of Breckenridge, Ottumwa, for minor children.

Considered by Eisenhauer, P.J., Danilson, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

EISENHAUER, P.J.

A mother appeals from the juvenile court order terminating her parental rights to her children. She contends the State failed to prove the ground for termination and termination is not in the children's best interests. We review her claims de novo. *See In re P.L.,* 778 N.W.2d 33, 40 (Iowa 2010).

The Iowa Department of Human Services (DHS) became involved with the family when the twins, B.M. and K.M., were born prematurely in October 2009 and tested positive for THC. The mother admitted to using marijuana on a daily basis from January 30, 2009, until March 30, 2009. The children were removed from the mother's care in January 2010 because of the mother's mental health issues, lack of transportation, and substance abuse, as well as her boyfriend's substance abuse. They were placed in the care of the maternal grandmother.

On February 20, 2010, the children were adjudicated in need of assistance and were returned to their mother's care. By then, the mother had successfully completed substance abuse treatment, was employed, and had addressed concerns about housing and transportation. However, in May 2010, the mother and her boyfriend resumed using marijuana, and on June 14, 2010, they were arrested for possession of marijuana with intent to deliver and child endangerment. The children were again removed from the mother's care in July 2010 and placed with the maternal grandmother.

The mother attempted substance abuse treatment again but was unsuccessful. She was not taking the psychiatric medication prescribed to her because she was pregnant with her third child and was concerned about the

effects the medication would have on the child. The mother gave birth in September 2010.

In February 2011, the mother was arrested for domestic abuse assault, and a no-contact order was entered prohibiting her from having any contact with her boyfriend. The mother admitted herself into in-patient mental health treatment and was prescribed medication, but quit taking it because she could not remember to take it at the same time each day. While in treatment, the mother also learned she was again pregnant.[1] The no-contact order was soon dropped, and the mother resumed living with her boyfriend.

A petition to terminate parental rights was filed in July 2010. A hearing was held August 30, 2011. In its November 14, 2011 order, the juvenile court terminated the mother's parental rights pursuant to Iowa Code section 232.116(1)(h) (2011). Custody of the children was ordered continued with the maternal grandmother.

The mother contends the State failed to prove the grounds for termination by clear and convincing evidence. In order to terminate under section 232.116(1)(h), there must be proof of the following:

> (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.

[1] The mother later suffered a miscarriage.

The mother concedes the first three elements have been proved, but argues there is insufficient evidence the children cannot be returned to her care.

We find the evidence supports terminating the mother's parental rights pursuant to section 232.116(1)(h). Although the mother made some progress just prior to the termination hearing, we cannot ignore the mother's history. *See In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) ("The changes in the two or three months before the termination hearing, in light of the preceding eighteen months, are insufficient."). While there has been no reported substance abuse or domestic violence recently, the mother continues to live with a man with whom she shares a history of both. The mother has obtained employment, but has a history of being fired. The mother is diagnosed with bi-polar disorder and has not been under the consistent care of a psychiatrist and has not attended counseling. She was taking her medication at the time of the termination hearing, but has a history of stopping due to pregnancy or failure to remember to take it consistently.

Furthermore, the evidence suggests the mother is inadequately prepared to parent the children for the long-term. Although the mother has unsupervised visits with B.M. and K.M. for six hours each Saturday, she struggles to care for the three children together and requires someone to assist her in caring for them. The mother becomes easily frustrated. She has no plan to care for the children if returned to her. Under these facts, we find the children cannot be safely returned to the mother's care.

We also find termination is in the children's best interests. In determining best interests, we must consider the child's safety, the best placement for

furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. *In re P.L.*, 778 N.W.2d at 37. At the time of termination, the children were two years of age and had been out of their mother's care for fifteen months of their lives. After two years of involvement with the DHS, the mother is not in the position to have the children returned to her care. She has not shown she is able to provide for the children's long-term care.

The children have been in the care of their maternal grandmother since July 2010, and she expressed an interest in adopting them. Section 232.116(3)(a) provides "The court need not terminate the relationship between the parent and child if the court finds . . . [a] relative has legal custody of the child." However, a "determination to terminate a parent-child relationship is not to be countermanded by the ability and willingness of a family member to take the child." *In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997). The children are young and require permanency. Termination of the mother's parental rights to allow the maternal grandmother to adopt them will afford them that permanency. *See In re C.K.*, 558 N.W.2d 170, 175 ("It is simply not in the best interests of children to continue to keep them in temporary foster homes while the natural parents get their lives together.").

AFFIRMED.