

IN THE COURT OF APPEALS OF IOWA

No. 2-1043 / 12-1606
Filed November 29, 2012

**IN THE INTEREST OF A.A., B.M., J.M.,
J.M., AND N.M.,
Minor Children,**

J.M., Mother,
Appellant.

Appeal from the Iowa District Court for Howard County, Alan D. Allbee,
Associate Juvenile Judge.

A mother appeals the district court's order terminating her parental rights.

AFFIRMED.

Luke Guthrie of Roberts, Stevens, Prendergast & Guthrie, P.L.L.C.,
Waterloo, for appellant mother.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, Joseph M. Haskovec, County Attorney, and Alex P. Koenigs,
Assistant County Attorney, for appellee State.

Thais Ann Folta of Elwood, O'Donohoe, Braun & White, LLP, Cresco,
attorney and guardian ad litem for minor children.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

VOGEL, J.

Jenna appeals the district court's decision terminating her parental rights to her five children: A.A., born 2002; B.M., born 2005; J.M., born 2006, J.M., born 2009; and N.M., born 2010.¹ The district court terminated her parental rights pursuant to Iowa Code section 232.116(1)(f) (2011) (child four or older, adjudicated child in need of assistance (CINA), removed from home for twelve of last eighteen months, and child cannot be returned home) and (h) (child three or younger, adjudicated CINA, removed from home for six of last twelve months, and child cannot be returned home). She argues there was not clear and convincing evidence to prove the statutory elements, termination was inappropriate due to the closeness of her relationship with her children, and termination was not in the children's best interests.

We review termination of parental rights proceedings de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). The children were removed from Jenna's care on June 4, 2011, due to the deplorable, unsanitary, and unsafe conditions of the home. They have been living with their maternal grandmother and her husband since that time. This is the second time the children have been removed. The first removal occurred in 2009, although the children were eventually returned and the prior CINA case closed. The children were adjudicated as CINA for the second time on July 13, 2011. Jenna has had nine previous child protective assessments dating back to 2006; five of the

¹ The whereabouts of the putative fathers of A.A., J.M. (2009), and N.M. were unknown at the time of the hearing. Their parental rights were terminated pursuant to Iowa Code § 232.116(1)(b) and (f). The father of B.M. consented to termination of his rights. The father of J.M. (2006) is unknown and his parental rights were also terminated. None of the fathers appealed.

assessments were founded. Department of Human Services (DHS) workers visited the various residences of Jenna during the pendency of this case and found them to be unsafe and unhealthy for the children; including cockroach infestations, knives laying out within the children's reach, and significant amounts of clutter amounting to a fire hazard. In addition, the children were filthy, and lacked the most basic necessities. Family Safety, Risk, and Permanency (FSRP) services; psychological and psychiatric evaluations; mental health counseling and medication management, transportation assistance; house and utility assistance; and county case management were offered to Jenna.

Jenna seems to focus on the fact she now has stable housing for herself because of a federally funded housing program. However, her current housing is unsuitable for the children due to its size, and while Jenna claims a larger apartment may become available to her, there is no time frame of availability in the record. In addition to her inability to provide adequate shelter to the children, Jenna has also consistently shown she is unable or unwilling to supervise the children properly. The family team meeting facilitator opined that while Jenna is doing better interacting with the children, "safety concerns still exist due to Jenna's poor judgment, lack of follow through, and inability to control the children's behavior. . . . Jenna has made progress but not in a consistent pattern." Jenna has also made excuses for, minimalized, or denied the reasons for removal, further showing her unwillingness to address the issues fully. Based on our de novo review of the entire record, Jenna has been given the appropriate amount of time and has not adequately addressed the situations that led to the removal of the children. As the children's guardian ad litem asserts, given the

lengthy history of difficulty Jenna has had in attempting to provide for and parent these children, no additional amount of time would serve to correct the situation. We agree with the district court that the statutory elements of section 232.116(1) (f) and (h) are satisfied.

Jenna also argues that the considerations found in Iowa Code section 232.116(3) should apply to weigh against termination. However, those factors are permissive. *In re D.S.*, 806 N.W.2d 458, 474-75 (Iowa Ct. App. 2011). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). Jenna does not seek out the children during visitation and they do not come to her without encouragement from other adults. Jenna even requested less visitation time with her children—four hours per week instead of six—because of the stress of the visits. Jenna has shown the opposite of an exceptionally close relationship with her children through her lack of desire to interact and spend time with them.

We agree with the guardian ad litem that maintaining Jenna's parental relationship with her children would put the children in great danger. The district court also found that returning the children to Jenna would subject them to adjudicatory harm. Jenna has been provided services off and on for several years, yet has not been able successfully to learn and implement proper parenting techniques. Children should not be asked, "continuously [to] wait for a stable biological parent, particularly at such tender ages." *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010). At the time of the hearing the children had been

at their current residence for approximately fourteen months. The children are bonded and attached to their grandmother and all of their needs are being met in that home. We agree with the district court that termination is in the children's best interest despite any claim of exceptional closeness to Jenna.

AFFIRMED.