

IN THE COURT OF APPEALS OF IOWA

No. 2-155 / 12-0039
Filed February 29, 2012

**IN THE INTEREST OF A.G.P., A.A.P., and K.M.P.,
Minor Children,**

**S.A.R., Mother,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Randy S. Hisey and Zachary S. Hindman of Bikakis, Mayne, Arneson, Hindman & Hisey, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney General, Patrick Jennings, County Attorney, and Diane Murphy, Assistant County Attorney, for appellee State.

Lesley Rynell of the Juvenile Law Center, Sioux City, attorney and guardian ad litem for minor children.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

EISENHAUER, C.J.

The mother of A.G.P., A.A.P., and K.M.P. appeals from the order terminating her parental rights.¹ The mother contends the State did not prove the statutory grounds for termination and termination is not in the best interests of the children. On our de novo review, see *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010), we affirm.

The children were adjudicated in need of assistance in June 2009 because of neglect and parental substance abuse, coupled with domestic violence in the home. K.M.P., born in 2001, was placed with her paternal grandmother, where she has remained. The twins A.G.P. and A.A.P., born in 2006, were placed in family foster care. The younger children were returned to the parents' care in August 2010, but removed for the final time in June 2011 following the father's relapse on drugs and the mother's criminal activity and continuing substance abuse issues. In October the State sought termination of the parents' rights to the younger children. In November the State filed an amended and substituted petition, adding the older child. Following a contested hearing in December, the court terminated the mother's parental rights under Iowa Code section 232.116(1)(d), (g), and (i) (2011), and the father's parental rights under section 232.116(1)(d) and (i).

The mother contends the State failed to prove the statutory grounds for termination. The court cited three independent grounds for termination under section 232.116(1). On appeal, we may affirm the termination on any ground we

¹ The father's parental rights also were terminated, but his rights are not at issue in this appeal.

find supported by clear and convincing evidence. *D.W.*, 791 N.W.2d at 707. We focus on section 232.116(1)(g), which requires the court find all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family or a court of competent jurisdiction in another state has entered an order involuntarily terminating parental rights with respect to another child who is a member of the same family.
- (3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.
- (4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

Iowa Code § 232.116(1)(g).

All three children here were adjudicated in need of assistance in 2009. The mother's parental rights have been terminated as to four other children: three in 1999 and one in 2000. At the time of the termination hearing, the mother was unemployed, she had completed some college courses but had withdrawn from several, she had received two three-day notices to quit for nonpayment of rent, and she had pending criminal charges.. She has been offered or received services most recently since March 2009, but has been involved with the department intermittently for over a decade. Although the mother had made some recent progress, the history of cooperation with services and improvement in parenting skills—most recently exhibited by the behavior when the children were returned to her custody in 2010 followed by relapses and criminal behavior—support the trial court's conclusion: "While [the mother] is currently cooperating with services, she has a history of not following through with services

on a consistent basis.” A parent’s past performance may be indicative of the quality of future care the parent is capable of providing. *In re T.T.*, 541 N.W.2d 552, 556 (Iowa Ct. App. 1995). In light of the prior termination of parental rights, this ground for termination does not require the court to wait a period of time before proceeding to termination. Although none is required, the mother was given over a year of services and an opportunity to demonstrate the children could be safely returned to her. Our legislature has carefully constructed a time frame to provide a balance between the parent’s efforts and the child’s long-term best interests. *D.W.*, 791 N.W.2d at 707. “We do not gamble with the children’s future by asking them to continuously wait for a stable biological parent, particularly at such tender ages.” *Id.* (quoting *In re D.W.*, 385 N.W.2d 570, 578 (Iowa 1986) (internal quotation marks omitted)); see also *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (“Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable.”). We find clear and convincing evidence the mother continues to lack the ability or willingness to respond to services that would correct the situation and an additional period of rehabilitation would not correct the situation.

Having found a statutory ground for termination exists, we consider the best-interests framework in section 232.116(2) that drives the actual decision-making process. The mother contends termination is not in the children’s best interests. We disagree. We give primary consideration to the children’s safety, the best placement for furthering their long-term nurturing and growth, and their physical, mental, and emotional condition and needs. See Iowa Code § 232.116(2). We also consider whether the children have been placed into a

foster family, the extent to which the children have been integrated into the family, and whether the foster family is able and willing to adopt them. *Id.* § 232.116(2)(b). The mother has a long history of not being able to further the long-term nurturing and growth of her children and not meeting their physical, mental, and emotional needs. K.M.P. remains in the care of her grandmother, who is willing to adopt her. A.A.P. and A.G.P. have bonded with their foster parents, who are willing to adopt them. Their early childhood education teacher noted the “total transformation” of the children’s behavior problems after a time with “a strong and loving family.” We agree with the district court that termination of the mother’s parental rights serves the best interests of these children.

The mother does not claim any discretionary factor in section 232.116(3) serves to prevent termination. We do not find any of the factors in that section should serve to preclude termination of the mother’s parental rights.

AFFIRMED.