

**IN THE COURT OF APPEALS OF IOWA**

No. 2-281 / 12-0380  
Filed April 25, 2012

**IN THE INTEREST OF E.W.,  
Minor Child,**

**T.K., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Marc A. Elcock of Elcock Law Firm, P.L.C., Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee State.

Cami N. Eslick of Eslick Law, Indianola, for appellee father.

Paul L. White of Juvenile Public Defender's Office, Des Moines, attorney and guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**VAITHESWARAN, P.J.**

A child, born in 2008, was twice removed from her mother's custody based on the mother's manufacture and use of methamphetamine. The second removal culminated in a juvenile court ruling terminating the mother's parental rights to the child.

On appeal of that ruling, the mother contends (1) "[t]here was insufficient evidence for the court to order the county attorney to file a petition to [ ] terminate [ ] the parental rights of [the mother] as there was no clear and convincing evidence that [the mother], if given continued services by [the Iowa Department of Human Services] could not be capable of taking care of the [child] in the foreseeable future;" (2) "[t]he termination of [the mother]'s parental rights pursuant to Iowa Code Section 232.116(1)(h), should be overturned;" (3) "the State failed to prove there was clear and convincing evidence that the termination of parental rights of [the mother] is in the [child's] best interests;" and (4) "the Court abused its discretion in not suspending the permanency decision for six months."

*I.* Iowa Code section 232.58(3)(c) (2011) allows a juvenile court to order the filing of a termination petition by the county attorney. See *In re K.C.*, 660 N.W.2d 29, 35–36 (Iowa 2003) ("The legislature's grant of authority to the juvenile court to direct the initiation of termination proceedings under certain circumstances furthers a child's best interests."). In this case, there is no indication that the juvenile court entered such an order. The record instead reveals that a department employee recommended the filing of a termination petition. The county attorney apparently followed that recommendation and filed a petition, without direction from the court.

The mother's real challenge is to the court's failure to find that she could effectively parent the child in the imminent future with the department's assistance. As will be discussed in greater detail below, the problem with this argument is that the mother did not seek an extension of time to show she could parent and she was already given a second chance, which she squandered.

*II.* This brings us to the mother's second argument, whether the State proved by clear and convincing evidence that the child could not be returned to her custody. See Iowa Code § 232.116(1)(h) (requiring proof of several elements, including proof that child could not be returned to parent's custody). The child was initially removed from the mother's care in 2009 based on the mother's involvement with methamphetamine. The same year, the mother was found guilty of conspiracy to manufacture methamphetamine and was placed on probation. Meanwhile, the juvenile court ordered the child returned to her care.

In the spring of 2011, following the child's return, the mother tested positive for methamphetamine in her system. Days later, an officer stopped a vehicle in which the mother was a passenger and, when ordering her out of the vehicle, saw a baggie of marijuana on the car seat. An officer took the mother into custody and later released her with a citation for possession of a controlled substance. The following month, the mother again received a positive methamphetamine test. She subsequently served time for a probation violation.

Less than a month after the mother's release from jail, the department made an unannounced visit to her home and asked her to undergo another drug test. The mother agreed but did not come in for testing. The same month, a police officer again stopped a vehicle in which the mother was riding after seeing

her throw something out of a window. The mother was cited for littering and the report was sent to her probation officer.

The mother was again jailed. In mid-November 2011, she again had a positive methamphetamine test. She also left a correctional facility for a work assignment, did not return, and was picked up and returned to jail in late November 2011.

At the time of the termination hearing in February 2012, the mother was still in jail. She did not testify at the termination hearing and her attorney conceded, “[S]he is not in a position today to take custody of her child.” Based on our de novo review of the record, we agree with this assessment and with the juvenile court’s determination that the child could not be returned to the mother’s custody.

**III.** Termination must be in the child’s best interests. Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Based on the record summarized above, it is clear that the mother was in no position “to provide a safe home for [the] child.” See *P.L.*, 778 N.W.2d at 41. Accordingly, we agree with the juvenile court that termination was in the child’s best interests.

**IV.** A court has discretion to “continue placement of the child for an additional six months.” Iowa Code § 232.104(2)(b); see also *id.* § 232.117(5). This provision requires the court to set forth “factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child’s home will no longer exist at the end of the additional six-month period.” *Id.* § 232.104(2)(b).

At the termination hearing, the mother's attorney made no request for a six-month extension. He simply stated that the mother was requesting "the Court to consider the request of the father [ ] to grant a six-month extension" because she believed he was "in the best position to have custody of their daughter." Accordingly, error was not preserved. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (noting that issues must be raised and decided by the lower court in order for error to be preserved).

Even if the mother had requested an extension, there was scant evidence to suggest she was on the road to recovery and a few additional months would facilitate reunification. See *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa Ct. App. 2005) (declining to grant a six-month extension where mother expressed an "unwillingness to submit to random drug screens or to give the Department the authority to verify" she was remaining drug free). As a 2009 drug conviction, a 2009 child-removal proceeding, and multiple jail terms did not deter the mother from returning to methamphetamine, it was unlikely that six months of additional services would change the landscape.

We affirm the termination of the mother's parental rights to her child.

**AFFIRMED.**