

IN THE COURT OF APPEALS OF IOWA

No. 2-417 / 12-0130

Filed June 13, 2012

**IN THE INTEREST OF A.W. and T.W.,
Minor Children,**

**C.I.W., Mother,
Appellant.**

Appeal from the Iowa District Court for Kossuth County, Donald J. Bormann, District Associate Judge.

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

Ashley M. Emick of Arends & Lee, Humboldt, for appellant mother.

Thomas J. Miller, Attorney General, Amy Licht, Assistant Attorney General, and Todd M. Holmes, County Attorney, for appellee State.

Eldon J. Winkel of Eldon J. Winkel Law Firm, Algona, for appellee father.

Gregory H. Stoebe of Stoebe Law Office, Humboldt, attorney and guardian ad litem for minor children.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

VAITHESWARAN, P.J.

A mother appeals the termination of her parental rights to her two daughters. She contends (1) the State failed to prove the grounds for termination cited by the district court and (2) termination was not in the children's best interests.

I. The district court terminated the mother's parental rights to the children pursuant to Iowa Code subsections 232.116(1)(d) (2011) (requiring proof that circumstances leading to the adjudication of the children as children in need of assistance continued to exist despite the offer or receipt of services), 232.116(1)(f) (requiring proof of several elements, including proof that child four years of age or older could not be returned to parent's custody), and 232.116(1)(h) (requiring proof of several elements, including proof that child three years of age or younger could not be returned to parent's custody). On our de novo review, we are persuaded that termination was warranted under subsection (d). See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (setting forth standard of review and noting that a court's decision to terminate the parental rights to a child may be affirmed if clear and convincing evidence supports any of the grounds relied upon by the court).

The mother's first daughter was born in 2006 with marijuana in her system. The State charged the mother with child endangerment and sought removal of the child from her custody. The district court removed the child and ordered her placed in foster care. The court subsequently adjudicated the child in need of assistance and required the mother to undergo substance abuse treatment. The mother complied with this requirement and was reunified with her

daughter. Later, she was adjudged guilty of child endangerment and received probation.

The mother gave birth to her second daughter in 2007. The same year, in separate incidents, law enforcement officers arrested her for public intoxication, disorderly conduct, and domestic violence. The district court found her guilty of the first two charges and entered a deferred judgment on the domestic violence charge. The court also found her guilty of violating her probation and sentenced her to jail for ten days. The mother continued to engage in criminal activity, accumulating two more public intoxication convictions and a conviction for interference with official acts.

In 2009, the Iowa Department of Human Services investigated a complaint that the mother and the father of one of the children¹ physically abused the children. During the investigation, the older child was asked about an injury to her lip. She stated “[m]ommy threw me on the floor and choked me.” A physician determined that the child had “been grabbed around the neck.” The physician also found that the other child had a “contusion around her right eye,” and “a very obvious bruise on her left cheek.” He additionally noted what appeared “to be a shoe print on the right forehead with an abrasion and contusion” and a “singular cigarette burn on the right forehead in the middle of the forehead abrasion.” The department issued a founded report of abuse, with both parents listed as perpetrators.

¹ The mother was married to a man she believed to be the father of both children. It was later discovered that he was not the father of one of the children.

Meanwhile, the district court ordered the children removed from the mother's custody. They spent approximately six weeks with relatives and were then placed in foster homes. They remained in foster care through the termination hearing.

The 2009 child abuse incident also precipitated a criminal action against the parents for child endangerment. The mother eventually entered an *Alford* plea² to the charge and was sentenced to five years in prison, with the sentence suspended, as well as five years of probation. Days after the sentence was imposed, the mother was arrested for operating a motor vehicle while intoxicated (second offense), possession of a controlled substance, and violation of the open container law. A probation revocation proceeding was initiated.

At the termination hearing, the mother acknowledged that her history "didn't look good," but stated she was now "trying to do everything" she could "to change that." Her efforts were stymied by her recent troubles with the law and her failure to invest herself in reunification services. As of the final day of the several-day hearing, the mother was committed to a residential treatment facility and did not expect to be discharged for three or four months. While she stated she was meeting department expectations, the record reveals a lengthy history of non-compliance.

Professionals who worked with the mother or children confirmed that the mother's circumstances had changed very little since the 2009 adjudication. A

² An *Alford* plea is a variation of a guilty plea where the defendant does not admit participation in the acts constituting the crime but consents to the imposition of a sentence. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970); *State v. Burgess*, 639 N.W.2d 564, 567 n.1 (Iowa 2001).

service provider noted “the number of attempts made to provide services and [the mother’s] lack of follow-through.” A court-appointed special advocate similarly testified he did not believe the mother had done what was necessary to reunite with the children. He stated, “[W]e have been at this over a year. I think that it is very critical that something gets done.” The children’s guardian ad litem, in a 2011 report to the court, echoed this theme, stating:

[The mother] has had a plethora of excuses for not attending visits and therapy sessions ranging from illness to car trouble to inability to fit into her schedule. In every instance, even the illness excuses, I find no apologetic attitude or intense desire to reschedule as a front burner priority. Her interest in all these services has been largely passive. Of particular concern is the criminal involvement. A great deal of State resources have been spent to address her substance abuse problems since 2006. Yet in March of this year, she earned another drunken-driving charge and on June 15 of this year she received public intoxication and trespass charges from yet another incident in Humboldt County. Her arrests generally involve alcohol, drugs in the Palo Alto County arrest earlier this year, and problems with authority figures. Following her incarceration this summer on the criminal matters, she has gone into a residential rehabilitation facility, ostensibly to address the substance abuse. It is evident, however, that efforts in this regard have been 100% unsuccessful. In five years of involvement with state agencies and rehabilitation programs, not one iota of progress has been made. This is important since a primary problem in her rehabilitation as to parenting skills has been getting control of the substance abuse issues. This has not occurred.

Finally, the department social worker assigned to the case testified that reunification was not possible because the parents refused to “accept responsibility and address what caused them to lose their patience and hurt their children.”

We conclude the circumstances that led to the children’s adjudication continued to exist.

II. Termination must also be in the children's best interests. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The record is replete with evidence that the children were at risk of harm in the care of their mother.

Both children exhibited behaviors and made statements indicative of past physical abuse. Both children identified their mother as one of the perpetrators. In chilling detail, they told their play therapist and foster mother that they were choked, hit, dragged, and locked in a room. Before one supervised visit, the younger child asked her foster mother, "[My mother] is not going to spank me, is she?" During another visit, the older child prefaced a hand-tracing activity with the statement, "[L]et's make the hands that you, [mother], choked me with."

The older child also showed signs of having been sexually abused. With a video camera monitor in the child's bedroom, the foster mother documented the child's sexualized behaviors and recorded the child's simultaneous and disquieting words.

The mother nonetheless asserts that termination was not in the children's best interests because the children "were excited for their visits with [her]." She is correct that the children recognized her as their mother and were "always . . . happy to see [her]." However, the children's behaviors deteriorated following the visits, with "more tantrums, more meltdowns." These meltdowns became so severe that the children's play therapist recommended suspension of the visits. The department initially suspended them temporarily but, in 2011, discontinued them entirely. While the mother suggests that, as a result, there were not a "sufficient number of visits" on which to base a best interests analysis, she

overlooks close to six years of documented health and safety concerns. Those concerns lead us to conclude that termination was in the children's best interests.

AFFIRMED.