

**IN THE COURT OF APPEALS OF IOWA**

No. 2-480 / 12-0655  
Filed July 11, 2012

**IN THE INTEREST OF T.M. and C.M.,  
Minor Children,**

**M.W., Mother,  
Appellant.**

---

Appeal from the Iowa District Court for Polk County, Rachael Seymour,  
District Associate Judge.

A mother appeals a juvenile court's order terminating her parental rights to  
her two youngest children. **AFFIRMED.**

Jessica A. Millage of Millage Law Firm, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, John Sarcone, County Attorney, and Cory McClure, Assistant  
County Attorney, for appellee.

Linda Murphy, Des Moines, for father.

Kimberly Ayotte of Youth Law Center, Des Moines, attorney and guardian  
ad litem for minor children.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

**TABOR, J.**

A mother appeals an order terminating her parental rights to her two youngest children, T.M. and C.M. She argues that because she participated in the services offered by the Department of Human Services (DHS) and followed the directions of care providers, the juvenile court wrongly decided that she could not regain custody of her sons. She also argues it is counter to the children's best interest to separate them from her and their three adult half-siblings.

We acknowledge the mother's concerted efforts to comply with the DHS case plan, but nevertheless affirm the juvenile court's termination. After two and one-half years, the record shows the mother has made little to no improvement in her ability to maintain a safe environment for T.M. and C.M. Accordingly, we find clear and convincing evidence that the boys cannot be returned to her care. We also conclude termination is in the children's best interest given the potential harm that could befall T.M. and C.M. if returned to their mother's care.

***I. Background Facts and Proceedings***

T.M. was nineteen months old and C.M. was four months old in December 2008 when a family friend reported to the DHS that their parents, Melinda and John, used marijuana in the home while caring for the children. As a result, the agency opened a case, but did not remove the children from their home. Melinda sought substance abuse treatment at House of Mercy in January 2009, but was unable to complete the program.<sup>1</sup> Melinda successfully completed a month-long

---

<sup>1</sup> The House of Mercy is a program designed to help mothers with substance abuse problems, and in a number of cases, provides for the children to live with the mother at the facility. *In re C.W.*, 522 N.W.2d 113, 115 (Iowa Ct. App. 1994).

relapse program in April 2009, but did not attend recommended support meetings. During this time, she passed all drug screens she submitted. John was incarcerated in August 2009 on drug related charges.

Melinda was forty-three years old at the time of the termination hearing. According to a 2008 neuropsychological evaluation, she has mild mental retardation; a cognitive disorder, not otherwise specified; and brain injuries.<sup>2</sup> A 2010 psychological evaluation estimated her intellectual function as “borderline,” placed her basic knowledge at a second- or third-grade level, and suggested she may suffer from a learning disability. The DHS reported to the court that Melinda dropped out of school during the eighth grade<sup>3</sup> and is unable to read or write. Despite two attempts, she has been unable to obtain her G.E.D. Melinda receives disability payments as a result of her cognitive and learning problems.

The DHS offered the family services starting in 2009. Because both boys experienced delays in their ability to communicate, socialize, and control their emotions, they received Early ACCESS<sup>4</sup> services, and T.M. received speech therapy. The agency provided Melinda with parenting education, and services to address her intellectual disability. The family also received Family Safety, Risk

---

<sup>2</sup> Melinda has suffered several head traumas. As a ten-year-old, she was in a fight in which she lost consciousness after her head was kicked and slammed on the ground. She received additional head injuries from domestic abuse assaults.

<sup>3</sup> From age sixteen until she was twenty-two, Melinda was married to the father of her oldest three children, who are now ages twenty-nine, twenty-five, and twenty-three. They were raised primarily by their father because of Melinda’s substance abuse.

<sup>4</sup> Early ACCESS is “a statewide, comprehensive, interagency system of integrated early intervention services that supports eligible children and their families.” Iowa Admin. Code 641-4.2(136A).

and Permanency (FSRP) services, family team meetings, bus tokens and gas cards, vocational rehabilitation, individual therapy, and adult literacy services.

Melinda consented to removal of the boys from her care on August 24, 2010 after she tested positive for marijuana. The DHS placed them in foster care where they remained throughout the case. Melinda acknowledged allowing drug users, and even a dealer with a history of violence, to stay in the same home as her children. Melinda had a history of using methamphetamine and crack cocaine, as well as marijuana, and underwent substance abuse treatment on four previous occasions.

On September 29, 2010, the juvenile court adjudicated T.M. and C.M. as children in need of assistance (CINA) under Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2009). At the November 10, 2010 dispositional hearing, the court confirmed the removal based on Melinda's inability—notwithstanding her considerable effort—to care for the children. Melinda struggled to maintain structure, enforce boundaries, and provide a safe and healthy environment. Because the record before the court during the February 10, 2011 review hearing showed little if any progress in Melinda's parenting abilities despite her overall compliance, all visitations remained fully supervised.

At the June 17, 2011 permanency hearing, the State and the guardian ad litem advocated for termination of parental rights. Melinda requested more time to show her ability to parent. Upon the juvenile court's order, the State filed a termination petition on August 16, 2011.

The juvenile court heard no witness testimony during the October 12, 2011 termination proceedings, but accepted the parties' exhibits into the record. The State and guardian ad litem renewed their arguments for termination, with both parents resisting. On March 13, 2012, the court ordered Melinda's paternal rights to T.M. and C.M. terminated under Iowa Code sections 232.116(1)(f) and (h) (2011).<sup>5</sup> Melinda challenges the decision, claiming the State failed to produce clear and convincing evidence supporting the grounds for termination, and that the termination was not in the children's best interest.

## ***II. Scope and Standard of Review***

Our review is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (citations omitted). We will uphold a court's order to terminate if the grounds in section 232.116 are supported by clear and convincing evidence. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). "Clear and convincing" means there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.* (quoting section 232.116). Our paramount concern is the best interests of the children. *In re C.A.V.*, 787 N.W.2d at 99.

### **A. Did the State Produce Clear and Convincing Evidence?**

The juvenile court terminated Melinda's parental rights to T.M. and C.M. under Iowa Code section 212.116(1)(f) and (h) (2011) respectively.<sup>6</sup> Melinda

---

<sup>5</sup> The court also terminated John's parental rights. He does not appeal.

<sup>6</sup> Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

(f) The court finds that all of the following have occurred:  
(1) The child is four years of age or older.

concedes the State proved the age and time requirements of those subsections, but argues the State failed to show clear and convincing evidence that T.M. and C.M. cannot be returned to her custody under section 232.102. Since the boys' removal, her drug screens have been negative. She cites her compliance with the FSRP and DHS workers, and that she maintained the same apartment throughout the proceedings, addressing the drug-use and roommate issues that lead to the removal of the children. Melinda contends because "[t]he State cannot identify any requested or court-ordered service in which Melinda failed to comply, it failed to show by clear and convincing evidence that T.M. and C.M. could not be returned to her."

---

(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 twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

. . . .

(h) The court finds that all of the following have occurred:

(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.

Iowa Code § 232.116(1).

The State responds that despite two and one-half years of services, Melinda remains unable to recognize and evaluate situations that pose danger for the children.

We acknowledge that Melinda has made efforts to end her marijuana use, participate in services, and comply with case workers' suggestions for improved parenting. But we must look to the primary basis of the State's termination petition—her inability to safely parent the children. Her cooperation and involvement with services is not tantamount to providing a safe family environment.

CINA proceedings are intended to “improve parenting skills and maintain the parent-child relationship.” *In re D.A.W.*, 552 N.W.2d 901, 903 (Iowa Ct. App. 1996). The State seeks termination when it is unable to provide the help necessary to correct a parent's shortcomings. *Id.* Underlying this determination is whether the parent is “beyond help.” *Id.* (noting a parent does not have unlimited time to correct her deficiencies).

The instant record shows that throughout the CINA proceeding the parties have not questioned Melinda's compassion for her children, but her capacity to provide a safe environment. The termination report to the court explains: “Melinda loves her boys and has worked as hard as she can in an attempt to make the progress that would be required to parent them, however, she has been unable to make the progress it would take to have the boys safely returned to her custody.” The report notes she is now in a relationship with a man who may be a possible risk of danger to herself as well as her children. It ultimately

concludes neither parent will be able to provide an appropriate home now or at any time in the foreseeable future. Based on this report and the exhibits presented before the court, the State has shown that at this time, T.M. and C.M. cannot safely be returned to Melinda's custody. See Iowa Code § 232.116(1).

**B. Is Termination in the Children's Best Interest?**

Our legislature directs juvenile courts to consider children's safety; the best placement for furthering their long-term nurturing and growth; and their physical, mental, and emotional needs. See Iowa Code § 232.116(2). In this case, we particularly turn our attention to "[w]hether the parent's ability to provide the needs of the child is affected by the parent's mental capacity or mental condition." Iowa Code § 232.116(2)(a). Although a parent's mental condition or disability is not, standing alone, sufficient grounds for termination, it is among the factors to be considered. *D.W.*, 791 N.W.2d at 708; see also *In re Wardle*, 207 N.W.2d 554, 563 (Iowa 1973) ("Ordinarily, mental disability in a parent does not operate in a vacuum so far as the best interest and welfare of his child is concerned but is usually a contributing factor in a person's inability to perform the duties of parenthood according to the needs of the child.").

Two neuropsychological exams rate Melinda's intellectual abilities as low, though they disagree as to the measure. We are less concerned about how to classify her learning disability or quantify her IQ and more concerned about her fitness for parenting. See *In re L.M.W.*, 518 N.W.2d 804, 806 (Iowa Ct. App. 1994) (holding that despite precise extent of disability, so long as its adverse effect on mother's ability to care for children appears on record, such reasoning



sufficiently justifies termination). The record is replete with instances in which Melinda compromised the children's safety during visitations. On one occasion Melinda gave T.M. jumbo hot dogs for lunch without cutting them up. T.M., who did not have his four front teeth, began to choke, requiring the FSRP worker to intervene. After warning Melinda of the risk, Melinda immediately gave T.M. another hot dog without cutting it up. The worker also repeatedly reminded her to not let the boys touch the hot stove.

Both children are active, energetic, and require full-time supervision. Because Melinda was unable to control the boys without assistance, visits had to be relocated from shopping malls and community settings to private environments. Even the home visits are chaotic, requiring the FSRP worker to provide most supervision. Visitations have dropped from three two-hour visits to two one-hour visits a week because of Melinda's poor parenting skills and the lack of education achieved during the visits. While visitation is an important component to reunification, "the nature and extent of visitation is always controlled by the best interests of the child. *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996).

Despite attending weekly parenting classes and receiving direction from workers as to proper techniques, Melinda quickly forgets what she has learned, and has not achieved any sustained improvement in her care-giving skills over the past two and one-half years. She has not progressed to semi-supervised or unsupervised visitations with the boys. In a DHS family care plan, after commending her attempts to regain custody, the worker concludes, "despite her

considerable efforts, Melinda remains unable to recognize and evaluate safety issues regarding the boys during the visits, often resulting in the need for intervention by the FSRP worker.”

Termination is the appropriate remedy when a disabled parent remains incapable, after considerable time, of bettering her parenting skills or meeting the children’s needs. *In re A.M.S.*, 419 N.W.2d 723, 734 (Iowa 1988). Because the record shows T.M. and C.M. will not be assured a safe environment if placed with their mother now or at any time in the foreseeable future, severing their legal relationship is necessary. See *In re R.K.*, 649 N.W.2d 18, 20 (Iowa Ct. App. 2002) (finding termination to be “the only workable solution” for mother when child could not be returned to her custody due to impact of disability in raising child, and services offered to provide responsible parenting).

Melinda notes DHS concerns about her parenting capabilities existed before the boys were removed from her care, but that they did not rise to the level of removal until coupled with her marijuana use—which she has stopped. She argues termination is not appropriate given her substantial efforts. While the report of her continued drug use was the catalyst for removal, the increased DHS involvement highlighted the inadequate home environment. The boys had poor nutrition. T.M. had significant dental needs, with twelve cavities and four teeth that needed removal. Melinda followed poor hygiene practices, the apartment was unkempt, and had a bed bug infestation.

We gain insight into the prospective life T.M. and C.M. would have in their mother’s custody by reviewing her past performance, as it indicates her future

capabilities. *D.W.*, 791 N.W.2d at 709. Despite genuine commitment, Melinda has not mastered the skills necessary to protect her boys from harm or nurture their long-term growth. See *id.* (affirming termination where services provided to parent did not improve mother's ability to provide for child's welfare "to a point sufficient to have semi-supervised or unsupervised visits with the [child]").

Melinda also argues her parental rights should not be terminated because T.M. and C.M. will lose their connection to three older half-siblings. The State questions the actual bond between the two young boys and Melinda's children who are in their twenties, especially when she has had such a limited role in the upbringing of the older children.

The record does not reveal a close relationship between the younger and older children, aside from the fact that one of Melinda's older sons has lived with her while searching for a new residence. Absent additional ties between the half-siblings, we do not feel the split would substantially weigh against termination. See *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) (holding our jurisdiction's general rule that "wherever possible brothers and sisters should be kept together," did not apply where older children did not reside with mother and no bond existed between older and younger siblings).

Since their removal in August 2010, T.M. and C.M. have remained with the same foster parents. The boys continue to progress in foster care. T.M.'s speech has improved, and both boys are behaving better since the foster parents eliminated sugar from their diets. Both attend daycare, and T.M. is enrolled in half-day preschool. These developmental strides show the boys' current

environment promotes their best interests. See *In re A.S.*, 743 N.W.2d 865, 868 (Iowa Ct. App. 2007) (holding child's best interests were being met by foster home, where child lived since removal). Because of Melinda's inability to care for her sons despite participation in numerous services over time and the children's progress in their current situation, we believe termination serves the best interests of T.M. and C.M.

Finally, we do not find that any of the factors in section 232.116(3) weigh against termination.

**AFFIRMED.**