

IN THE COURT OF APPEALS OF IOWA

No. 2-611 / 12-0943
Filed July 25, 2012

**IN THE INTEREST OF A.S. and B.C.,
Minor Children,**

B.S., Mother,
Appellant.

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

A mother appeals from the juvenile court permanency order placing her
two children in the custody of their respective fathers. **AFFIRMED.**

Gary F. McClintock of McClintock Law Office, Independence, for
appellant-mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Shawn M. Harden, County Attorney, and Karl Moorman, Assistant
County Attorney, for appellee.

Roger L. Sutton of Sutton Law Office, Charles City, for appellee-father of
B.C.

James T. Peters of Peters Law Office, Independence, for appellee-father
of A.S.

Linnea Nicol, Juvenile Public Defender, Waterloo, attorney and guardian
ad litem for minor children.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

MULLINS, J.

A mother appeals from the permanency order placing her two daughters within the sole custody of their respective fathers. She contends the juvenile court erred by not granting her an additional six months to work toward reunification. We affirm.

I. Background Facts and Proceedings.

The mother has two children: A.S. (born March 2005) and B.C. (born January 2009). She has a lengthy history of substance abuse starting when she was thirteen. At sixteen or seventeen, she was placed in inpatient treatment for three months. Her substance abuse also resulted in previous involvement with the Iowa Department of Human Services (DHS). In April 2008, A.S. was adjudicated a child in need of assistance (CINA) and removed from the mother's care due to concerns of methamphetamine use. The child was temporarily placed with her maternal grandparents, but the mother progressed and the case was closed in December 2008.

In May 2011, DHS received reports that the mother's boyfriend was selling methamphetamine out of his home, where the mother was residing with her two children. DHS initiated a child protective assessment, but the mother and her boyfriend refused to participate in drug testing and refused to allow testing on the children. However, B.C.'s father had his daughter undergo a hair stat test during a visit, which was positive for methamphetamine. After the positive test, the State sought and was granted a temporary removal order, and the children were placed with DHS for suitable relative placement. The mother and her boyfriend

were court-ordered to undergo drug testing. The mother tested negative, but the boyfriend tested positive for methamphetamine. The child protective assessment was determined to be founded and the mother was placed on the child abuse registry for denial of critical care failure to provide proper supervision.¹

On May 20, 2011, the State filed a CINA petition. The mother and the two fathers for the children stipulated to the children being adjudicated CINA under Iowa Code section 232.2(6)(c)(2) (2011) on June 6, 2011. Following a dispositional order entered July 18, 2011, the children were placed into the care of their fathers. Placement was confirmed in review orders filed October 24, 2011 and January 23, 2012.

Following removal, the mother participated in several services. Although she initially moved out of her boyfriend's home, she soon moved back in and both participated in family safety, risk, and permanency services. The mother also completed a substance abuse evaluation that recommended outpatient treatment. The mother attended all appointments and provided clean drug tests, and was successfully discharged on October 20, 2011. The paramour also underwent a substance abuse evaluation and submitted to drug testing through his parole officer. The mother also underwent a psychological evaluation where she was diagnosed with bipolar disorder, generalized anxiety disorder, and personality disorder NOS. The mother was recommended to attend mental health counseling services and prescribed medication. The mother also regularly

¹ The assessment was also initially founded against the boyfriend, but following an appeal, an addendum was attached to the assessment finding the abuse could not be confirmed against the boyfriend due to insufficient evidence showing he was a caretaker for the children.

attended supervised and semi-supervised visitation with her daughters, and no safety concerns were raised.

The mother was unable to sustain her progress. When the mother was discharged from outpatient treatment on October 20, 2011, she was told to abstain from all mood altering substances including alcohol. However, that very night, the mother became extremely intoxicated with her boyfriend. The next morning, the mother reported to the police that her boyfriend had physically abused her. The boyfriend was arrested. Two days after the incident, the mother recanted her allegations and stated that her injuries were the result of her drunkenly running into a wall. The mother was then arrested and charged with knowingly filing a false report.

Following this incident, the mother's visits with the children returned to fully supervised. The mother also moved in with her mother, but continues to have contact with her boyfriend and would like to maintain her relationship with him. However, the boyfriend no longer participates in services, and they have not attended or completed couple's counseling. In addition, testimony at the permanency hearing revealed that the boyfriend had a prior relationship with the maternal grandmother and that during that relationship the boyfriend attempted to poison the maternal grandmother resulting in her hospitalization.

On March 23, 2012, the mother was arrested and charged with operating while intoxicated, second offense. The mother's blood alcohol level was 0.213. Her driving privileges were revoked, and she relied on family to get her to and from work, appointments, and visits. The mother also readmitted herself into

substance abuse treatment for the third time, and now admits that she is an alcoholic.

On May 14, 2012, a permanency hearing was held.² That same day, the juvenile court entered a permanency order transferring sole custody of the children to their fathers. The mother appeals from this order.

II. Standard of Review.

We review permanency orders de novo. *In re K.C.*, 660 N.W.2d 29, 32 (Iowa 2003). We review both the facts and the law and adjudicate rights anew. *Id.* Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.*

III. Discussion.

Iowa Code section 232.104(2) sets forth several options for a juvenile court when entering a permanency order. The mother claims the juvenile court erred by not picking the option that would have given her an additional six months to work toward reunification. See Iowa Code § 232.104(2)(b). However, before choosing this option, the juvenile court must be able to make a 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.* As our court has noted: “Under some circumstances extensions could be appropriate. ‘The judge considering them should however constantly bear in mind that, if the plan fails, all extended time must be subtracted from an already shortened life for the children in a better home.’” *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa Ct. App. 2005)

² Although the juvenile court had granted the fathers’ requests for concurrent jurisdiction to resolve custody and visitation rights, no orders had been entered by the district court.

(quoting *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987), *cert. denied sub nom. In re A.C. v. Iowa*, 485 U.S. 1008 (1988)).

Upon our de novo review, we agree with the juvenile court that a six-month extension would not be appropriate in this case. The children had already been removed from the mother's care for a year, and during this time, the mother has had several relapses in judgment. Although she has made some progress, she has struggled to maintain consistency and sobriety. *A.C.*, 415 N.W.2d at 613 ("The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems."). In addition, the mother continues to want to maintain a relationship with her boyfriend, which fails to alleviate the concerns of substance abuse, violence, and instability. The children are safe and excelling in their fathers' care. Because we agree with the juvenile court's findings that convincing evidence exists showing termination of the parent-child relationship is not in the children's best interests, services were offered to correct the situation which led to the children's removal, and the children cannot be returned to the mother's home, see Iowa Code § 232.104(3)(a)-(c), we affirm the transfer of sole custody of the children from the mother to their respective fathers. See *id.* § 232.104(2)(d)(2).

AFFIRMED.