

IN THE COURT OF APPEALS OF IOWA

No. 2-618 / 12-1053
Filed August 8, 2012

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

S.T., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A mother appeals the order terminating her parental rights. **AFFIRMED.**

Jane M. White of Pargulski, Hauser & Clarke, 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 Stephanie E. Brown,
Assistant County Attorney, for appellee State.

Jami J. Hagemeyer of Williams & Hagemeyer, P.L.C., Des Moines, for
appellee father.

Erin E. Mayfield of Youth Law Center, Des Moines, attorney and guardian
ad litem for minor children.

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

VOGEL, P.J.

Sandrauel appeals the termination of her parental rights to two of her children, T.M., born July in 2006, and C.M., born in December 2011.¹ Because the record demonstrates by clear and convincing evidence that Sandrauel was offered reasonable services, additional time was not warranted, the children could not be returned home, and termination was in T.M. and C.M.'s best interests, we affirm.

I. Background.

On May 23, 2012, Sandrauel's rights were terminated under Iowa Code section 232.116(1)(d), (g), and (l) (2011). We review termination of parental rights decisions de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the factual findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by them. *In re K.M.R.*, 455 N.W.2d 690, 690 (Iowa Ct. App. 1990).

The Iowa Department of Human Services (DHS) has been involved with this family since C.M.'s birth as she was born testing positive for cocaine in her system. While in the hospital, Sandrauel admitted to the DHS worker she had used cocaine and marijuana while she was pregnant. She consented to the removal of her children and placement with the paternal grandmother. They were placed with the grandmother on December 14, 2011, where they have remained.

¹ The children's putative father consented to the termination of his parental rights and does not appeal.

A removal hearing and child in need of assistance (CINA) pretrial conference were held on December 28, 2011, at which time Sandrauel was directed to complete a substance abuse evaluation and follow any recommendations; to participate in random drug screens; to participate in family safety, risk, and permanency services (FSRP); to participate in individual therapy; and to have the children participate in appointments at the Regional Child Protection Center. On January 19, 2012, C.M. and T.M. were adjudicated CINA pursuant to Iowa Code section 232.2(6)(b), (c)(2), and (n) regarding both children and section 232.2(6)(o) regarding C.M. only. Following an uncontested disposition hearing on March 14, 2012, the children were ordered to remain at the paternal grandmother's home. On April 25, 2012, and May 21, 2012, the matters of permanency and the State's petition to terminate parental rights filed March 19, 2012, were heard. The juvenile court found the statutory requirements to terminate parental rights were proved by clear and convincing evidence and termination was determined to be in the children's best interests. Sandrauel appeals.

II. Evidentiary and Procedural Issues.

Sandrauel's first argument is that "[t]he Juvenile Court erred in allowing the Assistant County Attorney to enter into evidence prior Child in Need of Assistance legal files including files of children not parties to this proceeding by taking judicial notice of the files rather than properly marking them as exhibits and providing them to counsel as exhibits." Sandrauel's parental rights were terminated as to two other children before T.M. and C.M. were born. The files from these previous CINA and termination proceedings were offered and

admitted as exhibits over Sandrauel's objection. Sandrauel also objected to the method of admitting T.M. and C.M.'s underlying CINA files. Sandrauel's objection was based on *In re Adkins*, 298 N.W.2d 273 (Iowa 1980), claiming that because the files were not copied and made available they should not have been admitted. While Sandrauel does not argue the files from either the prior proceedings or C.M. and T.M.'s proceedings are not relevant, she argues the procedure in which they were admitted was faulty. We will address the prior files and the current files separately.

First, Sandrauel argues certified copies of C.M. and T.M.'s CINA files should have been made and provided to her. The juvenile court found that while the best practice may be requiring certified copies of the documents, the court is also allowed to make the entire court file a bulk exhibit without making certified copies.

The juvenile court did not err in admitting T.M. and C.M.'s CINA files without making certified copies. While *Adkins* lays out the procedure for a previous CINA file to be judicially noticed, our supreme court found that the failure to follow these procedures was not reversible error if on de novo review, the result would be the same without consideration of the earlier CINA proceedings. *Adkins*, 298 N.W.2d at 278. The juvenile court was also correct in finding the holding in *Adkins* has been refined by *K.M.R.*, 455 N.W.2d at 690 and *In re K.F.*, 437 N.W.2d 559, 563 (Iowa 1989). As long as there is sufficient record to allow the appellate court the opportunity to make a meaningful review of the juvenile court's decision, no basis for reversal exists. *K.M.R.*, 455 N.W.2d at 692–93. Sandrauel's counsel was also appointed on the underlying case, so

she was in possession of every entry in the CINA and exhibit files, foreclosing any claim of prejudice. *In re A.S.*, 743 N.W.2d 865, 869 (Iowa Ct. App. 2007) (finding even if evidence is erroneously admitted in a termination of parental rights proceeding, reversal is not warranted unless it is shown to be prejudicial). There is no reversible error from the manner in which the juvenile court admitted T.M. and C.M.'s CINA files.

Sandrauel's argument regarding the admittance of the older children's CINA and termination files must also fail. The content of the prior files is admissible. *In re C.M.*, 526 N.W.2d 562, 565 (Iowa Ct. App. 1994) ("[I]f relevant and material, evidence from a termination proceeding may be admitted in a later CINA hearing to the extent of its probative value."); see also *In re N.M.W.*, 461 N.W.2d 478, 480–81 (Iowa Ct. App. 1990) (holding evidence of a parent's past actions that formed basis of prior CINA proceedings may be considered in new CINA proceeding as long as there is other clear and convincing evidence as a basis of new CINA proceeding).

Even without resorting to the two prior CINA and termination files, we find clear and convincing evidence was offered to prove the elements of section 232.116(1)(g). *C.M.*, 526 N.W.2d at 565 (finding the district court did not err in allowing evidence from a prior termination because clear and convincing evidence existed to find the child to be CINA, independent of the prior termination hearing). The critical facts contained in the prior proceedings were admitted in this termination proceeding through other testimony or evidence. Notably, Sandrauel admitted in her testimony at the termination hearing that her rights were terminated with regards to two older children. This information was also

contained in a current DHS report to the court. In addition, Sandrauel reported to the DHS worker shortly after C.M.'s birth that one of her older children was also born testing positive for cocaine. Therefore, because the critical information contained in the prior CINA and termination proceedings came in through these other channels, there is no reversible error. *Adkins*, 298 N.W.2d at 278.

This finding also forecloses Sandrauel's next issue claiming the juvenile court erred in not granting a continuance when Sandrauel was not given copies of exhibits prior to the termination hearing. The juvenile court noted that Sandrauel's counsel was advised in the April 10 pretrial order that she could check these exhibits out from the clerk's office prior to the termination hearing. However, when Sandrauel's counsel attempted to check the files out just two days before the hearing, she was unsuccessful as the files were in transit for the upcoming hearing.

Denial of a motion to continue is reviewed for an abuse of discretion. *In re K.A.*, 516 N.W.2d 35, 37 (Iowa Ct. App. 1994). A denial of a motion to continue will only be reversed if injustice will result to the party desiring the continuance and the denial was unreasonable under the circumstances. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996) (citations omitted). Sandrauel was given the opportunity to examine the exhibits on April 10, fifteen days before the first day of the hearing scheduled for April 25. Moreover, Sandrauel had additional time to review the exhibits, as the hearing did not reconvene for a second day until May 21. We also note that at no time did Sandrauel state what information in the exhibits was prejudicial to her, possibly because the pertinent information contained in the exhibits was duplicative of other evidence. *State v. Hildreth*, 582

N.W.2d 167, 170 (Iowa 1998) (holding no prejudice would be found due to erroneously admitted evidence where it was merely cumulative). Therefore, we find the juvenile court did not abuse its discretion in denying Sandrauel's motion to continue.

III. Best Interests.

Sandrauel does not contest that the statutory basis for the termination of her parental rights were proved, but rather asserts that termination is not in the children's best interests. Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We consider "the child's safety," "the best placement for furthering the long-term nurturing and growth of the child," and "the physical, mental, and emotional condition and needs of the child." *Id.* The record demonstrates that Sandrauel is unable to provide a safe and nurturing home for the children. Most striking is Sandrauel's failure to acknowledge the severity of her substance abuse, and her repeated failure to succeed in substance abuse treatment programs. Even the drug screening ordered on the first day of the termination hearing came back positive for cocaine, underscoring Sandrauel's unwillingness to address her substance abuse issues in the face of losing parental rights to her children. As the juvenile court found, Sandrauel does not recognize the harm she poses to her children by her chaotic lifestyle, persistent drug use and "dropping in and out of her young children's lives." We conclude termination of Sandrauel's parental rights is in T.M. and C.M.'s best interests as set forth under the factors in section 232.116(2).

IV. Reasonable Efforts.

Sandrauel's final claim is that reasonable efforts pursuant to Iowa Code section 232.102(10) were not made to work toward reunification. When a parent fails to demand services other than those provided, the issue of whether services provided were adequate has not been preserved for appellate review. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). The record is void of any requests from Sandrauel for additional services but rather is full of opportunities to utilize services offered. Even if error were preserved on this issue, Sandrauel's assertion is simply not reflected in the record. The juvenile court listed the many services offered to Sandrauel, as also shown in the DHS reports. While Sandrauel claims the three months given to acknowledge her substance abuse problems were not sufficient, the evidence demonstrates that she has had at least fifteen years in and out of the court system and various treatment programs to acknowledge and overcome her severe drug addiction. With little to no progress made with the many services offered, we find no merit to this argument. We therefore affirm the juvenile court.

AFFIRMED.