

**IN THE COURT OF APPEALS OF IOWA**

No. 2-986 / 12-1610  
Filed November 29, 2012

**IN THE INTEREST OF N.P.R., S.P.R., and R.R.,  
Minor Children,**

**A.R., Mother,**  
Appellant.

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

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Nancy L. Pietz, 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.

Michelle Saveraid of the Youth Law Center, Des Moines, for minor children.

Considered by Eisenhauer, C.J., Vaitheswaran, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**MAHAN, S.J.****I. Background Facts & Proceedings.**

Andrea is the mother of three children, born in 1998, 2004, and 2009. The father of the oldest child is Christopher, and the father of the younger two children is Pedro.<sup>1</sup> Andrea and Pedro lived together with the children, and their relationship involved domestic violence. In 2006 the family voluntarily participated in services with the Iowa Department of Human Services.

The children were removed from Andrea's and Pedro's care on September 12, 2011, due to reports Pedro had physically and sexually abused the oldest child. The oldest child stated she had told her mother about the sexual abuse several weeks earlier, but her mother had not done anything about it. The children were placed with their maternal great-aunt and uncle. Pedro left and his whereabouts remain unknown. The children were adjudicated to be in need of assistance pursuant to Iowa Code sections 232.2(6)(b) (2011) (parent has or is likely to physically abuse or neglect child), (c)(2) (child is likely to suffer harm due to parent's failure to supervise), and (d) (child was or is likely to be sexually abused). Andrea participated in services, but never progressed to unsupervised visitation because she would not accept accountability for her actions that led to the removal of the children.

On May 17, 2012, the State filed a petition seeking termination of the parents' rights. The termination proceedings began on June 28, 2012. Subsequently, Andrea was arrested and charged with child endangerment based

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<sup>1</sup> Christopher has had very limited interaction with his child. He does not appeal the termination of his parental rights. At the time of the termination hearing, Pedro's whereabouts were unknown. He also has not appealed the termination order.

on her actions in September 2011. Also, during this time the children were placed with the maternal grandparents. The termination hearing resumed on August 2, 2012. Andrea's counsel asked for a continuance, stating due to Andrea's incarceration she was not able to assist in preparation for the hearing. The court denied the motion, finding Andrea had been reasonably available for consultation. Andrea was present at the hearing, but exercised her Fifth Amendment right not to answer any questions.

The juvenile court terminated Andrea's parental rights pursuant to sections 232.116(1)(d) and (h). The court found Andrea had not demonstrated an ability to keep the children safe. The court noted that rather than supporting her oldest child, Andrea had attempted to undercut her credibility and minimize the abuse. The court specifically found Andrea was not credible. The court found termination of the parents' rights was in the best interests of the children. Andrea appeals the decision of the juvenile court.

## **II. Standard of Review.**

The scope of review in termination cases is de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Clear and convincing evidence is needed to establish the grounds for termination. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Where there is clear and convincing evidence, there is no serious or substantial doubt about the correctness of the conclusion drawn from the evidence. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). "The paramount concern in termination proceedings is the best interest of the child." *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011).

### **III. Continuance.**

Andrea contends the juvenile court should have granted her motion to continue. She claims it would have been in the children's best interests to continue the matter to allow stabilization of their placement and to give her the opportunity to deal with her criminal issues.<sup>2</sup>

A motion for continuance is reviewed for an abuse of discretion, and we will reverse only if there is injustice to the party seeking the continuance. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). "A denial of a motion to continue must be unreasonable under the circumstances before we will reverse." *Id.* We conclude the juvenile court did not abuse its discretion by denying Andrea's motion to continue. As the court noted, she was in jail locally, and she was reasonably available for consultation with her attorney.

### **IV. Sufficiency of the Evidence.**

Andrea claims there is insufficient evidence to support termination of her parental rights. She points out she participated in services and she has a stable home and a job. Andrea claims she has gained insight into protecting her children and they could be returned to her care.

We conclude the mother's parental rights were properly terminated as to all three children under section 232.116(1)(d).<sup>3</sup> The children were previously adjudicated to be in need of assistance based on a finding that they had been or

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<sup>2</sup> Andrea also raises a due process issue that was not raised before the juvenile court. We do not address issues that are raised for the first time on appeal. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003).

<sup>3</sup> The mother's parental rights were also terminated under section 232.116(1)(h). This section applies only to children who are ages three or younger, and would in fact only apply to the youngest child. We determine the mother's parental rights were properly terminated under this section as to the youngest child as well.

were likely to be physically or sexually abused or neglected. See Iowa Code § 232.116(1)(d)(1). Also, “the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.” *Id.* § 232.116(1)(d)(2). The juvenile court engaged in extensive analysis showing Andrea had not gained insight into the need to protect her children. The court found she continued to obfuscate and deny the risk to the children, and consequently was not able to protect them.

#### **V. Extension of Time.**

On appeal, Andrea asserts the juvenile court should have given her six more months to work on reunification with her children pursuant to section 232.104(2)(b). As the juvenile court noted, Andrea “has had years, not months, to deal with these issues and she has not done so.” The court also found, “Nothing has changed during court involvement. [Andrea] reacts and makes the abuse about herself and her own reported past abuse, not that of her children.” We conclude the juvenile court properly did not further extend these proceedings. See *In re A.B.*, 815 N.W.2d 764, 777 (Iowa 2012) (noting we cannot deprive a child of permanency “by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child”).

#### **VI. Best Interests.**

We have already determined there are sufficient grounds for termination of Andrea’s parental rights under section 232.116(1). We then turn to the issue of whether termination of Andrea’s rights is in the best interests of the children considering the language of section 232.116(2). See *In re P.L.*, 778 N.W.2d 33,

40 (Iowa 2010). Looking to the children's safety, to furthering the long-term nurturing and growth of the children, and to the physical, mental, and emotional condition and needs of the children, we conclude termination of Andrea's rights is in the best interests of the children. See Iowa Code § 232.116(2).

Lastly, we consider whether any of the exceptions to termination found in section 232.116(3) are applicable in this case. See *P.L.*, 778 N.W.2d at 41. The court has discretion concerning whether to apply these exceptions to avoid termination of parental rights. *In re D.S.*, 806 N.W.2d 458, 475 (Iowa Ct. App. 2011). Andrea claims the court could have avoided termination because the children were in the care of a relative. See Iowa Code § 232.116(3)(a). The juvenile court considered this option, but found termination was in the children's best interests. The court found there were unhealthy dynamics in the family, and "[t]he children need to know [the mother] will not be the one making the decisions about their future."

Andrea also claimed the court could have avoided termination due to the closeness of the parent-child bond. See *id.* § 232.116(3)(c). The juvenile court specifically found this bond had a long-term negative emotional effect for all of the children. The court found Andrea was "absolutely incapable of protecting them and providing for their long-term nurture." We conclude the juvenile court properly exercised its discretion under section 232.116(3) to terminate Andrea's parental rights.

We affirm the decision of the juvenile court.

**AFFIRMED.**