

IN THE COURT OF APPEALS OF IOWA

No. 3-603 / 13-0731
Filed June 26, 2013

**IN THE INTEREST OF D.E. AND Z.E.,
Minor Children,**

**M.E., Mother,
Appellant.**

Appeal from the Iowa District Court for Clay County, Charles K. Borth,
District Associate Judge.

Melissa, the mother, appeals the juvenile court's order granting the
petition for termination as to D.E. and Z.E., her children. **AFFIRMED.**

Pamela Wingert, Spirit Lake, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, Michael J. Houchins, County Attorney, and Kristi Busse, Assistant
County Attorney, for appellee State.

James Hastings, Okoboji, for appellee father.

Shannon Sandy of Sandy Law Firm, P.C., Spirit Lake, attorney and
guardian ad litem for minor children.

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

VOGEL, P.J.

Melissa has three children, A.E., D.E. and Z.E., who were removed from the home in August 2011 after a host of parenting and safety concerns came to light. After separating from her husband, Melissa filed a motion to modify custody in February 2013, so as to regain full custody of all three children. Without securing a ruling on the motion, the parties subsequently reached an agreement whereby Melissa would maintain custody of A.E., but consent to termination of her parental rights with respect to D.E. and Z.E. Melissa now appeals the juvenile court's order terminating parental rights as to D.E. and Z.E., claiming her motion to modify should have been granted, and the juvenile court failed to consider the effect of separating the siblings.

For a party to be able to argue the merits of a claim on appeal, the issue must first be raised in the juvenile court. *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). When Melissa consented to the termination of her parental rights with respect to D.E. and Z.E., she abandoned her motion to modify custody. *See, e.g., Harper v. Cedar Rapids Television Co., Inc.*, 244 N.W.2d 782, 786 (Iowa 1976) ("If a party permits the court to proceed to judgment without action upon his motion or objection, he will be held to have waived the right to have the motion or objection acted upon."). Furthermore, she did not argue for custody during the termination proceeding, but rather, as the district court found by clear and convincing evidence, "voluntarily and intelligently consent[ed] to the termination of [her] parental rights as to [D.E. and Z.E.]," pursuant to Iowa Code section 232.116(1)(a). Given that she consented to termination and did not raise the issue of her motion to modify, she has failed to preserve this issue on appeal.

The same analysis applies to her argument that the juvenile court erred in not considering the effect of separating the siblings. Melissa concedes, and we agree, that error was not preserved on this issue. *T.J.O.*, 527 N.W.2d at 420. The district court, citing the factors under Iowa Code section 232.116(2), gave “primary consideration to [D.E. and Z.E’s] safety, for their best placement for furthering their long-term nurturing and growth, and to their physical, mental, and emotional needs.” We agree, and therefore affirm under Iowa Rule of Court 21.29(1)(a), (b), (d), and (e).

AFFIRMED.