

**IN THE COURT OF APPEALS OF IOWA**

No. 3-625 / 13-0783

Filed July 10, 2013

**IN THE INTEREST OF K.K.H. and K.A.M.,  
Minor Children,**

**K.M., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Wapello County, William S. Owens,  
Associate Juvenile Judge.

A mother appeals an order terminating her parental rights to her two  
young children. **AFFIRMED.**

Mary Baird Krafka of Krafka Law Office, Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Lisa Holl, County Attorney, and Seth Harrington, Assistant  
County Attorney, for appellee.

Cynthia Hucks, Ottumwa, attorney and guardian litem for minor children.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

**TABOR, J.**

Kimberly, the mother of three-year-old K.H. and two-year-old K.M., appeals a juvenile court's order terminating her parental rights to both children. She contends the State did not establish the ground for termination by clear and convincing evidence and termination is not in the best interest of her children, both of whom have special needs.

Since the children were originally adjudicated in need of assistance (CINA), Kimberly has not consistently visited them, has largely refused services to address her substance abuse, has continued to engage in criminal behavior, and lacks stable housing or job prospects. Because Kimberly shows no signs of possessing the capacity to care for K.H. and K.M., termination of her legal ties is in the best interest of these young children so they may move toward a permanent home.

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

Kimberly and Jimmy are the parents of K.H. and K.M. Both children have been identified with special needs. K.M. is being monitored for possible autism and Prader-Willi syndrome, which may account for his eating disorder. K.H. has experienced developmental delays and may have been affected by prenatal alcohol exposure.

In October 2011, the Iowa Department of Human Services (DHS) became involved with the family after reports of adverse living conditions and substance abuse. Kimberly and K.H. tested positive for methamphetamine, and Kimberly's former paramour, Freddie, admitted daily methamphetamine use. Following a

DHS assessment, the children stayed with Kimberly's mother. On January 25, 2012, the children's maternal grandmother requested both children be placed in foster care. Kimberly consented to the placement. Both children have remained with the same foster family for the duration of the case.

On March 20, 2012, the juvenile court adjudicated K.H. and K.M. as CINA, under Iowa Code section 232.2(6)(c)(2), (n), and (o) (2011).

Jimmy has been absent throughout the proceedings, and DHS has been unable to contact him, despite diligent efforts. Throughout the CINA case DHS has offered Kimberly and Freddie many services, which they have almost entirely refused. Both Kimberly's and Freddie's substance abuse assessments recommended they participate in outpatient treatment, but neither followed through with the recommendation. Kimberly has not arranged for individual counseling and has not participated in any services to help her regain custody of her children. Since the children were removed from her care more than fourteen months ago, Kimberly has had no more than twenty visits with them, all of which were supervised and took place in the service provider's office. She has attended few, if any, of the children's medical appointments.<sup>1</sup>

Kimberly admitted to using methamphetamine since DHS involvement and to selling drugs before the CINA case opened. DHS workers suspect she has continued to abuse controlled substances throughout the course of proceedings. The State has charged Kimberly with theft for writing bad checks for "several thousand dollars," and she has been incarcerated at times for theft and delivery

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<sup>1</sup> Because of Kimberly's minimal involvement, DHS sought limited guardianship of both children to address their medical needs.

of methamphetamine. Kimberly told her mother the FBI was looking for her, and as of the date of termination, a warrant issued for failing to attend a criminal hearing had not yet been served. Kimberly also had not gained stable housing or a verifiable source of income.

On December 28, 2012, the State filed its petition to terminate the parental rights of Kimberly and Jimmy to K.H. and K.M. The juvenile court held a termination hearing on February 22, 2013. Consistent with all previous hearings, neither Kimberly nor Jimmy attended.<sup>2</sup> On April 29, 2013, the juvenile court terminated Jimmy's parental rights to both children under section 232.116(1)(b),<sup>3</sup> and terminated both parents' rights to K.H. and K.M. under section 232.116(1)(h).<sup>4</sup> Only Kimberly appeals.

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

We review a juvenile court's termination of parental rights *de novo*. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). While we accord weight to the juvenile

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<sup>2</sup> The juvenile court previously held an adjudicatory hearing on March 30, 2012; a dispositional hearing on April 24, 2012; a review hearing on July 31, 2012; and a permanency hearing on January 22, 2013. Neither parent attended any hearing.

<sup>3</sup> Section 232.116(1)(b) authorizes termination if "[t]he court finds that there is clear and convincing evidence that the child has been abandoned or deserted."

<sup>4</sup> Section 232.116(1)(h) authorizes termination if the court finds each of the following:

(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.

court's fact findings, especially concerning witness credibility, we are not bound by them. *Id.*

### ***III. Analysis***

In a very cursory argument in her petition on appeal, Kimberly claims: "The grounds for terminating mother's parental rights must be proven by clear and convincing evidence. Such clear and convincing evidence is lacking in this record." To the extent this is a challenge to the juvenile court's statutory basis for termination, we reject it. The record contained overwhelming evidence the children could not be returned to Kimberly's care at the time of the termination hearing. See Iowa Code § 232.116(1)(h). Kimberly did not attend the hearing and did not contact her attorney regarding her absence. The State presented testimony from the case coordinator that Kimberly did not have the skills to be a competent parent. It is clear Kimberly could not have resumed care of her young children.

Kimberly also asserts termination is not in the best interest of K.H. and K.M. She asserts because the children are young and have special needs, they "would most surely benefit by having their mother as an ongoing part of their lives."

The State contends by failing to appear or raise any issue at the termination hearing, Kimberly has not preserved her best-interest challenge on appeal. The State additionally argues because Kimberly continues to struggle with the issues leading to the CINA adjudication and the DHS has identified foster families willing to adopt them, termination is in both children's best interest.

Assuming without deciding error was preserved, we believe the juvenile court properly decided termination was in the children's best interest. See *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011) (applying framework in section 232.116(2)). When evaluating whether termination is in the children's best interest, we primarily consider their safety, the best placement to further their long-term growth and nurturing, and their mental, physical, and emotional needs. *In re A.B.*, 815 N.W.2d 764, 776 (Iowa 2012). We glean insight for what situation would best serve the children's long-range interest from evidence of a parent's past performance, since that track record may indicate the quality of care the parent is capable of providing in the future. *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000).

Kimberly has shown minimal progress toward parenting K.H. and K.M. Throughout the case, she attended roughly half of the scheduled visits, which she would often end early. She consequently was unable to advance beyond two-hour supervised encounters. Kimberly's last correspondence with DHS was two weeks before the termination hearing, and without a home address or working phone, DHS no longer has any means to directly contact her. The case coordinator testified Kimberly repeatedly declined services and refused to participate in parenting programs, distracted by her own criminal troubles. Kimberly's failure to attend the children's medical appointments and absence from all court hearings signal her lack of commitment to the children.

"[A]lthough there exists a parental interest in the integrity of the family unit, this interest is not absolute." *In re K.M.*, 653 N.W.2d 602, 608 (Iowa 2002)

(internal alterations omitted). Kimberly's failure to improve her parenting prospects and negligible efforts to engage in her children's lives throughout the case overshadows her parental interest in the integrity of the family.

Kimberly's exposure to illicit drugs further convinces us that termination is in K.H. and K.M.'s best interest. She has a history of substance abuse and has admitted recent use, yet she has refused to complete a treatment program. See *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (“[I]n considering the impact of a drug addiction, we must consider the treatment history of the parent to [determine] the likelihood the parent will be in a position to parent the child in the foreseeable future.”).

While we recognize the law demands a full measure of patience with parents trying to remedy a lack of parenting ability, this patience is built into chapter 232. *C.B.*, 611 N.W.2d at 494. Once the statutory period lapses, we view termination proceedings with a sense of urgency. *Id.* at 495.

K.H. and K.M. have made substantial developmental strides during their time in foster care. Although they know Kimberly is their mom, because of her infrequent involvement in their lives, any meaningful parental bond has been effectively severed. It is not in children's best interest to keep them in a holding pattern while their parents “get their lives together.” *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). This is especially true when the children are young and adoptable. *Id.* The DHS has identified foster families who may be willing to adopt these special needs children. We find termination is in their best interest.

**AFFIRMED.**