

IN THE COURT OF APPEALS OF IOWA

No. 6-1043 / 06-1831
Filed January 18, 2007

**IN THE INTEREST OF C.L.P.H. and F.L.B.,
Minor Children,**

R.B., Mother,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Kathleen Kilnoski, District Associate Judge.

R.B. appeals from the juvenile court's order terminating her parental rights concerning her children, C.L.P.H. and F.L.B. **AFFIRMED.**

Chad Primmer, Council Bluffs, for appellant mother.

Brian Rhoten, Council Bluffs, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn Eimers, Assistant County Attorney, for appellee State.

Jay Mez, Council Bluffs, for minor children.

Considered by Huitink, P.J., and Vogel and Zimmer, JJ.

HUITINK, P.J.

R.B. appeals from the juvenile court's order terminating her parental rights concerning her children, C.L.P.H. and F.L.B. She argues the State failed to prove the statutory grounds for termination. She also argues termination of her parental rights is not in the best interests of the children. We review her claims de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

R.B.'s parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d) (child CINA for physical or sexual abuse (or neglect), circumstances continue despite receipt of services), 232.116(1)(e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child), 232.116(1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home), and 232.116(1)(j) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time). When the trial court terminates on more than one statutory ground, we need only find termination is proper on one ground. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

There is no dispute concerning the sufficiency of the State's proof concerning the first three elements of section 232.116(1)(h). Both children are three years of age or younger, both had been adjudicated children in need of assistance, and both had been removed from R.B.'s custody for eleven consecutive months preceding the termination hearing. R.B. nevertheless claims the State has failed in its burden to prove the children cannot be returned to her custody. We disagree.

A parent's failure to follow the Iowa Department of Human Services' plan "can be considered evidence of the parent's attitude toward recognizing and correcting the problems which resulted in the loss of custody." *In re J.L.P.*, 449 N.W.2d 349, 352 (Iowa 1989). "While recognizing the law requires a 'full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,' Iowa has built this patience into the statutory scheme of Iowa Code chapter 232." *In re C.B.*, 611 N.W.2d at 494 (quoting *In re D.A., Jr.*, 506 N.W.2d 478, 479 (Iowa Ct. App. 1993)). C.L.P.H. and F.L.B. should not be forced to endlessly await the maturity of their parent. *In re C.L.H.*, 500 N.W.2d 449, 453 (Iowa 1993) (citing *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983)). A child should not be forced to suffer "the parentless limbo" of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993).

Here, C.L.P.H. and F.L.B. were separately adjudicated children in need of assistance based on R.B.'s mental health issues, substance abuse, and related risks of harm from her failure to adequately care for or supervise the children. The record indicates R.B. was offered a variety of services intended to address mental health and substance abuse issues, as well as facilitate reunification with her children. These services included intensive outpatient treatment, including alcohol education, women's group, individual counseling, and cognitive and intensive group therapy. R.B. resisted and dropped out of therapy after attending one session. R.B. also failed to attend court-ordered Alcoholics Anonymous and Narcotics Anonymous meetings. She was discharged from codependency treatment because she failed to attend therapy sessions.

In addition to failing to follow through with the services provided, R.B. failed to find work or stable housing. The continued removal of her children resulted, in part, from R.B.'s failure to communicate with her family-centered services counselor, failure to secure utility services to her residence, failure to take C.L.P.H. to special education services provided through an area education agency, and failure to participate in codependency counseling. In addition, R.B. completed only five of twenty-six drug screens requested, and in one of the five she tested positive for amphetamines. R.B. was also incarcerated in January 2006 for a probation violation.

We, like the trial court, find the children cannot be returned to R.B.'s custody because of the risk of further adjudicatory harm presented by her failure to address her substance abuse issues. See *State v. Petithory*, 702 N.W.2d 854, 858-59 (Iowa 2005); *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993) (parents who have chronic severe substance abuse problems clearly present a danger to their children). We affirm on this issue.

The court can deny the State's requested termination of parental rights if circumstances indicate that termination is not in the children's best interests. *In re A.L.*, 492 N.W.2d 198, 200 (Iowa Ct. App. 1992). A relative having legal custody of the child is an example of a circumstance warranting such restraint. Iowa Code § 232.116(3)(a). The factors under section 232.116(3) have been interpreted by the courts as being permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d at 454. We are primarily concerned with the best interests of the children. Iowa R. App. P. 6.14(6)(o); *In re R.K.R.*, 572 N.W.2d 600, 601 (Iowa 1998). In determining the best interests of the children, we look to the children's

long-range and immediate interests. *In re J.J.S., Jr.*, 628 N.W.2d 25, 28 (Iowa Ct. App. 2001). Placement of a child with a relative under a permanency order is not a legally preferable alternative to termination of parental rights. *In re L.M.F.*, 490 N.W.2d 66, 67-68 (Iowa Ct. App. 1992). “Insight for the determination of a child’s long-range best interests can be gleaned from ‘evidence of the parent’s past performance for that performance may be indicative of the quality of the future care that parent is capable of providing.’” *In re C.B.*, 611 N.W.2d at 495 (citing *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

Here, the children’s best interests are served by terminating R.B.’s parental rights in an effort to give the children permanency. R.B.’s past performance and failure to address her drug dependency do not indicate that she can adequately care for her children. C.L.P.H. is living with her father. He has maintained employment and an appropriate home. He has participated in family-centered services and demonstrated improvement in his parenting skills. F.L.B. continues to live with her paternal relatives. They provide her with a caring home and are willing to become her adoptive parents. We affirm the trial court’s termination of parental rights.

AFFIRMED.