

IN THE COURT OF APPEALS OF IOWA

No. 6-1044 / 06-1807
Filed January 18, 2007

**IN THE INTEREST OF A.R.R. AND S.E.M.,
Minor children**

**R.L.M., Mother,
Appellant.**

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

A mother appeals from the district court's order terminating her parental rights to her two children. **AFFIRMED.**

Lori Falk-Goss, Council Bluffs, for appellant.

Phil Caniglia, Council Bluffs, and Brian Rhoten, Council Bluffs, for appellee fathers.

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

Maura Comstock, Council Bluffs, for minor children.

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

VOGEL, J.

Rebecca appeals from the district court's order terminating her parental rights to her two children, Seth and Anthony. She asserts the State failed to provide her with reasonable efforts towards reunification and was not given reasonable time to rehabilitate herself. After reviewing the record on appeal, we affirm.

Seth and Anthony,¹ were ages three and one respectively, at the time of the termination hearing. Rebecca also is the mother of four older children, but has custody of none of them. She has long-term substance abuse issues that have led to three prior imprisonments, including her Nebraska incarceration during the pendency of this case. In June 2004, when the Council Bluffs police found methamphetamine and a hypodermic needle cap on Rebecca's nightstand, Seth was taken into protective custody. He was adjudicated a child in need of assistance (CINA) under Iowa Code sections 232.2(6)(c)(2) (2003) (child likely to suffer harm due to parent's failure to exercise care in supervising child), (g) (parent fails to provide adequate food, clothing, or shelter), and (n) (parent's drug or alcohol abuse results in child not receiving adequate care).

Seth was placed with his paternal grandmother until Rebecca regained custody in July 2005. Rebecca had successfully completed outpatient drug treatment, and Anthony was born in June 2005 free of illegal substances. In early October 2005, Seth and Anthony were removed from Rebecca's care when she missed a drug screening and two sessions with the family-centered services,

¹ Seth's father, Elvis, and Anthony's father, Robert, were each incarcerated at the time of the children's removals from Rebecca's care. Neither father appeals the termination of his parental rights.

in-home therapist. The therapist reported she could not locate the family. Anthony was then also adjudicated CINA under sections 232.2(6)(c)(2), (g), and (n). Due to progress made by Rebecca complying with services, the children were again returned to her care in December 2005. Rebecca relapsed again, testing positive for methamphetamine in late January 2006, and requiring removal of the children from her care for the final time. Seth and Anthony have been in DHS custody since this removal.

During the pendency of the case, Rebecca was offered a myriad of services to assist with reunification including: substance abuse evaluations and treatment; drug screenings; AA/NA meetings; mental health evaluations; family-centered services of supervised visitation and parent skill training; for Seth, services included an area education agency evaluation, special education services, and mental health evaluation. In May 2006, Rebecca was imprisoned in a Nebraska state correctional facility, impeding her meaningful participation in DHS-offered services or personal contact with the boys. She did participate in a mood management course in prison and was on a waiting list for a parenting class. Before her incarceration, Rebecca did not consistently attend visitation, and there were concerns about her abilities to appropriately supervise and discipline the children. The termination hearing was held in September and October, with Rebecca participating via telephone from prison.

Following the hearing, the district court entered an order terminating Rebecca's parental rights to Seth and Anthony. The court found termination in the children's best interests, and the grounds for termination were proven by clear and convincing evidence under sections 232.116(1)(d) (children CINA for

neglect, circumstances continue despite receipt of services); (g) (children CINA, parent's right to another child were terminated, parent does not respond to services); (h) (children are three or younger, children CINA, removed from home for six of last twelve month, and cannot be returned home); (i) (children meet definition of CINA, children in imminent danger, services would not correct conditions); and (l) (children CINA, parent has substance abuse problem, children cannot be returned within a reasonable time). Rebecca appeals, arguing she did not receive adequate services, she should have been given additional time to rehabilitate herself, and termination is not in the children's best interests.

We review termination of parental rights proceedings de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). We are primarily concerned with the best interests of the children. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

Rebecca argues that DHS failed to make reasonable efforts at reunification. Although she claims error was preserved on this issue, she does not generally direct us to when she requested additional services. See Iowa R. App. P. 6.151(2)(d) (stating, "The petition on appeal shall include. . . . A statement of the legal issues presented for appeal, including a statement of how the issues arose and how they were preserved for appeal."). A parent is not entitled to rely upon an allegation DHS failed to provide reasonable services, where she did not timely request such services. See *In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000). We deem this issue waived for purposes of appeal.

Rebecca next contends that she should have been given additional time for rehabilitation and that termination was not in the children's best interests. We agree with the district court that Rebecca's past actions and pattern of improvement only to relapse shortly thereafter is the best indicator of her inability to remain drug free in the near future. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). Nonetheless she asserts, "Under the federal guidelines, the time frames set forth are not realistic for parents who have had a severe drug addiction in their past." Our Iowa appellate courts neither set the federal framework, nor the Iowa legislative standards for termination of parental rights. However, we have recognized that at some point, the rights and needs of the children rise above the rights and needs of the parent and our legislature, through section 232.116 has directed us to that point. *J.L.W.*, 570 N.W.2d at 781. In this case, Rebecca has had numerous opportunities to care for her children, only to place her addiction to illegal substances above the needs and concerns of her small children. The record reveals scant support for her assertion that additional time would result in a permanent improvement of the situation. The children should not be forced to wait any longer for Rebecca to straighten out her life so that she can be a dependable parent. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). The boys have done well in foster care, and it is in their best interests that Rebecca's parental rights are terminated so that they can enjoy the security of a permanent and safe home. We affirm the termination of Rebecca's parental rights.

AFFIRMED.