

IN THE COURT OF APPEALS OF IOWA

No. 6-599 / 06-0939
Filed September 7, 2006

**IN THE INTEREST OF J.A., B.A., and T.A.,
Minor Children,**

**T.M.V., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise M. Jacobs,
District Associate Judge.

The mother appeals the district court's termination of her parental rights to
her three children. **AFFIRMED.**

Nancy L. Pietz, Des Moines, for appellant mother.

Jami Hagemeyer, Des Moines, for appellee father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Jennifer Galloway,
Assistant County Attorney, for appellee.

Kimberly Ayotte of Youth Law Center, Des Moines, for minor children.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206
(2005).

VAITHESWARAN, J.

Terra appeals the termination of her parental rights to Jordyn, born in 1998, Baylee, born in 1995, and Taylor, born in 1994. She contends (1) the grounds for termination on which the district court relied are not supported by the evidence and (2) termination was not warranted because the children were with a relative.

I. The Evidence.

We may affirm a termination ruling if we find clear and convincing evidence to support any of the grounds on which the district court relied. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). On our de novo review, we find evidence to support termination under Iowa Code section 232.116(1)(f) (2005) (requiring proof of several elements including proof that the children cannot be returned to the parent's custody).

The children were removed from Terra's care in March 2004 due to her methamphetamine use.¹ They were placed with Terra's parents. Terra initially cooperated with reunification services and maintained regular contact with her children, but her progress was short-lived. Less than a year after the removal, the Department of Human Services found Terra was again using methamphetamine. The Department also had concerns about possible drug use by Terra's parents. The children were moved to the home of their paternal grandparents, where they remained through the termination hearing in May 2006.

¹ Terra provided inconsistent testimony regarding her methamphetamine use. Initially, she admitted her usage was the reason for the children's removal. Later, she equivocated, testifying she only began using methamphetamine after their removal. However, Terra's urine tested positive for the presence of methamphetamine at the time of the removal.

Terra exercised no visitation with the children from April 2005 through December 2005. She admitted to continued use of methamphetamine during much of that time.² In January 2006, Terra had one visit with the children. A Department report noted that, during this session, "Terra's behavior was erratic and she was verbally aggressive."

By the time of the termination hearing, Terra had made some effort to address her problems. She completed a substance abuse evaluation, attended three outpatient treatment sessions, and attempted to confront issues with anger management. By her own admission, however, she had more work ahead of her. After acknowledging that her children's case had been open for over two years, she stated, "I want to get everything in my life under control and I just need a little bit more time to prove that it's going to be consistent." It is clear from this testimony that the children could not immediately be returned to her custody.

II. Relative Placement.

A court need not terminate a parent's rights if a relative has legal custody of the children. Iowa Code § 232.116(3)(a). The ultimate consideration is the best interests of the children. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

We recognize that the children lived with their paternal grandparents and their father for more than a year. However, this fact alone does not preclude the termination of Terra's rights. See *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). Terra made little progress towards resuming a non-custodial relationship, let alone a custodial relationship, with the children, having exercised only one visit with them in well over a year. In addition, Terra's relationship with

² Terra reported that she did not stop using drugs until October 2005.

the children's father and his parents was strained at best. She acted belligerently towards them and inappropriately attempted to make contact with the children at their home. A Department worker expressed concern "that the girls are aware of these relationships and have been present or overheard the yelling that takes place amongst the adults."

Terra's on-again-off-again interest in her children hurt them. A service provider testified:

[The children] have been through an unbelievable amount of chaos up until now. They have seen their mother once in over a year. It was something that was built up. They had so much hope for that, and the let down was so great after yet again [Terra] was unable to demonstrate any type of stability or put her children's needs ahead of her own at this point.

While acknowledging that the children once shared a bond with their mother, the provider testified, "[T]he bond with her is affected because they are very well aware it is due to her choices that have prevented her from seeing them."

We conclude the children's placement with a relative did not warrant deferral of the termination decision as to Terra. The district court concluded termination was in the best interests of the children. We concur.

AFFIRMED.

Robinson, S.J., concurs; Sackett, C.J., concurs specially.

SACKETT, C.J. (concurring specially)

I agree with the majority that the State has met its burden to support termination.

It appears these children will be living with their father and his parents. Terra contends it is not in the children's best interest to terminate her parental rights because, among other things, it will take away her financial support, something to which the children are entitled if she remains their mother. The father has not sought support from Terra. He contends that if Terra retains her parental rights she is likely to involve him in continued litigation and disrupt the children's life.

There is no fairness in discharging the support obligation of a parent to a child where parental rights are terminated and the terminated parent is not replaced by an adoptive parent.³ Nor is it necessarily in the children's best interest to relieve a parent of a child support obligation. The father's argument that not terminating Terra's parental rights will lead to further litigation and disruption in the children's life has merit. Mindful of this argument and the fact Terra's methamphetamine use places the children at risk if she has access to them, I would find Terra has failed to show it is in the children's best interest not to terminate her parental rights. Consequently, I too would affirm.

³ Some jurisdictions may terminate parental rights but not the child support obligation under these circumstances.