

**IN THE COURT OF APPEALS OF IOWA**

No. 6-865 / 06-1438  
Filed December 13, 2006

**IN THE INTEREST OF K.R., S.S., Jr., and E.R.,  
Minor Children,**

**R.R., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Karla Fultz, Associate  
Juvenile Judge.

A mother appeals from the termination of her parental rights. **AFFIRMED.**

Susan Kelsey Brooks, Des Moines, for appellant mother.

David Pargulski, Des Moines, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, John P. Sarcone, County Attorney, and Annette Taylor,  
Assistant County Attorney, for appellee State.

Jason Hauser, Des Moines, for minor children.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**MAHAN, P.J.**

Robin appeals from the order terminating her parental rights to her three children. We affirm.

**I. Background Facts and Proceedings**

Robin is the mother of Eric, born in 1992; Steven Jr., born in 1995; and Katarina, born in 1997. The children were first removed from Robin's care in January 2001 after she tested positive for methamphetamines. The children were adjudicated children in need of assistance (CINA) in February 2001. Robin participated in therapy, substance abuse treatment, and other services. Eric and Katarina were returned to Robin's care in August 2001, and review hearings in the CINA case continued. Due to behavioral issues and other problems, Steven's need for services prevented placement with Robin, although he was returned to her custody for a short time in 2003.<sup>1</sup>

Eric and Katarina were removed from Robin's custody again in April 2005 after Robin provided a positive drug screen for methamphetamine. The two children were placed with their maternal grandmother. Robin was ordered to move from the maternal grandmother's home, where she had been living with the children. A no-contact order was entered in April 2005 after Robin had unauthorized contact with the children. In June 2005 the order was amended to allow supervised contact. A second no-contact order was entered in December 2005.

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<sup>1</sup> Steven was eventually placed in a psychiatric medical institution for children (PMIC), where he remained until shortly before the termination hearing, when he was placed with his grandmother.

In June 2005 Robin provided a positive drug screen for marijuana and cocaine. Robin was generally uncooperative and did not participate in services during this time. She did not attend a review hearing in February 2006. She did not provide another drug screen until May 2006, which came back negative. Robin's last approved and supervised visit with the children was on September 12, 2005.

Robin was jailed in January 2006 for violation of the no-contact order. She violated the no-contact order again in April 2006. She was later arrested as a result of the violation, found in contempt of court, and sentenced to six months in the county jail with all but seven days suspended.<sup>2</sup>

The State filed a petition to terminate parental rights on April 6, 2006, alleging termination was appropriate pursuant to Iowa Code sections 232.116(1)(b), (d), (e), (f), (g), and (h) (2005). Hearing was held on July 18, 2006. The juvenile court filed its ruling on August 22, 2006, terminating Robin's parental rights as to all three children. Robin appeals.<sup>3</sup>

## **II. Standard of Review**

Our review is de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). The grounds for termination must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the best

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<sup>2</sup> The contempt hearing was held on July 13, 2006, and sentencing occurred the following day.

<sup>3</sup> The court also terminated the parental rights of Katarina's and Steven Jr.'s father. He has not appealed. The parental rights of Eric's father, who is unknown, were also terminated.

interests of the children. *In re J.J.S., Jr.*, 628 N.W.2d 25, 28 (Iowa Ct. App. 2001).

### III. Discussion

Robin contends the State failed to prove the grounds for termination by clear and convincing evidence and that termination is not in the children's best interests. She also claims a violation of her due process rights.

Robin argues the State's requirement that she, an indigent parent, pay for services violates her constitutional right to due process. In her petition for rehearing,<sup>4</sup> Robin points to several instances after the State filed its termination petition, but before the termination hearing, where she raised the issue of her inability to pay for certain services. Robin admits, however, that "constitutional language was not used" in these various motions and arguments. We have carefully reviewed the record in this case and conclude that at no time was the juvenile court made aware of any constitutional challenge. We granted Robin's motion for rehearing to reiterate that matters not raised in the trial court, including constitutional questions, cannot be asserted for the first time on appeal. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993). Robin's failure to raise her due process argument before the juvenile court leaves us with nothing to review on appeal. *State v. Rutledge*, 600 N.W.2d 324, 325 (Iowa 1999) ("Nothing is more basic in the law of appeal and error than the axiom that a party cannot sing a song to us [on appeal] that was not first sung in the trial court.").

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<sup>4</sup> We originally filed our opinion in this case on November 16, 2006. Robin timely filed a petition for rehearing pursuant to Iowa Rule of Appellate Procedure 6.28, which we granted. The sole issue raised in the petition for rehearing is the preservation of error on the constitutional issue.

The juvenile court terminated Robin's parental rights pursuant to Iowa Code sections 232.116(1)(b), (d), (e), (f), (g), and (l). We acknowledge termination of Robin's parental rights pursuant to section 232.116(1)(g) (child adjudicated CINA, parent's rights to another child were terminated, parent does not respond to services) was in error, as this section applied only to the father's parental rights. However, when the juvenile court terminates parental rights on more than one statutory ground, we need only find termination proper under one ground to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Termination under section 232.116(1)(f) is appropriate where:

- (1) The children are four or older.
- (2) The children have been adjudicated children in need of assistance.
- (3) The children have been removed from the physical custody of the parent for at least twelve of the last eighteen months.
- (4) There is clear and convincing evidence that at the present time the children cannot be returned to the custody of the parent.

Robin contends the State failed to prove the children could not be returned to her custody at the present time.

Robin showed no interest in participating in services until May 2006, after the termination petition was filed. At the time of the termination hearing, Robin was in custody as a result of her violation of the no-contact order. She was living in transitional housing and testified children were not allowed to live there. She had recently gained employment, which she testified would remain available after her release from jail. She testified it would take two months to save enough money for an apartment. Robin claimed she last used illegal substances in February 2006, but had provided no drug screens between June 2005 and May 2006 to support this claim.

“We must reasonably limit the time for parents to be in a position to assume care of their child because patience with the parents can soon translate into intolerable hardship for the child.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Once the statutory limits established in section 232.116 have passed, “the rights and needs of the child rise above the rights and needs of the parents.” *Id.* It is clear from the record that the children cannot be returned to Robin’s custody at this time. We affirm the termination of Robin’s parental rights on statutory grounds.

Even if the statutory requirements for termination are met, the decision to terminate must still be in the children’s best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). The juvenile court made the following findings related to the children’s best interests:

[Robin] has not been able to utilize the many services made available to her. She lacks insight into the harms her lifestyle has visited on her children. Although she has made progress very recently, she has done too little, too late. Her history militates against her maintaining the course of action she has so recently begun. Her children have suffered greatly from waiting for her to be able to be a parent. They should not have to wait any longer for a permanent home. Evidence presented indicates their behavior has already been affected by the uncertainty in their lives because of their mother’s actions. Steven has been most severely affected as evidenced by his placement in a PMIC facility until recently when he was placed with his grandmother. They need a stable permanent home environment to allow them to grow to be well-adjusted, happy adults.

The record fully supports these findings, and we adopt them as our own. Accordingly, we affirm the juvenile court’s order terminating Robin’s parental rights to her three children.

**AFFIRMED.**