

IN THE COURT OF APPEALS OF IOWA

No. 7-015 / 06-1834
Filed February 14, 2007

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

**M.N.R., Mother,
Appellant.**

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis,
District Associate Judge.

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

Douglas Q. Davis, II, of Douglas Q. Davis, II, Law Firm, Iowa City, for
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, J. Patrick White, County Attorney, and Kristin Parks, Assistant
County Attorney, for appellee.

Shannon Walsh, Iowa City, for minor child.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

BAKER, J.

Michelle is the mother of Mikhail, who was born in 2003, and Mikah, who was born in 2004. In May of 2005, the Iowa Department of Human Services (DHS) received a report alleging that Michelle was using marijuana in the presence of the children. Later that month, tests revealed that Mikhail had been exposed to methamphetamine, cocaine, and marijuana, while Mikah had been exposed to cocaine and marijuana. Michelle tested positive for marijuana and oxazepam. On May 18, the children were taken from Michelle's custody and placed in foster care.

Following a hearing on July 6, 2005, Mikhail and Mikah were determined to be children in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c)(2), (n), and (o) (2005). On May 10, 2006, the State filed a petition seeking to terminate Michelle's parental rights to both children. Following a hearing on the petition, the court terminated Michelle's rights under sections 232.116(1)(d), (e), (h), (i), and (l). Michelle appeals.

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern in termination proceedings is the best interests of the children. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). While the district court terminated Madeline's parental rights on more than one statutory ground, we will affirm if at least one ground has been proved by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

On appeal, Michelle contests whether each provision under which her rights were terminated was established by clear and convincing evidence. Upon our careful de novo review of the record, we conclude the State met its burden

under Iowa Code section 232.116(1)(h), which requires proof of, among other things, that “the child cannot be returned to the custody of the child’s parents as provided in section 232.102 at the present time.”¹

At the time of the termination hearing, Michelle was again pregnant and residing at the Heart of Iowa treatment program as a condition of a criminal probation. It would not be in the children’s best interests to reside with her in that setting. She clearly has a substantial drug abuse problem, having consistently provided “dirty” urinalyses (UA) throughout this case. As evidenced by their positive tests, this drug use has had a direct impact on her children. Prior to the hearing Michelle had been in multiple treatment programs, but never remained clean for any meaningful period of time. While Michelle maintains the State “failed to proffer any evidence that the children could not be returned to Michelle within a reasonable time,” this assertion is plainly belied by the clear record. DHS social worker Judith Ellyson testified that Michelle was “totally out of compliance with the case permanency plan” and she could not recommend a return of the children within even the next six months. Finally, due to her failure to remain clean of drugs, Michelle has not seen Mikhail and Mikah since September 6, 2005.² Accordingly, because the facts plainly support that the children cannot be returned to her care, we affirm the termination of Michelle’s parental rights.

AFFIRMED.

¹ Michelle concedes the remaining elements of this provision were established by clear and convincing evidence.

² Michelle blames DHS for her failure to see the children during this time frame. However, we find it was her failure to complete a drug treatment program and provide clean UA’s that ultimately led to the DHS’s refusal to provide visitation with the children.