

IN THE COURT OF APPEALS OF IOWA

No. 7-219 / 07-0291

Filed April 25, 2007

**IN THE INTEREST OF M.S. and A.S.,
Minor Children,**

**M.W., Mother,
Appellant,**

**D.S., Father,
Appellant.**

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, Judge.

A mother and father appeal the termination of their parental rights to their children. **AFFIRMED.**

Sue Kirk of Honohan, Epley, Braddock & Brenneman, Iowa City, for appellant-mother.

Dai Gwilliam, Iowa City, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Janet Lyness, County Attorney, and Kristin L. Parks, Assistant County Attorney, for appellee.

Shelly Mott, Coralville, guardian ad litem for minor child.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

A mother and father appeal the termination of their parental rights to their children. They contend the State failed to prove the grounds for termination by clear and convincing evidence. The father also contends his due process rights were violated. We review these claims de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The district court terminated the mother's parental rights on several grounds, including Iowa Code section 232.116(1)(i) (2005). The father's parental rights were terminated pursuant to section 232.116(1)(b). Termination is appropriate pursuant to section 232.116(1)(i) where the State has proved by clear and convincing evidence the following:

- (1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.
- (2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.
- (3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

The mother does not dispute the first two elements were proven, but instead argues the third element has not been proven.

We conclude clear and convincing evidence shows the mother's receipt of services would not correct the conditions that led her to neglect her children within a reasonable period of time. At the time of termination, the children had been removed from their mother's care for two years. During this time, the mother has continued to abuse drugs as is evidenced by the results of the urine she provided for analysis, as well as her testimony at trial that she did not provide

urine for analysis because she knew she would test positive for drug use. Although the mother admits she has a substance abuse problem, she stated she would only seek treatment at the House of Mercy so long as her children were returned to her. She testified:

My substance abuse problem and my addiction is bigger than I am; and I don't have complete control over that or why, umm, I've used.

If it were only for the sake of my children and knowing the jeopardy that I am in of losing them, I would have stopped. Umm, I don't have a handle on how to do recovery. I'm still in the process of learning the recovery and how to – to do that, and every day.

I love my children, and the fact that I use doesn't mean that I don't love my children. I have an addiction that's bigger than me and that I don't know – I don't have a handle on right now.

The mother requires at least an additional year of treatment at the House of Mercy. Additionally, the mother has continued to have difficulty maintaining appropriate housing and quit her job to avoid being fired over financial discrepancies.

The mother's past actions are evidence of the future quality of her care. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). Coupled with her admission that she is only seeking treatment to have her children returned to her care and not for herself, the mother's prognosis is poor. The child should not be forced to endlessly await the maturity of her natural parents. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). "At some point, the rights and needs of the child rise above the rights and needs of the parent." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

We also conclude the State has proved the grounds for terminating the father's parental rights pursuant to section 232.116(1)(b) as he has abandoned the children. At the time of the termination hearing, the father was incarcerated.

Since the children were removed from the mother's care, the father has had only one contact with the Department of Human Services.

The father also contends his due process rights were violated when the Iowa Department of Corrections refused to transport him to testify at the termination hearing. He instead submitted an affidavit to the court, although he argues his writing skills are not well-developed. There is no due process requirement that an incarcerated parent be present at a termination of parental rights hearing, especially where the parent is represented by counsel at the hearing and is not denied an opportunity to present testimony by deposition at the hearing, if requested. See *In re J.S.*, 470 N.W.2d 48, 52 (Iowa Ct. App. 1991) ("Where a parent receives notice of the petition and hearing, is represented by counsel, counsel is present at the termination hearing, and the parent has an opportunity to present testimony by deposition, we cannot say the parent has been deprived of [due process]."). We reject this claim.

We affirm the order terminating the mother and father's parental rights.

AFFIRMED.