

IN THE COURT OF APPEALS OF IOWA

No. 7-349 / 07-0433
Filed June 13, 2007

**IN THE INTEREST OF K.D.J. Jr. and J.M.L.W.,
Minor Children,**

**M.L.M.-J., Mother,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

M.M.-J. appeals from the juvenile court's order terminating her parental rights concerning her two children. **AFFIRMED.**

Stephanie Forker Parry of Forker & Parry, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and David Dawson, Assistant County Attorney, for appellee State.

Michelle Dreibelbis of the Juvenile Law Center, Sioux City, for minor children.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

HUITINK, P.J.

M.M.-J. appeals from the juvenile court's order terminating her parental rights concerning her two children, K.J. Jr. (age one) and J.W. (age three). The juvenile court terminated M.M.-J.'s parental rights to K.J. Jr. and J.W. pursuant to Iowa Code sections 232.116(1)(b) (abandonment), (d) (child CINA for physical or sexual abuse (or neglect), circumstances continue despite receipt of services), (e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child), (g) (child CINA, parent's rights to another child were terminated, parent does not respond to services), (h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home), (i) (child meets definition of CINA, child was in imminent danger, services would not correct conditions), and (l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time).

On appeal, M.M.-J. challenges the sufficiency of the evidence supporting the statutory grounds relied on by the juvenile court to terminate her parental rights. She also contends termination of her parental rights is not in the children's best interests.

We review M.M.-J.'s claims 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). The primary concern in termination proceedings is the best interests of the children. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa Ct. App. 1995). When the trial court

terminates on more than one statutory ground, we need only find termination is proper on one ground. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Abandonment.

“*Abandonment of a child*” means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Iowa Code § 232.2(1) (2005).

Two elements are necessary to establish abandonment: (1) the giving up of parental rights and responsibilities as demonstrated by the party’s conduct and (2) an accompanying state of mind that shows intent to forego these rights and responsibilities. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996) (citing *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994)). “Parental responsibilities include more than subjectively maintaining an interest in a child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances.” *Id.*

“*Significant and meaningful contact*” includes, but is not limited to, the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child’s life.

Iowa Code § 232.116(1)(e)(3).

The record indicates K.J. Jr. and J.W. were removed from parental custody and adjudicated children in need of assistance because of M.M.–J.’s

substance abuse and the resulting risk of harm to her children. Although M.M.-J. was offered visitation with her children, she has not visited the children or inquired about their welfare since they were removed in April 2006. The record also indicates M.M.-J. has been incarcerated for a substantial period of time while this case was pending in juvenile court. She, however, cannot use her incarceration as an excuse for her failure to establish and maintain a relationship with her children. *In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa Ct. App. 1994).

Based on this evidence, the juvenile court found:

These children have been abandoned by their respective parents as evidenced by the parents' lack of motivation/interest in assuming a parental role by failing to involve themselves in services and visitations, failing to provide any emotional or financial support, and continued involvement in criminal activities, resulting in ongoing incarcerations.

We agree and adopt the juvenile court's findings of fact and conclusions of law as our own. Moreover, we expressly reject M.M.-J.'s claim that her request for placement in the Woman and Children's Program so that she could reside with the children during treatment is conclusive proof she did not intend to abandon her children. M.M.-J.'s requested placement falls far short of the affirmative parenting contemplated by section 232.116(1)(e)(3). *In re A.B.*, 554 N.W.2d at 293. Like the juvenile court, we find clear and convincing evidence supporting termination of M.M.-J.'s parental rights because she abandoned her children.

Best Interests.

Once we determine grounds for termination have been established by clear and convincing evidence, we must next determine whether it is in the children's best interests to terminate parental rights. *In re M.S.*, 519 N.W.2d 398,

400 (Iowa 1994). When determining a child's best interests, we look to both the child's long-range and immediate interests. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998). "A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) (internal citation omitted).

The juvenile court's dispositive findings of fact on this issue state:

[J.W.] has resided in family foster care since his removal from parental custody on April 5, 2006. [K.J. Jr.] has resided in family foster care since his birth. Both boys are doing well and their needs are being met. They cannot be returned to parental custody now or at any time in the foreseeable future. Both boys are adoptable. They have been abandoned by their parents. This court finds that it would be in the best interests of these two children to terminate the rights of their biological parents in order to provide them with a safe, stable, loving, secure environment, free of drugs, domestic violence and criminal activities.

We agree. Moreover, M.M.-J.'s assertion that with appropriate services "she could be certain that no future harm would come to either of the children" is hopelessly irreconcilable with her overall lifestyle and past parenting performance. We, like the juvenile court, conclude termination of M.M.-J.'s parental rights is in the children's best interests.

The juvenile court's order terminating M.M.-J.'s parental rights concerning K.J. Jr. and J.W. is affirmed.

AFFIRMED.