

IN THE COURT OF APPEALS OF IOWA

No. 7-416 / 07-0676

Filed June 27, 2007

**IN THE INTEREST OF M.F. and C.F.,
Minor Children,**

K.F., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

K.F. appeals from the order terminating her parental rights. **AFFIRMED.**

J. Michael Mayer, Des Moines, for appellant mother.

Nancy Pietz, Des Moines, for father.

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

Cathleen Siebrecht, Des Moines, for minor children.

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

HUITINK, P.J.

K.F. appeals from the termination of her parental rights. K.F. is the mother of C.F. (age twelve) and M.F. (age nine). S.F. is the father of the children and is not a party to this appeal. He currently has custody of the children.

The children were removed from the home on November 21, 2002, because their parents had kept the home in an unsanitary condition and were unable to provide for them. The parents were also suffering from substance abuse and mental health issues. The children were initially placed with a neighbor. A month after the removal, the children were placed in the custody of a paternal aunt for nearly two years and permanency was established during that time. At some point during 2003, S.F. filed for divorce from K.F. On October 1, 2004, the girls were placed in the custody of a maternal aunt and uncle. On August 3, 2006, S.F. moved to modify the permanency order. The district court granted the motion and entered an order returning the children to their father's custody.

K.F.'s parental rights were terminated pursuant to Iowa Code sections 232.116(1)(b) (2007) (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), (f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home). On appeal, K.F. argues the district court erred when it found clear and convincing evidence to terminate her parental rights under sections 232.116(1)(b), (d), (e), and (f) and that termination of her parental rights is not in

the best interests of the children. When the district 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).

We review K.F.'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 Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

K.F. first contends the district court lacked clear and convincing evidence to terminate her parental rights. Section 232.116(1)(f) states that termination of parental rights is permitted when

all of the following have occurred:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

She concedes the State has met its burden on the first three elements and argues there is not clear and convincing evidence the children cannot be returned to her custody. In support of her claim, she notes that she "has stabilized her life and consistently sought visitation; that she has a strong, bonded, and loving relationship with and from these children; and that she is ready, willing and able to regain custody" of them. K.F. was homeless up until several weeks before the termination hearing. She is now in transitional housing

and she has a Golden Circle worker. At the time of the hearing, she had applied for disability benefits a fourth time and was awaiting a decision. She hoped to move to permanent housing within several months. She was also starting a partial hospitalization program at Broadlawns.

While the record shows K.F. obviously loves her children very much, it does not support K.F.'s claim that she has a strong, bonded relationship with her children. K.F. was not present at a hearing to confirm the placement of the children with the father in November 2006. A temporary no-contact order between her and the children was entered against her at that hearing. By the time of the hearing, she had not had contact with her daughters in over a year. K.F.'s contact with her daughters has been progressively reduced throughout the pendency of this case. Her visitation was reduced in 2003 because of her failure to meet expectations. She had missed visits and repeatedly failed to schedule visits. In July 2005 her DHS worker decided to end phone calls until the children could be seen by a therapist because the worker felt K.F. was inappropriate during her phone conversations and in letters to the children. K.F. was telling the girls they would be home with her soon and that other people were at fault for their situation. She also told the children she would be sending birthday presents, but the children never received them.

K.F. has struggled with homelessness and substance abuse for over four years. She has also suffered from various physical maladies as well as depression and other mental health issues. She claims she has only been able to work sporadically. However, she did not sufficiently comply with services offered to her. K.F. was discharged from Rainbow Recovery Center in April

2004. She had been granted a weekend pass to Omaha to see her daughters for Easter but never arrived there. She was also asked to provide a urine sample, which was positive for cocaine. In 2003 she was asked to complete a psychosocial evaluation at Two Rivers Psychological Services but only attended the first of two required appointments. She repeatedly missed therapy appointments in 2003. She stopped providing urine samples for analysis in March 2003. It appears she resumed providing samples in June 2004. She has also never provided financial support for the children since their removal.

K.F. has undoubtedly had a very difficult life. While the recent progress she has made is admirable, she had many opportunities early on that she failed to utilize. K.F. has had four years to get permanent housing and the treatment she needs, but she has failed to do so. A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting. *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). K.F. has waited too long to cooperate with services, and her current progress is no guarantee she will be able to maintain the stability the children require. Case history records are entitled to much probative force when considering a parent's past performance to assess their ability to provide future care. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). When viewed in the context of the last four and a half years, a few months of stability in K.F.'s life does not give us confidence that she has turned her life around and is now capable of being the parent her children need. The State has proved by clear and convincing evidence the children cannot be returned to K.F. at the present time.

K.F. next contends that termination of her parental rights is not in her children's best interests. 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) (citation omitted). When determining a child's best interests, we look to both the child's immediate and long-range interests. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998). We consider what the future holds for the child if returned to his or her parents. *In re T.T.*, 541 N.W.2d 552, 555 (Iowa Ct. App. 1995). Insight for this determination can be gained from evidence of the parents' past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *Id.*

The family's therapist testified the children feel very welcome and "extremely wanted" in their home. The district court noted C.F. and M.F. have a "solid and secure" relationship with their father. The district court also noted

[the children] have developed a warm and secure relationship with their stepmother and stepbrother and want the security of having the stepmother adopt them so that they know legally, as well as emotionally, that they now have a permanent home. As they have been moved several times, even after developing a secure relationship with their caregivers, they now seek legal certainty.

The family's therapist testified the children have an absolute need for stability. C.F. and M.F. have a permanent, stable, loving home with a parent and step-parent who are capable of providing for their needs. Their family's therapist was confident that if S.F. and his wife needed help in the future, they would know about the resources they could use. Unfortunately, K.F. has not demonstrated a similar ability to use the resources and services available to her to help her solve

her problems. K.F. did not take the necessary steps to maintain a bond with her children when she failed to contact them for a year. We find the State has met its burden for proving termination is appropriate under section 232.116(1)(f). We conclude termination is in the best interests of these children. Accordingly, we affirm the order terminating K.F.'s parental rights.

AFFIRMED.