

IN THE COURT OF APPEALS OF IOWA

No. 7-447 / 07-0904
Filed August 8, 2007

**IN THE INTEREST OF T.R.G., R.G., J.E.D., JR.
and J.R.D.,
Minor Children,**

**N.R.G., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her four minor
children. **AFFIRMED.**

Cory Speth, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Rebecca Belcher,
Assistant County Attorney for the appellee State.

Judy Goldberg, Cedar Rapids, for the minor children.

Considered by Sackett, C. J., Vogel, J., and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

NELSON, S.J.**I. Background Facts and Proceedings**

Nina is the mother of Tyler, born 6/28/97, Rayshawn, born 2/27/00, James, Jr., born 9/12/01, and Jayvon, born 2/10/05. At the time of his birth, both Jayvon and Nina tested positive for marijuana. Nina admitted to smoking marijuana during her pregnancy with Jayvon. Tyler and James, Jr. were also drug tested through hair samples, and both of them tested positive for cocaine. The Department of Human Services asked the court to remove the children from Nina's custody, but relented when Nina agreed to enter the Heart of Iowa substance abuse treatment facility, which she did in March of 2005.

The Department of Human Services initiated a child in need of assistance (CINA) proceeding and on May 5, 2005, the children were adjudicated as children in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2). Nina was discharged from the Heart of Iowa program in June of 2005 and transferred to intensive out-patient treatment. Because of an incident of domestic violence between Nina and J.D., Sr., the father of James, Jr. and Jayvon, and reports from the Department of Human Services of missed drug tests, inconsistent meetings with service providers, a dirty home, the level of supervision Nina exercised over the children, and concerns over the children's safety, the children were removed from Nina's care on August 25, 2005. The children have been in foster care since that time.

Nina progressed to an overnight visit in December of 2005, but she permitted James, Sr. to have contact with the children. Nina initially lied to service providers about this incident. Visits were then changed back to

supervised. Nina made progress in other areas, however. She successfully completed an outpatient program and obtained employment. In June 2006, the juvenile court entered a permanency order giving Nina an additional six months to work on reunification with her children. See Iowa Code § 232.104(2)(b).

In July 2006, Nina began wearing a patch that would indicate if she had used illegal drugs. When the patch was removed in August 2006, it showed positive for marijuana and cocaine. Of seven subsequent patches, six showed indications of tampering, or were not returned. Nina stated the patches would not stay on because she sweated excessively working in the kitchen at a casino.

In January 2007, the State filed a petition seeking termination of Nina's parental rights. At the termination hearing in March 2007, Nina testified she was still working in the kitchen at a casino. After the hearing the guardian ad litem discovered Nina had not worked at the casino since September 2006. The record was reopened to include this information. The juvenile court concluded Nina was not credible. The court terminated Nina's parental rights under section 232.116(1)(f) (2007) (Tyler, Rayshawn, and James, Jr.) and (h) (Jayvon). Nina appeals the termination of her parental rights.

II. Standard of Review

The scope of review in termination cases is *de novo*. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). 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 interests of the children. *In re C.V.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Sufficiency of the Evidence

Nina contends the State did not present sufficient evidence to show the children could not be safely returned to her care, which is an element of section 232.116(1)(f) and (h). On this issue the juvenile court found:

Nina's blatant dishonesty prevents the Court from being able to accept her denial of drug use, particularly when the drug test results indicate that she has attempted to tamper with the testing process. Nina's lack of employment, the tenuous nature of her housing, the reports regarding her lack of ability to consistently provide a safe, clean, stable environment for her children does not allow the Court to conclude that the children could be returned to Nina's custody without continuing to be at risk of harm. These children would clearly continue to be children in need of assistance if returned to their mother.

We agree with the juvenile court's reasoning. We find clear and convincing evidence in the record to support the termination of Nina's parental rights.

IV. Best Interests

Nina contends termination of her parental rights is not in the children's best interests. The paramount consideration in parental termination proceedings is the best interests of the children. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). In seeking out those best interests, we look to the children's long-range as well as immediate interests. *Id.* This requires considering what the future holds for the children if returned to the parent. *Id.* When making this decision, we look to the parent's past performance because it may indicate the quality of care the parent is capable of providing in the future. *Id.*

On our de novo review, we conclude termination of Nina's parental rights is in the children's best interest. Nina's past performance shows she is unwilling to place the children's needs before her own. The children have been out of

Nina's care since August 2005, and she is still unable to offer them the stability they need. The children need permanency and termination is in their best interests.

The court also terminated the parental rights of L.R., the biological father of Tyler, R.A., the biological father of Rayshawn, and J.D., Sr., the biological father of James, Jr. and Jayvon. None of the fathers were personally involved in any of the previous proceedings, nor did any of the fathers appeal. We affirm the decision of the juvenile court.

AFFIRMED.