

IN THE COURT OF APPEALS OF IOWA

No. 7-627 / 07-1175
Filed September 19, 2007

**IN THE INTEREST OF B.A., J.A., J.K. and J.K.,
Minor Children,**

A.M.K., Mother,
Appellant,

R.A., Father,
Respondent.

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

A mother and father separately appeal from the order terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

Andrea M. Flanagan of Sporer & Ilic, P.C., Des Moines, for appellant-mother.

Aaron H. Ginkens of Ginkens Law Firm, P.L.C., West Des Moines, for appellant-father of B.A. and J.A.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee.

Michael Bandstra, Des Moines, guardian ad litem for minor children.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

SACKETT, C.J.

A mother appeals from the order terminating her parental rights to four children. The father of B.A. and J.A. also appeals. The father of J.K. and J.K. is not involved in this appeal. The mother contends the State failed to prove any of the statutory grounds for termination, the court terminated on a ground not pled, and termination is not in the children's best interest. The father contends he did not abandon or desert his children and termination is not in the children's best interest. We affirm on both appeals.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The statutory grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). When the juvenile court terminates parental rights on more than one statutory ground, we will affirm if at least one ground has been established by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

A. Mother. The court terminated the mother's parental rights under Iowa Code sections 232.116(1)(d), (e), (n), (f) (concerning J.K., J.K., and J.A.) and (h) (concerning B.A.) (2007). She challenges termination under section 232.116(1)(n) contending it was not pled. We agree and do not consider this statutory ground for termination.

The evidence reveals the mother participated in services and was making progress toward reunification. In January of 2007 the court gave the mother an additional six months from the November 2006 permanency date to pursue reunification. It reasonably expected reunification if the mother continued to develop her parenting skills to deal with four children with behavior disorders and

eliminated all associations in her life that might expose the children to violence, intoxication, or illegal drugs.

The mother continued to abuse alcohol and continued her relationship with a man with an extensive criminal history involving drugs and violence. She suffered physical abuse in the relationship. We find clear and convincing evidence the children would be at risk of further adjudicatory harm if returned to her custody and care. Clear and convincing evidence supports termination of her parental rights to J.K., J.K., and J.A. under Iowa Code section 232.116(1)(f) and to B.A. under section 232.116(1)(h). See *In re M.M.*, 483 N.W.2d 812, 814-15 (Iowa 1992) (holding the threat of probably adjudicatory harm will support termination of parental rights).

The mother contends termination is not in the children's best interest because of the strong parent-child bond and because reunification was imminent. While we acknowledge the mother had a bond with her children, we cannot agree reunification was imminent. Her lack of progress during the extended period for reunification and her choice to continue a dangerous, abusive relationship makes it clear the children could not be returned to her within any reasonable period. Giving weight to the case history records and evaluating the mother's past performance and lack of progress as an indicator of the potential future for these children if returned to her care, we find termination of the mother's parental rights is in their best interest. See *In re K.M.*, 653 N.W.2d 602, 608 (Iowa 2002) (noting that safety and the need for a permanent home are "the concerns that clearly impact a child's best interests"); *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) (gleaning the future from evidence of a parent's past

performance and motivations); *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993) (giving weight to case history records).

B. Father. The father of J.A. and B.A. contends he did not desert or abandon his children, Iowa Code section 232.116(1)(b), and termination is not in their best interest. The father does not challenge termination under sections 232.116(1)(d), (e), (f), or (h). We affirm the termination of his parental rights on those statutory grounds. Consequently, we need not address his challenge to section 232.116(1)(b).

Based on the father's past performance and motivations, that his parental rights to three other children have been terminated, and that he did not participate in services or visitation during the last year of J.A.'s and B.A.'s removal, we find termination of his parental rights is in their best interest. See *T.B.*, 604 N.W.2d at 662; *S.N.*, 500 N.W.2d at 34.

AFFIRMED ON BOTH APPEALS.