

IN THE COURT OF APPEALS OF IOWA

No. 7-727 / 07-1431
Filed October 12, 2007

**IN THE INTEREST OF M.J.H. and T.R.H.,
Minor Children,**

**M.A.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Pottawattamie County, Kathleen A. Kilnoski, District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Scott D. Strait, Council Bluffs, for appellant mother.

John Heithoff, Council Bluffs, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Eric Strovers, Assistant County Attorney, for appellee State.

Brian Rhoten, Council Bluffs, for minor children.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

HUITINK, P.J.

Margo appeals from the order terminating her parental rights to her two children. We affirm.

I. Background Facts and Prior Proceedings

T.R.H. and M.J.H., the two children in interest, were born in Nebraska in 1992 and 1994, respectively. Both children spent their early years of childhood in and out of foster care due to their parents' neglect. By 2005 the children were out of foster care and residing with their father in Omaha. In November 2005 the father was evicted from his home, so the children moved to Council Bluffs to live with their mother, Margo, and her husband.

The Iowa Department of Humans Services (DHS) became involved two months later in January 2006 when police arrested several known drug users at Margo's home. The police issued Margo a citation for possession of drug paraphernalia and removed the children from her care.

M.J.H. told DHS investigators she was very concerned about her mother's use of illegal drugs. She indicated she had previously broken her mother's needles in order to prevent her from further drug use. Margo confirmed she used "unconventional means," including methamphetamines, to relieve the pain associated with her on-going health problems. On March 8, 2006, the children were adjudicated children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2005).

On June 27, 2006, the court found that Margo had made progress with family centered services and returned the children to her care. This placement lasted less than two months. On August 21, 2006, Margo slapped M.J.H. across

the face with a plastic hanger. Margo and M.J.H. fought until T.R.H. was able to pull Margo off M.J.H. Both children ran to a neighbor's house and called the police. M.J.H. told the police about Margo's use of illegal drugs in the home. Margo denied that anyone in her home used drugs; however, a drug screening performed shortly thereafter on Margo tested positive for methamphetamine. Both children were returned to foster care.

Drug screenings in September and November revealed amphetamines, methamphetamines, and marijuana in Margo's system. In November she was hospitalized for unrelated spinal problems. During this time frame, Margo stopped attending her drug treatment program, and her participation in random drug screenings was erratic. In February 2007 she tested positive for marijuana. In March 2007 M.J.H. discovered drug paraphernalia in Margo's home during a supervised visitation. Margo did not report for drug screenings in March or April, and the State filed a petition to terminate her parental rights on May 3, 2007.

The juvenile court held a hearing on the petition on June 13, 2007. Margo appeared at the hearing and argued there were insufficient statutory grounds for termination. The juvenile court disagreed and issued an order terminating both parents' parental rights pursuant to Iowa Code section 232.116(1)(d) (child CINA for neglect, circumstances continues despite receipt of services), (e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child), and (f) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time). Margo appeals. The father is not a party to this appeal.

II. Standard of Review

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Grounds for termination must be proven by clear and convincing evidence. *Id.* Our primary concern is the best interests of the children. *Id.*

III. Merits

Statutory Grounds for Termination. Margo contends the evidence does not support termination under sections 232.116(1)(d), (e), or (f). Because we find statutory grounds for termination under section 232.116(1)(d), we need not address the arguments pertaining to the other statutory grounds listed by the juvenile court. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (“When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.”).

Under section 232.116(1)(d), we may terminate Margo’s rights if we find (1) the children have been previously adjudicated in need of assistance after a finding of neglect and (2) the parents received services to remedy the circumstance that led to the adjudication, but the circumstance continues to exist.

Margo contends there is not clear and convincing evidence to find the drug condition that was the basis for adjudication still exists because the “testimony of the DHS worker and the mother supports that the mother has been drug free since February and that the primary reason for her being discharged from out patient treatment was her hospitalization for her neck condition.” She

also contends the State has not provided sufficient reunification services and that termination is not in her children's best interests.

We find these arguments are not supported by the record. While Margo did not test positive for illegal substances during the two months immediately preceding the May 3 petition for termination, she also did not provide random drug screenings during that time. Margo tested positive for marijuana on February 9, 2007. She provided one clean sample on February 20, but then missed her required screenings on March 13, March 26, April 3, and April 30. During this same time frame, her daughter discovered drug paraphernalia in the family home. We find there is clear and convincing evidence that Margo was still abusing illegal substances at the time of termination.

We also reject Margo's argument that the State failed to provide adequate services towards reunification. The record shows Margo was offered numerous services: family team meetings, housing assistance in the form of partial payment of her rent, chemical dependency evaluations and treatment, family counseling services, supervised visitation, and bus passes. Margo chose not to consistently utilize these services. Most importantly, she stopped attending her drug treatment program in December 2006, presumably due to her medical condition, and failed to take any initiative to return to treatment. We find the State offered sufficient services; Margo simply chose not to use them.

Because the circumstance that led to the CINA adjudication still exist, despite the many services offered to Margo, we find the requirements of section 232.116(d) have been met.

Best Interests. Even where there is a statutory basis to terminate parental rights, the termination must still be in the best interests of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). We look to a parent's past performance to consider what the future may hold for the child if returned to that parent. *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990). The record reveals that Margo was given ample opportunity to demonstrate the consistency and stability needed for parenting. Unfortunately, she was never willing to place her children's needs above her own.

There is no doubt that Margo loves her children. However, even her children realize that her substance abuse problems preclude her from adequately providing for their care. By Margo's own admission, the children have spent nearly six years in foster care. They deserve to spend their remaining childhood years with a permanent family that can provide for their physical and emotional needs. See *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests."). Accordingly, we find it is in their best interests to terminate Margo's parental rights.

After considering all issues presented by the mother, we affirm the juvenile court.

AFFIRMED.