

**IN THE COURT OF APPEALS OF IOWA**

No. 7-730 / 07-1470  
Filed October 12, 2007

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

**M.F., Mother,**  
Appellant.

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

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Scott Strait, Council Bluffs, for appellant mother.

Phil Caniglia, Council Bluffs, for father.

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

Kimberly Murphy of Murphy & Murphy Law Office, Council Bluffs, for minor children.

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

**ZIMMER, J.**

A mother appeals from the order terminating her parental rights to two of her children. We affirm.

***I. Background Facts and Proceedings.***

Mandy is the mother of Jayce, born in May 2005, and Kaylen, born in October 2006.<sup>1</sup> Ralph is the father of Jayce. Kaylen's father is unknown. Mandy named Jerryl, Corey, and Mark as possible fathers of her youngest child.<sup>2</sup>

Mandy has a severe and chronic substance abuse problem and a significant criminal history. Jayce was removed from his mother's custody in February 2006, after police officers found six grams of methamphetamine, a glass pipe with residue, and a digital scale in the bedroom where the child was staying with his mother. In March 2006 Mandy pled guilty to possession of methamphetamine with intent to deliver.<sup>3</sup> A judge sentenced her to ten years in prison, suspended her sentence, and placed her on probation. Mandy entered a women's residential correctional facility in April 2006 as a condition of her probation.

The juvenile court placed Jayce with his father in April 2006. Jayce was removed from his custody in July 2006, because of his father's use of methamphetamine. Jayce was then placed in family foster care where he has remained.

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<sup>1</sup> Mandy also has an older son, who is not a child in interest in this case. This child lives with his paternal relatives.

<sup>2</sup> None of the possible fathers have appealed from the termination of their parental rights.

<sup>3</sup> Mandy has a previous conviction for possession of methamphetamine in May 2000.

Mandy was released from the women's correctional facility in September 2006, and she moved into her father's home. Kaylen was born the following month. In November 2006 Mandy's newborn daughter was removed from her custody, because Mandy tested positive for methamphetamine. Kaylen was placed in the same family foster care as Jayce.

Jayce and Kaylen were adjudicated children in need of assistance (CINA) in April 2006 and February 2007, respectively. The State filed a petition to terminate the parents' parental rights on April 9, 2007. The juvenile court held a contested termination hearing on May 10, 2007. At the hearing, the court heard testimony from Mandy via telephone from the Mitchellville Correctional Facility, where she was incarcerated and participating in the Violator's Program. Mandy testified that she would need to return to a residential correctional facility after completing the Violator's Program. She acknowledged that living with family members who used methamphetamine would cause her to relapse. Mandy's service provider testified that the children could not be safely returned to their parents' care, and that it would be in the children's best interests to terminate Mandy's, Ralph's, and all of the alleged and unknown fathers' parental rights to Jayce and Kaylen. Mandy asked the court for more time to demonstrate that she is making lasting changes in her life.

In an order filed July 13, 2007, the juvenile court terminated Mandy's and Ralph's parental rights to Jayce pursuant to Iowa Code sections 232.116(1)(d), (e), (h), (i) and (j) (2007), and Mandy's and Mark's, Corey's, Jerry's and any unknown fathers' parental rights to Kaylen pursuant to Iowa Code sections 232.116(1)(d), (i), and (j). The mother has appealed.

## ***II. Scope and Standards of Review.***

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). We are primarily concerned with the children's best interests in termination proceedings. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the children's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). When we consider the children's best interests, we look to their long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

## ***III. Discussion.***

Mandy contends the juvenile court judge erred by not recusing herself from hearing the State's petition to terminate. She also contends the grounds for termination were not supported by clear and convincing evidence, termination is not in the best interests of the children, and the State failed to provide her with reasonable reunification services. Upon our review of the record, we find no merit in any of the mother's arguments.

***Recusal Issue.*** At the beginning of the termination hearing, Mandy asked the presiding juvenile court judge to recuse herself because the court had previously ordered that a petition to terminate the mother's parental rights be filed. The mother argues the court erred by failing to grant her motion. We disagree.

Iowa Code section 232.104(2)(c) provides that the juvenile court may, as one of several options after a permanency hearing, direct the county attorney to institute termination proceedings. The court exercised that option in this case.

The burden of showing grounds for recusal is on the party seeking recusal. See *State v. Haskins*, 573 N.W.2d 39, 44 (Iowa Ct. App. 1997). In this case, Mandy has not alleged or demonstrated any actual conflict or bias on the part of the juvenile court. See *In re C.W.*, 522 N.W.2d 113, 117 (Iowa Ct. App. 1994) (stating “[t]he appearance of impropriety is not sufficient to merit recusal,” rather “[a]ctual prejudice must be shown before a recusal is necessary”). We conclude Mandy has failed to show sufficient grounds for recusal.<sup>4</sup> Therefore, we reject this assignment of error.

**Grounds for Termination.** When the juvenile court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate under one of the sections cited by the court in order to affirm the court’s ruling. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). In this case, we choose to focus our attention on section 232.116(1)(I) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time) as the basis for termination.

Mandy contends the court erred in terminating her parental rights because she has been drug free for six months and the children could be returned to her within a reasonable period of time. We disagree. Mandy has a severe, chronic substance abuse problem. She has consistently made bad choices. Her use of

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<sup>4</sup> We reject Mandy’s argument that her right to due process was violated. The record reveals she received a full and fair hearing before an impartial tribunal.

methamphetamine has placed her children in danger. It appears Mandy has made some progress while participating in services at the Mitchellville Correctional Facility; however, she has only been drug free since January or February 2007. In addition, Mandy has not been successful at maintaining sobriety outside a highly structured environment. Her previous relapses after inpatient, residential, and outpatient treatment efforts do not bode well for a safe reunification of the children with their mother. At the termination hearing, Mandy testified that in order to maintain her sobriety she would need more treatment and aftercare services. Once Mandy is released from prison, many more months of supervision would be necessary to evaluate her sobriety. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). We find clear and convincing evidence supports the juvenile court's decision to terminate Mandy's parental rights under section 232.116(1)(f).

**Best Interests.** Mandy further contends termination is not in the children's best interests because of the bond between her and the children. The record demonstrates that Mandy loves her children; however, as the juvenile court explained, Mandy's "choices have not allowed the children to have a strong bond with her." We agree with the juvenile court. Jayce has been removed from Mandy's custody for fifteen months. Kaylen has been removed from Mandy's custody since the child was one month old. Jayce and Kaylen have been living with the same foster family since Kaylen was removed from her mother's care. It is apparent that the children's strongest attachments are with their foster family.

These children deserve stability and permanency, which their mother cannot provide. See *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993).

**Reasonable Efforts.** Mandy also contends the State failed to provide her with reasonable reunification services. She asserts: (1) the services she received from the Iowa Department of Corrections Violator's Program should have been offered to her earlier and (2) the State failed to offer her reunification services as required because of the waiver of reasonable efforts regarding Kaylen in February 2007. The issue of reasonable efforts must be raised prior to the termination hearing. See *S.R.*, 600 N.W.2d at 65 (holding a failure to demand a service, other than those already provided, waives the issue of whether services were adequate); see also *In re C.B.*, 611 N.W.2d 489, 493-94 ("We have repeatedly emphasized the importance for a parent to object to services early in the process so appropriate changes can be made."). Because Mandy failed to raise any issue regarding the services she received prior to the termination hearing, this issue is waived on appeal.

Even if this issue had not been waived, we would reject it. Before either child was adjudicated to be a child in need of assistance, Mandy received numerous services. In addition, an incarcerated parent cannot fault the State for being unable to provide additional services when the parent's own actions prevented the parent from taking advantage of services. See *In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000). After Jayce's adjudication, Mandy entered a residential correctional facility. When she was released, she did not participate in court-ordered services and continued to use methamphetamine. Although Mandy has been able to demonstrate sobriety while participating in the

Violator's Program at Mitchellville, many more months of supervision would be necessary to evaluate her sobriety outside a highly structured environment. The juvenile court correctly found that the mother's participation in services offered by the Iowa Department of Human Services were "stymied by her criminal conduct and involvement in the penal system."

It is apparent that serious concerns still exist regarding Mandy's stability and her ability to provide adequate care for her children. When a parent is incapable of changing to allow the children to return home, termination is necessary. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995). The evidence does not support the conclusion that additional time would allow the children to be returned to their mother's care within a reasonable time. Jayce and Kaylen should not have to wait any longer for their mother to learn how to become a responsible parent. See *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). We agree with the juvenile court's finding that termination of Mandy's parental rights is in the children's best interests.

#### ***IV. Conclusion.***

We affirm the juvenile court's decision to terminate Mandy's parental rights.

**AFFIRMED.**