

**IN THE COURT OF APPEALS OF IOWA**

No. 7-809 / 07-1471  
Filed November 15, 2007

**IN THE INTEREST OF I.S. and I.S.,  
Minor Children,**

**J.J.S., Mother,**  
Appellant.

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

A mother appeals from the juvenile court order terminating her parental rights to her sons. **AFFIRMED.**

Jeffrey Carter of Jeffrey Carter Law Offices, P.C., Des Moines, for appellant mother.

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

Jessica Miskimins, Youth Law Center, Des Moines, for the minor children.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

**BAKER, J.**

A mother appeals from the juvenile court order terminating her parental rights to her sons. The grounds for termination were shown by clear and convincing evidence and because the termination of the mother's parental rights is in the boys' best interests, we affirm.

**I. Background and Facts**

Jessica is the mother of two sons, one born in October 2002, and one born in May 2004. The boys and Jessica lived with her mother, Terri, until January 2006, when Jessica left with the boys. During the period the mother had the children out of the grandmother's home, it appears that they were homeless. In April 2006, the mother brought the boys to visit the grandmother and left her youngest son. Later that month, the older son was removed from the mother's custody after a daycare provider reported a handprint-sized bruise on his face.

The mother lives with another man, Close, and they have a baby together. The boys have developed a fear of Close. The younger boy reported that Close was mean to him, struck him, and left the crying boys alone in a car in the dark and told them that, if they didn't shut up, the boogyman would get them.

The Iowa Department of Human Services (DHS) removed the children from the mother's home due to her physical abuse of the older boy and due to her unstable living conditions. On July 18, 2006, the boys were adjudicated children in need of assistance (CINA). On September 6, 2006, the juvenile court awarded temporary legal custody of the boys to their maternal grandmother and adopted a case permanency plan that required Jessica be able to parent her children in an environment free from violence or physical abuse before the children could be

returned to her home. On March 6, 2007, the juvenile court found that it was still contrary to the children's welfare to return to their mother's home, and stated the mother needed to address her mental health issues. The children were placed in the custody of both the grandmother and the mother's sister, Jennifer.

Following a July 19, 2007 hearing, the mother's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d), (f), (h), and (i) (2007).<sup>1</sup> The mother appeals. Other facts relevant to the appeal will be considered in our discussion of the legal issues presented.

## **II. Merits**

We review termination orders de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the children. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Even if the statutory requirements for termination of parental rights are met, the decision to terminate must still be in the best interests of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In considering the children's best interests, we look to both long-range and immediate interests, considering what the future holds for the children if returned to the parent. *J.E.*, 723 N.W.2d at 798.

The mother does not contest the statutory grounds for termination. She contends the termination is not in the children's best interests and that her recent compliance with services should prevent termination of her parental rights. She also contends that, due to her progress, she should be allowed additional time to continue with services until her children can be returned to her care.

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<sup>1</sup> The biological father's rights were also terminated. He is not a party to this appeal.

“When making [a best interests] decision, we look to the parents’ past performance because it may indicate the quality of care the parent is capable of providing in the future.” *Id.* We agree with the juvenile court that, to return the children to the mother’s home at this time would subject them to “continued exposure to neglect and abuse and improper supervision due to [the mother’s] demonstrated inability to provide them adequate care.”

The court found that the mother, when given the opportunity to engage in DHS-provided services before the children were removed, did not do so. After the children were removed, although she was given unlimited visitation with the boys at her mother’s home, “she never took advantage of that opportunity to build on her relationship with her children and to demonstrate that she could parent them alone.” The court specifically found “this was not due to lack of opportunity to take on more responsibility for the children and move to unsupervised visitation, it was due to [the mother’s] decision.”

We agree with the juvenile court’s finding that there is little evidence in the record that the mother’s relationship with the boys was a priority to her. The court was not convinced by the mother’s testimony that conditions had changed, and she would now do anything she needed to have the boys returned to her, noting the new baby and the mother’s “fourteen months of demonstrated commitment to a relationship with that baby’s father that has not included her first two children.” The court also noted the mother’s serious mental health issues, including depression, and that “[s]he has not engaged in the therapeutic process during the course of this case—missing more appointments than she has made.” Although the mother has recently attended parenting classes and appeared more

engaged in the termination hearing than at previous proceedings, and Close has sought treatment for substance abuse, we agree with the juvenile court's finding that, "[b]asically the same conditions exist that put [the boys] in jeopardy sixteen months ago, except they now have a half sibling."

The grandmother, with whom both the boys have lived most of their lives, is willing and able to adopt the boys. The boys look to the grandmother and aunt for parenting. While courts are not free to take children from their parents' homes simply because another home offers more advantages, the children's safety and the need for a permanent home are primary concerns when determining the children's best interests. *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (citing *In re K.M.*, 653 N.W.2d 602, 608 (Iowa 2002)); *In re C. and K.*, 322 N.W.2d 76, 81 (Iowa 1982). We affirm the juvenile court's well-reasoned conclusion that the termination of the mother's parental rights is in the boys' best interests.

We also agree it is unlikely that, with six months of additional care, the boys could be safely returned to the mother's care. The law "demands a full measure of patience with troubled parents who attempt to remedy a lack of parenting skills." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). Such patience with parents, however, "can soon translate into intolerable hardship for their children." *Id.* We therefore affirm the termination of the mother's parental rights.

**AFFIRMED.**