

**IN THE COURT OF APPEALS OF IOWA**

No. 8-200 / 08-0221

Filed April 9, 2008

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

**P.M.T., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Louise Jacobs,  
District Associate Judge.

A mother appeals from the order terminating her parental rights to three  
children. **AFFIRMED.**

Cathleen J. Siebrecht of Siebrecht Law Firm, Des Moines, for appellant.

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

Douglas Marberry, Des Moines, for father of Marcus

Kayla Stratton of the Juvenile Public Defender, Des Moines, guardian ad  
litem for minor children.

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

**SACKETT, C.J.**

Pauline, the mother of Makayla, Marcus, and Matthew, appeals from the order terminating her parental rights to these three children.<sup>1</sup> She contends the juvenile court judge erred in (1) not recusing herself, (2) in finding clear and convincing evidence supported the statutory grounds for termination, and (3) in not granting her additional time for reunification. We affirm.

**I. Background Facts and Proceedings.**

Makayla, born in October of 2003, Marcus, born in December of 2004, and Matthew, born in February of 2006, were removed from Pauline's care in March of 2006. Pauline's mother had recently died and Pauline was hospitalized for mental health treatment. Pauline's mother had assisted in the care of the children and her death left no one else to care for them. The fathers of the children were essentially out of the children's lives. Following Pauline's release from the hospital, she participated in services, had visits with the children, and progressed toward reunification with them.

The children were returned to Pauline's care on June 5, 2007, and removed for the last time on August 14. Between June 5 and August 14 Pauline was ill and unable to care for the children for seven days in July and placed them in respite care. The children also were out of her care from July 25 to August 6 due to Pauline's hospitalization. The children apparently were removed in

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<sup>1</sup> Pauline is the mother of eight children. Her parental rights to the oldest four were terminated in 2003. See *In re M.T., M.T., N.T. and N.T.*, No. 03-1417 (Iowa Ct. App. Oct. 15, 2003). By the time of the termination hearing in December of 2007 concerning the three children in this proceeding, her youngest child, born in November, had been removed from her care and found to be a child in need of assistance. At the time of the termination, all four children were placed together in the same foster home.

August because of concerns that Pauline was keeping company with a man her case worker did not approve. She was pregnant and he was the father of the unborn child.

After the August removal Pauline continued to participate in services though not always with success. In October, the State petitioned to terminate Pauline's parental rights under Iowa Code sections 232.116(1)(d), (f) (Makayla), (g), (h) (Marcus and Matthew), and (k).

A hearing on the petition to terminate parental rights commenced on December 6, 2007. After the first witness testified Pauline's attorney requested that Judge Jacobs recuse herself. The request was denied. Following the hearing, the court found clear and convincing evidence supported all the statutory grounds pled except section 232.116(1)(k) and terminated Pauline's parental rights on those grounds.<sup>2</sup>

## **II. Discussion.**

*A. Recusal.* Pauline contends the juvenile court erred in not recusing itself and thereby violating her due process rights. She also asserts "the court's perception of mother's moral standards" as shown in the termination order is evidence of the judge's personal bias or prejudice against her. In making the request for recusal Pauline's attorney stated:

Your Honor, it's my duty to inform the Court that last evening my client left a message for me indicating that Your Honor did represent her father, Glenn [ ], in an involuntary guardianship proceeding. I believe that was in 2007, and my client did petition the Court for guardianship. My client indicates that you did oppose her being appointed as the guardian. I feel it's my duty to inform

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<sup>2</sup> The order also terminated the parental rights of all known and unknown putative fathers, but their parental rights are not at issue in this appeal.

the Court there is a potential conflict, and I ask the Court to recuse itself from this case.

[The State opposes the motion]

COURT: Let me clarify, What date are you saying that—

PAULINE'S ATTORNEY: Your Honor, it appears in reviewing the records on ICIS that Louise Jacobs entered an appearance on September 27, 2007. It was Polk County GCPR 046936.

COURT: Pauline sought to be his guardian

PAULINE'S ATTORNEY: Yes , Your Honor.

Without making further inquiry, in response to the request for recusal the court stated:

All I can say for the record is that I don't recall representing [her father]. I was at that time a part-time magistrate and still did have a private practice. I do not recall him. From what you told me it was a probate matter. . . .

. . . .

I have no recollection of ever meeting [Pauline] before or being involved in any proceeding with her before. Certainly, if she had remembered, there would have been an appropriate time for her to call that to the attention of the court so the court could refresh its memory. I don't have any recollection today or during any of the proceedings here.

If I, in fact, did have contact in a hearing with [her], it did not affect and has not affected any of my decisions in this courtroom because it was not something I remembered. Today it will not have any effect because I have no recollection of having seen or talked to or hav[ing] been in any courtroom whatsoever with [her]. I am not going to recuse myself at this late date because of the lateness in bringing that to the court's attention and it having no bearing on my decision today.

And my decision in that, of course, if this was a civil matter regarding money, maybe I would just say, all right, we'll set this off. This is about children, and since I'm clear it has no effect on any decision I would make, it's in the best interest of the children to proceed to some resolution.

Pauline's attorney presented no further record.

One ground for a judge's recusal is if the judge "has a personal bias or prejudice concerning a party." Iowa Code § 602.1606(1) (2007). To be a disqualifying factor, the bias or prejudice must stem from an extrajudicial source

and “result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.” *State v. Smith*, 282 N.W.2d 138, 142 (Iowa 1979) (quoting *United States v. Grinnell Corp.*, 384 U.S. 563, 583, 86 S. Ct. 1698, 1710, 16 L. Ed. 2d 778, 793 (1966)). The burden of proving the grounds for recusal is on the party seeking recusal. *Campbell v. Quad City Times*, 547 N.W.2d 608, 611 (Iowa Ct. App. 1996). The burden is substantial and we will not overturn a judge’s decision absent an abuse of discretion. *State v. Farni*, 325 N.W.2d 107, 110 (Iowa 1982).

Pauline has not made the required showing to support recusal. We find no abuse of discretion in the court’s decision to deny the request for recusal.

*B. Statutory grounds for termination.* The court terminated Pauline’s parental rights on multiple statutory grounds. She challenges each on appeal. When a court terminates parental rights on multiple statutory grounds, we may affirm if we find clear and convincing evidence to support any one of the grounds. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999); *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996).

Pauline’s parental rights to her four oldest children were terminated. She has been offered services for several years that are designed to stabilize her mental health, improve her parenting abilities, and allow her to be reunited successfully with her children. In early 2007 the court extended permanency for six months to allow for reunification. The children were returned to Pauline’s care, but not successfully.

Pauline argues that that any deficiencies in her parenting could be remedied by the continuation of services. Even with the children in respite

daycare for a large part of the day, Pauline found it difficult to cope with the three children. The reunification attempt failed, demonstrating that even with years of services and support, Pauline is not able to be reunited with her children without putting them at risk of harm. An additional extension of time to progress toward reunification is not warranted. See Iowa Code § 232.104(2)(b) (requiring a determination “that the need for removal of the child[ren] from the child[ren]’s home *will no longer exist at the end of the additional six-month period*” in order to extend placement) (emphasis added).

Clear and convincing evidence supports termination of Pauline’s parental rights under all four sections cited by the court. We affirm the termination of Pauline’s parental rights on all statutory grounds.

**AFFIRMED.**