

IN THE COURT OF APPEALS OF IOWA

No. 8-344 / 08-0305

Filed April 30, 2008

**IN THE INTEREST OF B.B. and C.B.,
Minor Children,**

**M.D.A.-K., Mother,
Appellant.**

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

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

John Nemmers of Reynolds & Kenline, L.L.P., Dubuque, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney and Jean A. Becker, Assistant County Attorney, for appellee State.

Jamie Splinter of Splinter Law Office, Dubuque, for appellee father.

Leslie Blair of Blair & Fitzsimmons, P.C., Dubuque, for appellee intervenor.

Sarah Stork Meyer of Clemens, Walters, Conlon & Meyer, L.L.P., Dubuque, for minor children.

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

BAKER, J.

Melissa is the mother of Bianca, who was born in 2002, and Carter, who was born in 2005. The family first came to the attention of the Iowa Department of Human Services (DHS) in November 2006 after the children were found outside their residence at 7:00 a.m. Although it was a cold morning, Carter was naked and Bianca was in a nightgown. Bianca was also found to have extensive bruising. Melissa later claimed that she had left for work at around 6:00 a.m., expecting that a friend would arrive shortly to watch the children. The children were removed from Melissa's care by ex parte order.

On December 13, 2007, the State filed a petition seeking to terminate Melissa's parental rights. During the termination hearing, the court received a significant amount of evidence concerning Melissa's relationship with Yayha, who she had married in 2006. Evidence established that Yayha was a former gang member who had served time for attempted murder, and who had physically abused Bianca. Melissa secretly carried out a relationship with Yayha despite informing DHS she had ended all contact with him. Following that hearing, the court granted the State's request and terminated her rights pursuant to Iowa Code sections 232.116(1)(h) and (f) (2007). The court expressed significant concerns with Melissa's habit of associating with dangerous and abusive men. Melissa appeals from this order.

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern is the best interests of the children. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). The grounds for termination must be

proved by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000).

We first address Melissa's claim the court erred in finding clear and convincing evidence that the children cannot be returned to her custody. Upon our de novo review of the record, we reject this contention. The record supports the finding that a substantial risk to the children's safety still exists. See *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially) (stating children's safety is a defining element in a child's best interests). Melissa has been involved in multiple relationships with men who have abused both her and the children. Despite the clear direction from DHS and service providers in this matter, Melissa carried on a surreptitious relationship with Yayha, an individual who had physically abused her daughter. Although she claims to have ended any relationship with him, just three days prior to the hearing she had a sixteen-minute phone conversation with him from the jail. The court did not find credible her assertion that the relationship was over. We agree. In the end, Melissa has not demonstrated a full awareness of how her actions and relationships can affect the children.

There is no substantial likelihood that the children can be returned to Melissa within six months. Caseworker Melissa Benedetto testified that the children could not be guaranteed safety from Yayha if returned to their mother's care. This provides clear and convincing evidence the children could not be returned at the time of the termination hearing.

We next address Melissa's claim the court should have granted her an additional six months in which to address the barriers to reunification. A parent

does not have unlimited time in which to correct deficiencies. *In re H.L.R.B.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). “At some point, the rights and needs of the [children] rise above the rights and needs of the parents.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). “[P]lans which extend the . . . period during which parents attempt to become adequate in parenting skills should be viewed with a sense of urgency.” *In re A.C.*, 415 N.W.2d 609, 614 (Iowa 1987).

At the time of the termination hearing, the children had been removed from Melissa’s care for thirteen months. During that time, she never progressed beyond supervised visits. This, in conjunction with the evidence of her continuing relationship with Yayha, justifies the juvenile court’s conclusion that an additional period of time for her to further address her parenting deficiencies was unwarranted.

Finally, we address Melissa’s contention that the court improperly reopened the record to receive evidence of Melissa’s extensive phone conversation with Yayha just three days prior to the termination hearing that apparently confirmed her ongoing contact with him. A juvenile court has broad discretion to reopen the evidence and such discretion is to be liberally exercised. *In re J.R.H.*, 358 N.W.2d 311, 318 (Iowa 1984). We find no abuse of discretion in the decision to reopen the record. This is a juvenile case in which the best interests of the children dictate that the rules of procedure be liberally applied in order that all probative evidence might be admitted. *See Id.*

We affirm the termination of Melissa’s parental rights.

AFFIRMED.