

IN THE COURT OF APPEALS OF IOWA

No. 8-374 / 08-0490

Filed May 14, 2008

IN THE INTERST OF P.T. and S.T.,

Minor Children,

B.J.T., Mother,

Appellant.

Appeal from the Iowa District Court for Shelby County, Mark Eveloff,
Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her children.

AFFIRMED.

Matthew J. Hudson of Childs & Hall, P.C., Harlan, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd,
Assistant Attorney General, and Marcus Gross, Jr., County Attorney, for
appellee.

Jay Mez, Council Bluffs, for father.

Karen Mailander of Mailander Law Office, Anita, guardian ad litem
for minor child.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

A mother appeals from the termination of her parental rights to her two children. On the date of trial, one child was four years old and the other was two years old. She contends the State failed to prove the grounds for termination by clear and convincing evidence. She further contends termination is not in the children's best interest. We review her claims de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The mother's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d), (f), (h), and (k) (2007). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(f) where:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Section 232.116(1)(h) contains the same elements except it refers to children three years of age and younger and requires proof the child has been out of the physical custody of the mother for at least six months. The mother does not dispute the first three requirements for termination under these sections have been met. Instead, she argues there is not clear and convincing evidence the children cannot be returned to her custody.

The mother suffers from a plethora of mental health issues, as well as a history of substance abuse and relationships involving domestic abuse. She

continues to live with the children's putative father, whose parental rights were also terminated and who did not appeal. This relationship has been violent and led to orders prohibiting contact between the parents.

The mother has been hospitalized four times due to drug overdoses or suicidal ideation. Her most recent hospitalization was in January. She has been unable to demonstrate the stability necessary to allow her to safely parent the children and evidence at trial shows she is unlikely to be able to do so in the near future. See *In re K.F.*, 437 N.W.2d 559, 564 (Iowa 1989). Her mental disability is a proper factor to consider in deciding if the mother has the ability to perform essential parenting functions. *In re T.T.*, 541 N.W. 2d 552 (Iowa Ct. App. 1995). The future can be gleaned from the mother's past performance. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). The State has proved by clear and convincing evidence the children cannot be reunited with their mother without subjecting them to the same harm that would justify adjudicating them as children in need of assistance.

The mother next contends termination is not in the children's best interest. She argues the children have a close bond with her and therefore the court can choose not to terminate under section 232.116(1)(3)(c) as termination would be detrimental. We disagree. The children have been out of the mother's care for twenty-two months and have resided with the same family. They have adjusted well and the older child's speech has greatly improved. There is little chance for reunification here. To stay in foster care is not in the children's best interest. See *In re R.L.*, 541 N.W.2d 900, 903 (Iowa Ct. App. 1995) ("Long-term foster care is not preferred to termination of parental rights."). The mother's needs

must now yield to the needs of the children. *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). Accordingly, we affirm the termination of the mother's parental rights to her children.

AFFIRMED.