

**IN THE COURT OF APPEALS OF IOWA**

No. 8-381 / 08-0443

Filed May 29, 2008

**IN THE INTEREST OF V.S. and N.M.,  
Minor Children,**

**R.M., Mother,  
Appellant.**

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

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Daniel McClean of McClean Law Offices, Dyersville, for appellant mother.

Steven Carr, Manchester, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John Bernau, County Attorney, and William Werger, Assistant County Attorney, for appellee State.

Kimberly Lange, Edgewood, for minor children.

Considered by Sackett, C.J., and Huitink, and Mahan, JJ.

**MAHAN, J.**

Rachel appeals the juvenile court's order terminating her parental rights to her two-year-old daughter, V.S., and her one-year-old daughter, N.M. We affirm.

**I. Background Facts and Prior Proceedings**

Rachel has abused illegal substances since she was at least eleven years old. When she was fifteen years old, she gave birth to V.S. Four months later, in January 2006, V.S. was removed from her care when Rachel admitted using methamphetamines and tested positive for illegal substances. A hair stat test on V.S. came back positive for exposure to methamphetamine, and she was adjudicated a child in need of assistance (CINA) on February 16, 2006. Rachel's participation in offered services during the next few months was sporadic, but in August 2006 the juvenile court gave her the opportunity to be reunited with V.S. at the Heart of Iowa Treatment program. Rachel gave birth to N.M. three months later.

Rachel made some progress at this facility, but a member of the facility noted that many of her actions at the facility were inappropriate. Rachel was released from the program in December 2006, not because she successfully completed the program, but because the staff determined she had reached the "maximum benefits" regarding substance abuse issues.

Rachel and the two children temporarily moved in with Rachel's father, but Rachel eventually moved her family to her own apartment. Shortly thereafter, her Iowa Department of Human Services (DHS) caseworker became concerned about the number of teenagers and men staying in Rachel's apartment and about her lack of involvement with substance abuse and mental health services. Her

caseworker and services provider intensified the frequency of their drop-ins to ensure the safety of the children. In May 2007 the court authorized removal of the children when service providers were unable to make contact with Rachel or the children for four days. The children were placed in family foster care.

Rachel began to routinely test positive for illegal substances. The State filed a termination petition on November 8, 2007. Rachel tested positive for illegal substances the following month. After a contested hearing, the court terminated her parental rights on March 4, 2008, pursuant to Iowa Code section 232.116(1)(h) (2007).<sup>1</sup>

## **II. Standard of Review**

Our scope of review in juvenile court proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). “Although we give weight to the juvenile court’s factual findings, we are not bound by them.” *Id.* Our primary concern is the best interests of the children. *Id.*

## **III. Merits**

Rachel first challenges whether the State made reasonable efforts towards reunification. While she admits that the services offered to her were reasonable, she claims she could not comply with services because of her age and financial condition.

Before parental rights may be terminated, the State must make reasonable efforts to reunite a family by providing reasonable services in an attempt to eliminate the need for removal. Iowa Code § 232.102(7). However, it

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<sup>1</sup> The court also terminated the parental rights of the father of the children. The father is not a party to this appeal.

is the parent's responsibility to demand services if they are not offered, *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997), and to do so prior to the termination hearing. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Challenges to the case plan should be made when the case plan is entered. *J.L.W.*, 570 N.W.2d at 781. To raise this issue on appeal an appellant must have presented it before the juvenile court at the termination hearing. See *In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000).

The State claims Rachel has not preserved this issue for our review because, in orders filed May 14, 2007, and September 11, 2007, the juvenile court found the State had made reasonable efforts towards reunification. The State also points out that, aside from Rachel's motion to continue the date of the termination hearing so she could participate in inpatient substance abuse treatment, the record does not support her claims that she was not capable of participating in services because of her age or financial condition.

Even if we were to assume, *arguendo*, that Rachel preserved error on this issue, we would find her claim meritless. In the two years since her youngest child was initially removed from her care, Rachel was offered numerous services to promote reunification. Some of the services included protective day care, family centered services, mental health treatment, substance abuse treatment, and random drug and alcohol testing. Rachel participated in a number of of these services on an inconsistent basis, and flatly refused to participate in others. We will not reverse the juvenile court's termination order simply because Rachel now makes vague claims that her age and financial condition prevented her from participating in the offered services. Upon our *de novo* review of the record, we

conclude the State's efforts towards reunification were reasonable; Rachel simply did not make it a priority to take advantage of the offered services.

Rachel also claims the State failed to provide clear and convincing evidence to satisfy the statutory grounds for termination. Under section 232.116(1)(h), a parent's parental rights may be terminated if the court finds by clear and convincing evidence (1) the child is three or younger, (2) the child has been adjudicated in need of assistance, (3) the child has been removed from the home for six of the last twelve months, and (4) "[t]here is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time." Rachel does not dispute the first three elements of section 232.116(1)(h); she only contends the State failed to prove the children could not be safely returned to her care at the present time.

These children were removed from Rachel's care in May 2007. Rachel admitted abusing substances shortly thereafter and proceeded to fail drug screens in August, September, October, November, and December. Most notably, she tested positive for marijuana less than one month before the hearing on the petition to terminate her parental rights. Regardless of her continued drug use, Rachel claims the children would not be in a harmful situation if they were returned to her care.

We disagree. Parents who abuse drugs needlessly subject their children to numerous dangers. See, e.g., *State v. Petithory*, 702 N.W.2d 854, 858 (Iowa 2005); *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993) (finding that "parents [who] have severe chronic substance abuse problems" "clearly" presented a danger to their children). The tender age of these two children only exacerbates the

potential dangers they face. Because Rachel has not made sufficient progress towards resolving her ongoing substance abuse issues, we affirm the juvenile court's decision finding that the children could not be returned to her care at the time of the termination proceeding. See *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995) ("When a parent is incapable of changing to allow the child to return home, termination is necessary."). Accordingly, we find the State has met its burden to prove the statutory grounds for termination pursuant to Iowa Code section 232.116(1)(h).

We also note that termination is in the children's best interests. "We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children." *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997); see also *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems."). After considering the long-range as well as the immediate interests of these children, we conclude termination of Rachel's parental rights is necessary to afford these children the permanency they so desperately deserve. See *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests.").

We affirm the juvenile court's ruling terminating Rachel's parental rights.

**AFFIRMED.**