

**IN THE COURT OF APPEALS OF IOWA**

No. 8-394 / 08-0670

Filed June 11, 2008

**IN THE INTEREST OF  
C.M. AND S.M.,  
Minor Children,**

**J.M., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Davis County, William S. Owens,  
Associate Juvenile Judge.

A mother appeals a juvenile court order terminating her parental rights.

**AFFIRMED.**

John Silko, Bloomfield, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, and Rick L. Lynch, County Attorney, for appellee State.

Heather M. Simplot of Harrison, Moreland & Webber, P.C., Ottumwa, for  
appellee father.

Mary Baird Krafka of Krafka Law Office, Ottumwa, guardian ad litem for  
minor children.

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

**PER CURIAM****I. Background Facts & Proceedings**

Jamie and Tony are the parents of Crystal, born in 1993, and Shantel, born in 1995. The relationship between Jamie and Tony included incidents of domestic violence. The children were removed from the parents' care in November 2005, after Jamie dismissed a restraining order and allowed Tony to move back into the home, contrary to the recommendation of the Department of Human Services.

The children were adjudicated to be in need of assistance under Iowa Code section 232.2(6)(c)(2) (2005) (child is likely to suffer harm due to parent's failure to supervise). The children have emotional problems due to the domestic violence they have witnessed during their lives. They participate in individual therapy.

In May 2006, police officers came to the home due to reports of domestic violence and found illegal drugs and drug paraphernalia. Jamie tested positive for methamphetamine. She claimed she unwittingly took drugs Tony placed in a drink.<sup>1</sup> Jamie had a psychological evaluation and was diagnosed with an adjustment disorder with depressed mood. She cooperated with services and eventually progressed to unsupervised visitation.

On January 12, 2007, Crystal and Shantel were returned to the mother's care, with the Department to monitor the placement. The children were removed

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<sup>1</sup> Tony was placed in jail. He then entered substance abuse treatment, but absconded and his whereabouts were unknown for a period of time. In early 2007 he was returned to jail. Tony remained incarcerated throughout the remainder of the juvenile court proceedings.

again on February 21, 2007. The mother stated she was stressed by having the children in the home and asked a social worker if they could be returned to foster care. She stated the children had been returned to her "too soon." Crystal stated Jamie had hit her in the chest. Both children stated Jamie had permitted them to drink alcohol. They also stated Jamie left them alone while she spent time with her boyfriend.

In September 2007, Jamie was stopped by police officers for driving erratically. A drug test at that time was positive for methamphetamine and opiates. A second drug test later that month was also positive for methamphetamine. Two drug tests in December 2007 were positive for opiates. Jamie continued to deny that she regularly used illegal drugs.

In December 2007, the State filed a petition seeking termination of the parental rights of Jamie and Tony. Tony did not contest the termination. The juvenile court terminated the parents' rights under section 232.116(1)(f) (2007) (child is four or older, CINA, removed for at least twelve of the last eighteen months, and cannot be returned home). The court found the children could not be returned to the care of the parents in the reasonably foreseeable future. The court concluded termination of parental rights was in the children's best interests.

Jamie has appealed the termination of her parental rights. Tony filed a brief as an appellee, stating "It is clearly not in the minor children's best interests to be returned to Jamie given her priorities and positive drug testing." He asks to have the juvenile court order affirmed.

## **II. Standard of Review**

The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be proved by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the best interests of the children. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

## **III. Sufficiency of the Evidence**

Jamie contends there is insufficient evidence in the record to show Crystal and Shantel could not be returned to her care. Our examination of the record reveals clear and convincing evidence to show the children could not be safely returned to Jamie's care at the time of the termination hearing. Jamie had not addressed her substance abuse problems. She continued to make excuses as to why she had positive drug tests, and did not take steps to deal with the underlying problem of substance abuse.

## **IV. Reasonable Efforts**

Jamie claims the State did not provide her with sufficient services during the short period of time the children were in her care in early 2007. While the State has an obligation to make reasonable efforts to preserve the family unit, it is a parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). Jamie did not request any additional or different services prior to the termination hearing in this case. We conclude she did not preserve her claim that the State did not provide her with reasonable services.

**V. Additional Time**

Jamie asserts that she should be given additional time to reunite with the children. The children were out of Jamie's care from November 2005 until January 2007. Even with more than a year to address her problems, Jamie told a social worker the children had been returned to her care "too soon." The children were then removed from Jamie's care again in February 2007, and Jamie remained unable to resume caring for the children at the time of the termination hearing in February 2008. At this point, giving additional time to Jamie would be contrary to the children's need for permanency.

**VI. Best Interests**

Jamie claims that termination of her parental rights was not in the children's best interests. Crystal consistently asked that she be freed for adoption after the children were removed in February 2007. In late 2007 Shantel joined in this request. Furthermore, the evidence shows Jamie was not able to meet the children's needs during the brief period of time they were in her care in early 2007. We conclude termination of Jamie's parental rights is in the children's best interests.

**AFFIRMED.**