

IN THE COURT OF APPEALS OF IOWA

No. 8-738 / 08-1166
Filed September 17, 2008

**IN THE INTEREST OF R.B., Jr., J.B. and A.B.,
Minor Children,**

A.M.W., Mother,
Appellant.

Appeal from the Iowa District Court for Floyd County, Gerald W. Magee,
Judge.

A mother appeals from the district court's order terminating her rights to
her children. **AFFIRMED.**

Ronald Arispe of Arispe Law Office, Clear Lake, for appellant mother.

Ronald B., Debarry, Florida, pro se.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Jesse Marzen, County Attorney, and David A. Kuehner,
Assistant County Attorney, for appellee State.

Cynthia Schuknecht of Noah, Smith & Schuknecht, P.L.C., Charles City,
for minor children.

Considered by Huitink, P.J., and Vogel and Eisenhauer, JJ.

VOGEL, J.

Ann Marie appeals from the district court's order terminating her parental rights to R.B. (born in 1997), J.B. (born in 2002), and A.B. (born in 2004).¹ Ann Marie challenges the sufficiency of the evidence and the sufficiency of the services.² Upon our de novo review of the record, we conclude that Ann Marie's arguments are without merit and termination is clearly in the children's best interests. See *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (de novo review). We affirm.

In July 2006, the children came to the attention of the Iowa Department of Human Services (DHS) due to a lack of supervision in the home and substance abuse issues, which resulted in a founded child abuse assessment with Ronald, the children's stepfather, named as the person responsible. In October 2006, following extreme anger episodes and continued substance abuse in the home, the children were removed from Ann Marie's care and subsequently adjudicated to be in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (2005). Ann Marie and Ronald were offered numerous services, including in-home services, mental health treatment, substance abuse evaluation and treatment, and visitation. However, their participation was inconsistent and sporadic. In June 2008, the district court terminated Ann Marie's parental rights to R.B. and

¹ The children's father's parental rights were also terminated, but are not at issue in this appeal.

² We note that Ann Marie's trial attorney is not her attorney on appeal. See Iowa R. App. P. 6.6(4) ("The petition on appeal shall be prepared by appellant's trial counsel. Trial counsel may only be relieved of this obligation by the district court upon a showing of extraordinary circumstances."). Additionally, the petition on appeal did not comply with Iowa Rule of Appellate Procedure 6.151. See Iowa R. App. P. 6.751-Form 4 (including a form in the rules).

J.B. pursuant to Iowa Code sections 232.116(1)(e) and (f), and to A.B. pursuant to section 232.116(1)(h) (2007).

Ann Marie claims that there was not clear and convincing evidence that the children could not be returned to her care. Although both Ann Marie and Ronald were diagnosed with serious mental health issues, they have resisted treatment and failed to address these issues. Case workers testified that they remained concerned about the same issues that were present at the beginning of the case, including appropriate parenting skills, cleanliness of the home, Ann Marie and Ronald's mental health issues, and Ronald's substance abuse issues. Ann Marie continued to struggle with providing appropriate activities and meals during visitation and was unable to progress past supervised visitation. Additionally, case workers testified that Ann Marie and Ronald have been hostile and threatening to DHS workers and at times had refused to allow DHS workers in their home. The same judge has closely monitored this case from the beginning, and was in a very good position to measure Ann Marie's progress. We agree with the district court that Ann Marie has "not progressed with in-home services" and has demonstrated "no measurable change" with her mental health issues. Clearly, the children cannot be safely returned to her care.

Ann Marie also asserts that she was not provided reasonable services because visitation should have been increased. The State contends that Ann Marie has not preserved this issue for review. We agree. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App.1999) (holding a failure to demand a service, other than those already provided, waives the issue of whether services were adequate). However, even if she had preserved this issue, we would note that

visitation was reduced pursuant to Ann Marie's request and conclude that the visitation was appropriate to the circumstances.

The children have been out of their mother's care since October 2006. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997) ("At some point, the rights and needs of the [children] rise above the rights and needs of the parents."). They are in need of a safe and permanent home. *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (stating children's safety and their need for a permanent home are the defining elements in determining a child's best interests). They have done well in foster care, where their foster parents have attended to their special needs. Thus, we conclude that termination of Ann Marie's parental rights is in R.B., J.B., and A.B.'s best interests.

AFFIRMED.