

IN THE COURT OF APPEALS OF IOWA

No. 9-621 / 09-0987
Filed August 19, 2009

**IN THE INTEREST OF A.M., M.M., D.F., and H.F.,
Minor Children,**

J.F., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Scott A. Michels of Gourley, Rehkemper & Lindholm, P.L.C., Des Moines,
for appellant mother.

David Pargulski, Des Moines, for appellee father.

Thomas J. Miller, Attorney General, Janet L. Hoffman and Kathrine Miller-
Todd, Assistant Attorneys General, John P. Sarcone, County Attorney, and
Stephanie Brown, Assistant County Attorney, for appellee State.

Alexandra Nelissen of Nelissen & Juckette, P.C., Des Moines, for
intervenor.

Michelle Saveraid of Youth Law Center, Des Moines, for minor child H.F.

Marc A. Elcock, West Des Moines, for minor children A.M., M.M., and D.F.

Considered by Sackett, C.J., and Vogel and Potterfield, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

J.F. is the mother of H.F., D.F., M.M., and A.M., ages nine, five, four and three at the time of trial. The children's fathers have been in and out of their lives, and their parental rights are not at issue on appeal. The children came to the attention of the Iowa Department of Human Services (DHS) in November of 2007 after DHS received reports that J.F. was not supervising the children, that J.F.'s house was unclean and inappropriate for children, and that H.F. had been sexually abused by a relative of M.M. and A.M.'s father. The children remained in J.F.'s care with voluntary services provided.

On May 8, 2008, the juvenile court entered an order temporarily removing the children from J.F.'s care because of ongoing exposure to neglect and physical and sexual abuse. On May 9, 2008, J.F. consented to the removal of all four children. M.M. and A.M. were placed with their maternal aunt, and H.F. and D.F. were placed with their maternal grandmother. The children have remained in these placements since removal with no trial periods at home. The children are thriving in these placements, although J.F.'s relationship with her mother and sister is rancorous. Following a contested hearing on June 11, 2008, the juvenile court entered an order adjudicating all four children to be children in need of assistance. This adjudication later was affirmed by this court. *In re A.M.*, No. 08-1118 (Iowa Ct. App. Sept. 17, 2008). We incorporate by reference all of the facts stated in that opinion.

During the course of these proceedings, DHS offered and provided many services to J.F. She was allowed unsupervised visits with H.F. and D.F. for a

short period of time, but they were discontinued because J.F. had adult conversations in front of the children and did not follow DHS rules. Otherwise, all visits have been supervised.

J.F. maintained a relationship with Jacobo, the father of M.M. and A.M., despite H.F.'s claims that he had sexually abused her and his charges of sexual exploitation of a child and of third-degree sexual abuse in an unrelated incident. J.F. was unwilling to believe H.F.'s report of sexual abuse by Jacobo, and she maintained a relationship with him and allowed him contact with the children. J.F. was dishonest with providers throughout the case regarding Jacobo's pending criminal charges and his contact with the children.

On April 13, 2009, the State filed a petition to terminate J.F.'s parental rights to her children because of her inability to meet the children's needs and ongoing protective concerns. After trial, the juvenile court terminated J.F.'s parental rights to all four children pursuant to Iowa Code section 232.116(1)(d) (2009). The juvenile court also terminated her parental rights to H.F., D.F., and M.M. pursuant to section 232.116(1)(f) and terminated her parental rights to A.M. pursuant to section 232.116(h). J.F. appeals, arguing the juvenile court erred in: (1) terminating her rights on the above-listed grounds; (2) finding a termination of her rights was in the best interests of the children; and (3) not granting her request for additional time to work toward reunification.

II. Standard of Review

We review a termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination must be

proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the children. *Id.*

III. Statutory Grounds for Termination

Though the juvenile court terminated J.F.'s parental rights as to each child on two statutory grounds, we need only find that termination is appropriate on one ground to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

We agree with the juvenile court that clear and convincing evidence supported termination of J.F.'s parental rights to H.F., D.F., and M.M. pursuant to Iowa Code section 232.116(1)(f) and termination of J.F.'s parental rights to A.M. pursuant to section 232.116(1)(h). These two statutory grounds both require proof of age, adjudication of the children as children in need of assistance, and removal from the parent's physical custody for a specific length of time. These requirements have been met and are not at issue. However, both grounds also require clear and convincing evidence that the children cannot be returned to the custody of their parents at the present time. Iowa Code § 232.116(1)(f), (h). J.F. argues the State did not present clear and convincing evidence that her children cannot be returned to her at this time.

We agree with the juvenile court that J.F.'s children cannot be returned to her at the present time. Throughout the pendency of these proceedings, J.F. has struggled to take responsibility for her role in the children's removal. Although J.F. visited with the children frequently (but not consistently) and demonstrated a healthy attachment to them, she reportedly did not make progress in terms of her parenting skills. The DHS worker assigned to this case, Glori Hewitt, wrote in her report to the court that J.F. "has never been able to move beyond making

excuses for her lack of progress, or to progress to the point of having unsupervised overnights or weekend visitation.” Care providers noted that when J.F. visited her children, she left most of the parenting to her mother. Zack Mundy, an in-home care provider, noted that J.F. “relies on her mother to do the work and is not able to provide emotional support for the kids.”

Further, J.F. demonstrated an inability to be supportive and protective of H.F. throughout the year during which the juvenile case was ongoing. J.F.’s lack of insight to the problems presented by her dishonesty regarding her continued relationship with Jacobo demonstrate that she is putting her own interests ahead of the safety of her children. The record contains clear and convincing evidence that J.F.’s children cannot be returned to her at this time.

IV. Request for Additional Time

J.F. argues the juvenile court erred in denying her request for an additional six months to reunite with her children. As discussed above, care providers involved in this case noted J.F.’s lack of progress. When a parent is incapable of changing, termination is necessary. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995). Though her children have been removed from her care for over a year, J.F. is still unable to have unsupervised visits with them. J.F. does not seem to understand the impact her statements and behaviors have on her children. Further, J.F. has been dishonest with care providers and her mother since her children were removed.

J.F. was unwilling to end her relationship with Jacobo despite his pending charges of sexual exploitation of a child and third-degree sexual abuse and H.F.’s allegations that he had sexually abused her. J.F. ended her relationship

with Jacobo only four weeks before trial, at the suggestion of her attorney. Prior to ending her relationship with Jacobo, J.F. would visit him in jail when she was supposed to be visiting her children. J.F. prioritized her relationship with Jacobo over her duty to protect and support her children. “A child’s safety and the need for a permanent home are now the primary concerns when determining a child’s best interests.” *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially).

Further, J.F. was dishonest with care providers and her family about Jacobo’s pending criminal charges and contact with the children. J.F. has consistently displayed a lack of understanding of her role in protecting her children. Her actions have shown that she is unwilling to provide for her children’s safety. “[P]atience with parents can soon translate into intolerable hardship for their children.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). The juvenile court properly denied J.F.’s request for additional time.

V. Best Interests of the Children

Finally, J.F. argues termination of her parental rights is not in the children’s best interests. The guardian ad litem for H.F. and the guardian ad litem for D.F., M.M., and A.M. both recommended that J.F.’s rights be terminated. Hewitt also recommended that J.F.’s rights be terminated, noting, “The children have waited for J.F. to make the changes she has been unable to achieve and they should not have to wait any longer to know where, and with whom, they are going to grow up.” We agree. “A parent does not have an unlimited amount of time in which to correct his or her deficiencies.” *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). J.F. has not demonstrated sufficient insight to provide her children with a permanent and safe home. M.M. and A.M. are currently living

with their maternal aunt and are doing very well. H.F. and D.F. are with their maternal grandmother, who has been their source of emotional support in the past. We find it is in these children's best interests that they be given a stable and permanent home, which J.F. is unable to provide.

AFFIRMED.