

IN THE COURT OF APPEALS OF IOWA

No. 9-728 / 09-1167
Filed September 17, 2009

**IN THE INTEREST OF S.G. and C.G.,
Minor Children,**

**T.R.B., Mother,
Appellant.**

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

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

Kathleen T. Sandre of Coppola, McConville, Coppola, Hockenberg &
Scalise, P.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John P. Sarcone, County Attorney, and Stephanie Brown, Assistant
County Attorney, for appellee.

Stephie Tran, Des Moines, for father.

Kimberly Ayotte, Des Moines, attorney and guardian ad litem for minor
child.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

EISENHAUER, J.

A mother appeals the termination of her parental rights to her children. She contends the State failed to prove the grounds for termination by clear and convincing evidence. She also contends the State failed to make reasonable efforts to reunify her with her children and termination is not in the children's best interest. Finally, she contends termination is not necessary because the children are in a relative placement. We review these claims de novo. In re T.P., 757 N.W.2d 267, 269 (Iowa Ct. App. 2008)

This case involves the mother's two youngest children. The mother has five other children, all of whom are out of her care. She has been involved with the juvenile court since 2003.

At the time of termination, the children were six and two years of age, respectively. They came to the attention of the juvenile court in April 2008 following an allegation the father had beaten them and the mother. The following month, the children were removed from the parents' care due to concerns of neglect, exposure to drugs, inadequate food, unsafe living conditions, the children's sexual behaviors, and the parents' inability to control the children's behaviors. They were placed in the care of their great aunt and adjudicated in need of assistance.

The mother's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d), (f), and (h) (2009). 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 sections 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.

The provisions of section 232.116(1)(h) are identical, except they relate to a child three years of age or younger. The mother does not dispute the first three elements of these sections have been proved. She instead argues there is not clear and convincing evidence the children cannot immediately be returned to her care.

We conclude the children cannot safely be returned to the mother's care. At the time of termination, the mother continued to reside with the father, despite the physical abuse he had inflicted on both the mother and the children. The father did not adequately address his anger problems and his parental rights were terminated, which he does not appeal. As the district court noted:

[The father] has gained no insight as to the impact of having physically abused these children's siblings or their mother despite years of services related to the instant cases and the siblings' cases. He acknowledges that he physically disciplined them, but said if they had behaved it would not have been necessary. The in-home worker . . . testified that [the father] told her that he did not want to be around the children if they misbehave because he will become frustrated and likely re-abuse them.

Despite these concerns, the mother continues to be romantically involved with the father, at the expense of having a relationship with her children. Again, as noted by the trial court:

[The mother] is apparently powerless to take the steps necessary to protect her children independently. Due to the extensive history of exposure to abuse and neglect, which resulted in group care placement for several of [the mother's] other children, and the short period of time in which [the mother] has been able to demonstrate more interest and focus on her children, there is no reasonable likelihood that [the mother] will be able to provide a safe and stable nonviolent home for her children within the foreseeable future.

Accordingly, we affirm the termination of the mother's parental rights pursuant to Iowa Code sections 232.116(1)(f) and (h). We likewise find termination is in the children's best interest. See *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests.") (Cady, J., concurring specially).

The mother also contends the State failed to make reasonable efforts to reunify her with the children. Even if the mother has preserved the issue for our review, we note the reasonable efforts requirement is not a strict substantive requirement for termination. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Rather, the services provided by the Department of Human Services to reunify parent and child after removal impacts the State's burden of proving the child cannot be safely returned to the care of a parent. *Id.*

We conclude the State has met its burden to make reasonable efforts. The mother has been offered services since 2003. Additional services would not remedy the problems in this case.

Finally, the mother contends termination was improper because the children are in the custody of a relative. Section 232.116(3)(a) provides that the juvenile court may decide not to terminate a parent's rights if a relative has legal custody of the children. This section is permissive, not mandatory. In re C.L.H., 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). "It is within the sound discretion of the juvenile court, based upon the unique circumstances before it and the best interests of the child, whether to apply this section." In re J.L.W., 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). We find no abuse of discretion.

AFFIRMED.