

IN THE COURT OF APPEALS OF IOWA

No. 1-590 / 11-0759
Filed July 27, 2011

**IN THE INTEREST OF D.C. and D.B.,
Minor Children,**

**D.M.B., Mother,
Appellant,**

**D.A.C., Father,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara Liesveld,
District Associate Judge.

A mother and father appeal the termination of their parental rights to their
two children. **AFFIRMED.**

Kara L. McFadden, Cedar Rapids, for appellant mother.

Joan M. Black, Iowa City, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Jerry Vander Sanden, County Attorney, and Rebecca A.
Belcher, Assistant County Attorney, for appellee State.

Dawn R. Wilson, Cedar Rapids, attorney and guardian ad litem for minor
children.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

VAITHESWARAN, J.

A mother and father appeal the termination of their parental rights to their two children, born in 2006 and 2007. The mother contends (A) the State failed to prove the grounds for termination cited by the juvenile court and (B) termination was not in the children's best interests. The father contends (A) the State did not provide reasonable efforts to reunify him with his children and (B) termination was not in the children's best interests. Our review of these issues is de novo. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

I. Mother**A. Grounds for Termination**

The juvenile court terminated the mother's parental rights to her children pursuant to Iowa Code section 232.116(1)(f) (2011) (requiring proof of several elements including proof that child four or older cannot be returned to parent's custody), (h) requiring proof of several elements including proof that child three or under cannot be returned to parent's custody), and (l) (requiring proof of several elements including proof of severe, chronic substance abuse by the parent). We may affirm if we find clear and convincing evidence to support any of the cited grounds. *Id.* We conclude that the first two grounds mentioned above are supported by clear and convincing evidence.

The mother has a long history with the Iowa Department of Human Services. When the older child was born, he tested positive for marijuana metabolites in his system. A founded child abuse report was issued, with the mother listed as the perpetrator. The child was allowed to remain with the mother.

Several months later, the department received a complaint that there were illegal drugs in the mother's home. Following an investigation, a second founded child abuse report was issued.

In October 2006, the child was ordered removed from the mother's custody. Meanwhile, the mother left the state with her child. The pair was found in Florida, and the child was returned to Iowa and placed in foster care. The mother also returned to Iowa and was required to undergo weekly drug testing.

In late 2007, the juvenile court ordered a trial home placement of the child, as the mother was living in transitional housing and cooperating with services. Meanwhile, her second child was born. That child remained in her care, and the older child was returned to her care.

In 2009, the department reported that the mother was not complying with drug testing as ordered. She only provided four urine samples in the entire year and, of those, two were dilute and positive for marijuana metabolites. By early 2010, the mother had been unsuccessfully discharged from a drug treatment program and it was clear she was still using marijuana.

The children were ordered removed from the mother's care on March 25, 2010. Less than two weeks later, the mother tested positive for marijuana in her system. She did not undergo drug testing for the following five months. When she submitted to testing again in September 2010, the test was once again positive for marijuana in her system. In total, the mother underwent five of approximately twenty-five drug tests required of her in 2010, and all of them were positive for marijuana.

The department case manager summed up the mother's history and the prospect of reunification as follows:

[The mother] has demonstrated the ability to comply and regain custody before. She's failed to do that today. We're one year into this and I don't have faith that she will do something different now that she hasn't had the opportunity to do over the course of this entire case.

This summation is supported by the mother's own testimony. At the termination hearing, she admitted she used marijuana "[e]very weekend" between April and September 2010. She also admitted to using marijuana up to two weeks prior to the termination hearing in May 2011. She expressed little remorse, stating her use of marijuana was much less worse than many things that other parents were doing.

On this record, we agree with the juvenile court that the children could not be returned to the mother's custody. See Iowa Code § 232.116(1)(f) (child four or older cannot be returned to parent's custody), and (h) (child three or younger cannot be returned to parent's custody).

B. Best Interests

The mother next contends termination was not in the children's best interests, given the strong bond they shared with her. The standards for evaluating this argument are set forth in *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010).

There is no question the children were close to their mother. A service provider who supervised visits testified, "They hug her immediately when they come in the home. They're always looking for her. When we go to leave, [the younger child] kind of holds on to her, does not want to leave." The department

case manager seconded this opinion and even acknowledged that, in light of the bond, the children would “suffer damage” as a result of termination of the mother’s parental rights. But, the case manager also stated, “[T]he children are in serious danger if in her care if she continues to live the way she’s lived over the past year, or two years.” She continued, “I think the harm that the children face [] does rise to the level of being concerned that they could be physically hurt or killed.”

We agree with the juvenile court that termination of the mother’s parental rights was in the children’s best interests.

II. Father

A. Reasonable Efforts

The juvenile court terminated the father’s parental rights pursuant to several Code provisions including Iowa Code section 232.116(1)(b) (requiring proof of abandonment). The father contends the department did not make reasonable efforts to reunify him with the children. However, this is not a prerequisite to termination under the terms of subsection (b). *Cf. In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000) (discussing other grounds for termination and noting that they each contain an element that implicates the reasonable efforts requirement). All that is required under that section is proof that the father relinquished his parental rights and responsibilities with an intent to forgo them. Iowa Code § 232.2(1) (defining the term “abandonment of a child”).

There is no question the father did so. He was incarcerated throughout the younger child’s life and had not seen the older child for more than two years. The department case manager testified that the father had never inquired of the

department about the children's welfare or provided financial support or presents or cards for them. According to the mother, the father did not even think the second child was his. Based on this record, we agree with the juvenile court that termination was warranted under section 232.116(1)(b).

B. Best Interests

The father argues "there is no past performance on the part of the Father that would suggest the children would be unsafe if returned to his care." The father's incarceration for drug-related activity and indications that he may have abused the mother lead us to conclude otherwise. We agree with the juvenile court that termination was in the children's best interests.

We affirm the termination of the parents' rights to these children.

AFFIRMED.

Tabor, J., concurs; Sackett, C.J., concurs specially without opinion.