## IN THE COURT OF APPEALS OF IOWA

No. 1-785 / 11-1139
Filed November 9, 2011

**IN THE INTEREST OF M.Y.R. and B.J.L.,**
**Minor Children,**

**D.L.-O., Mother,**
Appellant.

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Appeal from the Iowa District Court for Buena Vista County, Mary L. Timko, Associate Juvenile Judge.

A mother appeals the district court's ruling terminating her parental rights. **AFFIRMED.**

Andrew J. Smith of Mack, Hansen, Gadd, Armstrong & Brown, P.C., Storm Lake, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, David Patton, County Attorney, and James M. McHugh, Assistant County Attorney, for appellee State.

David A. Dawson, Sioux City, attorney and guardian ad litem for minor children.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

**VOGEL, P.J.**

Dora appeals the termination of her parental rights to her two children, M.R., born September 2007, and B.L., born July 2004. In July 2011, the district court ordered the termination of Dora's parental rights under Iowa Code section 232.116(1)(d) (adjudicated CINA for physical or sexual abuse or neglect, circumstances continue despite services) and (i) (adjudicated CINA for physical or sexual abuse or neglect, significant risk to life of child or child in imminent danger, offer or receipt of services would not correct conditions that led to abuse or neglect within reasonable period of time) (2011). We affirm.[1]

We begin by noting that Dora's own childhood was filled with many incidents of abuse perpetrated by her father and prompting her to run away from home at the age of twelve. Dora came to the United States from Guatemala at the age of seventeen. M.R. and B.L. were born in the state of Georgia, but the family has since moved to Storm Lake, Iowa. The Iowa Department of Human Services (DHS) became involved with this family in October 2010, after B.L.'s lips were burned and blistered as a result of Dora intentionally placing a hot tortilla on B.L.'s mouth as punishment for lying. The children were removed from Dora's care, and Dora was arrested for child endangerment as well as identity theft. She was incarcerated and held by U.S. Immigration and Customs Enforcement (ICE) until early January 2011. While in foster care, the children began to open

[1] The parental rights of the children's putative father were also terminated on July 13, 2011 under Iowa Code section 232.116(1)(b) (children abandoned or deserted) and (e) (adjudicated CINA, removed from parent's custody for at least six consecutive months, parent has not maintained "significant and meaningful contact" with children during previous six consecutive months and no reasonable efforts to resume care of children). He does not appeal.

up to their foster parents and caseworkers regarding the many forms of abuse inflicted upon them by Dora. They were adjudicated children in need of assistance on February 17, 2011, under Iowa Code section 232.2(6)(b) and (c)(2) (2009). A joint disposition and waiver of reasonable efforts hearing was held on March 11, 2011, after which in an April 11 order, the district court found aggravated circumstances under Iowa Code section 232.102(12)(a) and (b) (2011) existed such that reasonable efforts towards reunification were waived. The termination of parental rights hearing was held on May 27, with written order filed July 13, 2011. Dora appeals.

**I. Standard of Review**

We review termination of parental rights cases de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

**II. Constitutional Claims**

Dora asserts that certain evidence was admitted in violation of her due process and confrontation rights under the Iowa and United States Constitutions. This evidence includes:

> [F]rom the disposition/aggravated circumstance hearing: the video of the interview of M.R. at CAC, the written interview summaries, Storm Lake Police Department initial report and related testimony; [F]rom the termination/permanency hearing: All evidence objected to at the disposition hearing and related testimony and the Court-Appointed Special Advocate (CASA) report.

Evidentiary rulings and motions are generally reviewed for an abuse of discretion. *In re J.A.P.*, 680 N.W.2d 379 (Iowa Ct. App. 2004). However, “to the

extent constitutional claims are at issue, our review is de novo." *State v. Reyes*, 744 N.W.2d 95, 99 (Iowa 2008).

**A. Error Preservation**

Dora states error was preserved on this issue. The State responds it is unclear whether error was preserved, because although Dora objected to the interview evidence and police records based on her due process and confrontation rights, neither the dispositional/waiver of reasonable efforts order dated April 11, 2011, nor the July 13 termination order reflect such preservation. The guardian ad litem also argues error was not preserved on appeal.

At the March 11, 2011 disposition/waiver of reasonable efforts hearing, Dora objected to entry of the Storm Lake Police Department Initial Report of the charge of child endangerment because of her pending criminal charges. Dora cited hearsay and the Confrontation Clause as "technical objections." She further objected to the entry of summaries prepared by the Mercy Child Advocate Center (CAC) regarding video interviews with M.R. and B.L., stating that because the State was seeking to enter video of the interview, the videos were the best evidence and therefore should be taken into evidence rather than the summaries prepared by the interviewer. The court noted the objection and entered the police report and video summaries into evidence pursuant to Iowa Code section 232.96(6) and 232.96(4). The court also noted that Dora was not stipulating to the factual allegations within the police report.

Dora further objected to the State's submission of a DVD interview by the Mercy CAC with M.R., again raising hearsay and Confrontation Clause objections. She also objected to the interview of M.R. (then age three-and-one-

half) based on a lack of reliability.[2] The court determined it would view the video, taking the objections "under advisement" and giving the interview "the weight it deserves in terms of a determination."

At the May 27, 2011 termination hearing, Dora objected to the entry of a CASA report dated April 29, 2011. This objection was based on Dora's belief that a right to confrontation

> should be read into the [D]ue [P]rocess [C]lause as well as subcontained within Article 1 Section 10 of the Iowa Constitution, which does not limit confrontation to criminal matters but references any cases in which life or liberty is at issue. The Court has recognized that parental rights is a liberty issue and due process applies, and the mother argues that the same argument should apply to require confrontation.

Dora also argued exclusion based on the double hearsay contained in the report and pertaining to Dora's truthfulness regarding the location of the putative father. The court overruled the objections, but stated it would note the objections when reading the report and that "some of the objections more appropriately go to the weight the [c]ourt will give to the double hearsay kind of things that are contained within [the report]."

Our supreme court has held that "[c]onstitutional questions must be preserved by raising them at the earliest opportunity after the grounds for objection become apparent." *In re C.M.*, 652 N.W.2d 204, 207 (Iowa 2002). We find that Dora timely objected to the issues relating to her due process and confrontation claims, and therefore these issues are preserved on appeal.

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[2] Dora did not object to admission of a similar DVD interview with B.L. at the Mercy CAC, because she believed it was "the better video with respect to the allegations" and "didn't want to put B.L. through testimony and cross-examination."

With respect to the admission of evidence, our supreme court has also recognized that "the preservation of error doctrine is grounded in the idea that a specific objection to the admission of evidence be made known, and the trial court be given opportunity to pass upon the objection and correct any error." *State v. Brown*, 656 N.W.2d 355, 361 (Iowa 2003). Dora specifically objected to the double hearsay contained in the CASA report at the termination hearing, alerting the district court to the basis of her complaint so if there was error, the district court could correct it. *See Sievers v. Iowa Mut. Ins. Co.*, 581 N.W.2d 633, 638 (Iowa 1998) ("The objection must be sufficiently specific to alert the district court to the basis of the complaint so that if there is error the court may correct it before submitting the case to the jury."). On appeal, however, Dora does not raise the double-hearsay claim, but rather argues all of her previous objections violated her Due Process Clause and Confrontation Clause rights. We therefore decline to review her claims separately under the Iowa Rules of Evidence as they relate to double hearsay. *See Iowa Glass Depot, Inc. v. Jindrich*, 338 N.W.2d 376, 381 (Iowa 1983) ("A proposition advanced at trial but not argued on appeal is deemed waived.").

**B. Due Process**

The Due Process Clause of the United States and the Iowa Constitutions protects a mother or father's interest in maintaining the integrity of the family unit. *In re R.B.*, 493 N.W.2d 897, 898 (Iowa Ct. App. 1992). When the State intervenes to terminate a parent-child relationship it must therefore comply with the requirements of the Due Process Clause. *In re R.K.*, 649 N.W.2d 18, 20 (Iowa Ct. App. 2002).

> Generally, the fundamental requirement of due process is an opportunity to be heard. This may include a right to notice of the hearing, to confront and cross-examine adverse witnesses, to be represented by counsel, to an impartial decision maker, and to a decision based solely on legal rules and the evidence presented at the hearing.

*In re A.M.H.*, 516 N.W.2d 867, 870 (Iowa 1994). This court has recognized that "[t]he nature of the process due in a parental rights termination proceeding turns on a balancing of the three distinct factors as specified in *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18, 33 (1976). *R.K.*, 649 N.W.2d at 20. These factors include "the private interests protected by the proceeding; the risk of error created by the State's chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure." *Id. at* 20.

**1. Private Interest**

Dora clearly has a private interest in the care, custody, and control of her children, which was fully litigated at the termination hearing. She contends the admission of certain evidence violated her due process rights under the Iowa and United States Constitutions.[3] At the joint disposition/waiver of reasonable efforts hearing, Dora objected to the admission of a video interview with M.R., written interview summaries, and the initial incident report of the Storm Lake Police Department. These objections were renewed at the termination hearing. At the termination hearing, Dora also objected to the entry of a CASA report.

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[3] Because Dora does not suggest a reason to interpret the two constitutions differently, we interpret the state constitutional claim as we would a federal constitutional claim. *See Hensler v. City of Davenport*, 790 N.W.2d 569, 579 (stating where a party makes claims under the state and federal constitutions, but does not suggest a reason to interpret the two differently, the Iowa claim would be interpreted the same as the federal claim).

**2. Procedure Required**

"As for the procedure required, our statutory scheme for protecting the rights of natural parents in termination proceedings was carefully crafted as a legislative response to federal court decisions which held our prior parental termination statutes unconstitutional." *A.M.H.*, 516 N.W.2d at 871. Iowa Code section 232.96 sets forth the law regarding adjudicatory hearings in termination of parental rights cases. With respect to the evidence presented, section 232.96(3), (4) and (6) state:

> (3) Only evidence which is admissible under the rules of evidence applicable to the trial of civil cases shall be admitted, *except as otherwise provided by this section*.
> (4) A report made to the department of human services pursuant to chapter 235A shall be admissible in evidence, but such a report shall not alone be sufficient to support a finding that the child is a child in need of assistance unless the attorneys for the child and the parents consent to such a finding.
> . . . .
> (6) A *report*, study, record, or other writing or an audiotape or *videotape* recording made by the department of human services, a juvenile court officer, a peace officer or a hospital relating to a child in a proceeding under this division *is admissible notwithstanding any objection to hearsay statements contained in it provided it is relevant and material and provided its probative value substantially outweighs the danger of unfair prejudice to the child's parent, guardian, or custodian.* The circumstances of the making of the report, study, record or other writing or an audiotape or videotape recording, including the maker's lack of personal knowledge, may be proved to affect its weight.

(Emphasis added). Iowa's procedure in termination of parental rights hearings permits the admission of hearsay evidence contained in reports and videotapes made by the Department of Human Services so long as the probative value is not substantially outweighed by the danger of undue prejudice. Iowa Code § 232.96(6). Additionally, any reports made under Iowa Code chapter 235A and

concerning child abuse are admissible. *Id.* § 232.96(4). Such reports under chapter 235A include a "recording made of an interview conducted under chapter 232 in association with a child abuse assessment" and any other information believed helpful in establishing the "nature, extent, and cause of injury, and the identity of the person or persons alleged to be responsible for the injury." *Id.* § 235A.13(d), (f), (g).

The videotaped interview of M.R. was conducted at the Mercy CAC by licensed mental health counselor Amy Scarmon. The subject of the interview was M.R.'s allegations of physical abuse by Dora and Dora's brother, Alex, and sexual abuse by Alex. During the interview, M.R. colored pictures and discussed with Scarmon the abuse she experienced. The interviewer asked open-ended questions, allowing M.R. to respond herself. When asked if anything had ever happened that hurt her, M.R. answered she had been spanked with a belt, and when asked by whom, M.R. decisively answered, "Dora." Similarly, when asked if anyone had ever touched her butt or private parts, M.R. firmly and immediately answered, "Alex" and indicated by pointing to her body that the touching was in her vaginal area.

We find the district court properly admitted the videotaped interview of M.R. as having a value that substantially outweighed the danger of unfair prejudice to Dora. Dora had ample opportunity at the hearing to undermine M.R.'s credibility with other evidence. Moreover, the video evidence was only one of many pieces of evidence the district court used in making its decision. We affirm the district court's overruling of Dora's objection.

Similarly, we affirm the district court's admission of interview summaries written by Scarmon. The summaries were accurate accounts of Scarmon's interviews with the children, which are relevant and material to the allegations to be tried at the termination hearing. In addition, the summary regarding M.R.'s allegations of sexual abuse qualifies as a report under Iowa Code chapter 235A, which helps establish the nature, extent, and cause of injury as it relates to sexual abuse, and it identifies the person responsible for the injury. Iowa Code § 235A.13(10)(d).

The Storm Lake Police Department's initial report, prepared by Officer Nick Thompson was also properly admitted by the district court as a report prepared by a peace officer under Iowa Code section 232.96(6). The probative value substantially outweighs any prejudice to Dora, as the report sets forth the initial allegations that commenced Dora's involvement with DHS and also states that Dora admitted to placing a hot tortilla on B.L.'s mouth as punishment for lying.

Admission of the CASA report was also objected to by Dora and properly admitted by the district court. Iowa Code section 232.89(5) provides:

> The court may appoint a court appointed special advocate to act as guardian ad litem. The court appointed special advocate shall receive notice of and may attend all depositions, hearings, and trial proceedings to support the child and advocate for the protection of the child. . . . The court appointed special advocate shall submit a written report to the court and to each of the parties to the proceedings containing results of the court appointed special advocates initial investigation of the child's case, including but not limited to recommendations regarding placement of the child and other recommendations based on the best interest of the child. The court appointed special advocate shall submit subsequent reports to the court and parties, as needed, detailing the continuing

> situation of the child's case so long as the child remains under the jurisdiction of the court.

The initial objection to this evidence was one of double hearsay, with respect to a third party's statements regarding the whereabouts of the putative father of M.R. and B.L., which appeared in a CASA report dated April 29, 2011. Our supreme court has held that double hearsay, which would normally be excluded under the ordinary rules of evidence, "is made admissible by statute in a juvenile proceeding, leaving the nature of the evidence to be considered as it affects its probative value rather than its admissibility." *In re Long*, 313 N.W.2d 473, 479 (Iowa 1981). We therefore agree with the district court's decision to admit the CASA report.

**3. Countervailing Government Interest**

The final prong of analysis under the Due Process Clause requires us to consider the "countervailing governmental interest supporting use of the challenged procedure." *R.K.*, 649 N.W.2d at 20. The State has an interest in protecting the health, safety, and welfare of children within its borders. *In re T.R.*, 483 N.W.2d 334, 337 (Iowa Ct. App. 1992). In order to abrogate a parent's constitutionally protected interest under the Due Process Clause the State must show by clear and convincing evidence that the parent has forfeited her interest. *Id.* As discussed in more detail below, Dora has forfeited her interest in keeping her parental relationship with M.R. and B.L. intact by virtue of the abuse inflicted on the children, parental shortcomings that will not be remedied in a reasonable amount of time, and the overarching determination that terminating Dora's parental rights is in the best interests of the children. Because the district court

determined that the criteria under Iowa Code section 232.116(1)(d) and (i) were satisfied by clear and convincing evidence, the court found termination necessary. On our de novo review, we hold this finding satisfies the due process rights of Dora under both the state and federal constitutions. *See Id.* at 338 (holding that where the juvenile court determined a child could not be returned to the custody of his parents without again becoming CINA, the finding satisfied appellant's due process rights).

**C. Confrontation Clause**

By its terms, the Sixth Amendment Confrontation Clause applies only to criminal cases. *See* U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him."); *In re D.J.R.*, 454 N.W.2d 838, 846 (Iowa 1990). The Sixth Amendment does not apply to a civil termination of parental rights hearing. *Id.* Therefore, on our de novo review we conclude that no violation of Dora's constitutional rights occurred under the state or federal constitutions by virtue of the district court's admission of the evidence Dora objected to on these grounds.

**III. Reasonable Services and Waiver of Reasonable Efforts**

Dora also contends a lack of reasonable services offered to her to prevent or eliminate the need for removal of the children, and insufficient evidence was presented to support the waiver of reasonable efforts for reunification. The State and guardian ad litem argue error was not preserved on these issues because Dora did not appeal the April 11, 2011 order that waived reasonable efforts due to aggravated circumstances.

While the State has an obligation to provide reasonable services to preserve the family unit, it is the parent's responsibility "to demand other, different, or additional services *prior* to the termination hearing." *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999) (emphasis added); *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). Complaints regarding services are properly raised "at removal, when the case permanency plan is entered, or at later review hearings." *In re C.H.*, 552 N.W.2d 144, 148 (Iowa 2002). Where a parent "fails to request other services at the proper time, the parent waives the issue and may not later challenge it at the termination proceeding." *C.H.*, 552 N.W.2d at 148. Similarly, we will not review a reasonable efforts claim unless it is raised prior to the termination hearing. *See In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994) (stating that a party challenging reasonable efforts must do so prior to the termination hearing).

A party may appeal any final order or judgment. Iowa R. App. P. 6.103(1); *In re T.R.*, 705 N.W.2d 6, 10 (Iowa 2005). If a ruling or decision is interlocutory, we lack jurisdiction unless our supreme court grants permission to appeal. Iowa R. App. P. 6.103(3); *T.R.*, 705 N.W.2d at 10.

In the case at hand, the joint disposition/waiver of reasonable efforts hearing led to an order that waived reasonable efforts due to the finding of aggravated circumstances. This dispositional order issued by the district court was a final, appealable order. *See Long*, 313 N.W.2d at 476 (stating that a dispositional order, and not an adjudicatory order, is a "'final, appealable order"). In order to preserve error on the issue of whether the waiver of reasonable services was proper, Dora was required to appeal the dispositional order. *In re*

*J.D.B.*, 584 N.W.2d 577, 581 (Iowa Ct. App. 1998) (stating where a mother did not appeal from any of the CINA proceedings, the time for appeal had passed and she could not challenge deficiencies in the CINA proceedings in the current appeal regarding the termination of her parental rights). Therefore, error on this issue was not preserved for our review.

**IV. Statutory Basis for Termination**

While Dora presents several arguments on appeal, she does not claim the elements of 232.116(1)(i) were not proved by clear and convincing evidence. When termination is based on more than one statutory ground, we are only required to find grounds to terminate under one of the sections cited by the juvenile court to affirm. *S.R.*, 600 N.W.2d at 64. With no challenge to the district court's findings under section 232.116(1)(i), we affirm those findings.

**V. Best Interests of the Children**

We next examine whether termination is in the best interests of these children. *See P.L.*, 778 N.W.2d at 37 (explaining the proper analysis under chapter 232.116 is to review the statutory elements supporting termination under 232.116(1), then determine if termination is in the child's best interests under 232.116(2), and finally to examine whether any reason exists that would militate against termination under 232.116(3)).

In parental termination proceedings, our paramount interest is always the best interests of the child. *In re C.S.*, 776 N.W.2d 297, 300 (Iowa Ct. App. 2009).

> In seeking out those best interests, we look to the child's long-range as well as immediate interests. This requires considering what the future holds for the child if returned to the parents. When making this decision, we look to the parents' past performance

> because it may indicate the quality of care the parent is capable of providing in the future.

*In re T.P.*, 757 N.W.2d 267, 269–70 (Iowa Ct. App. 2008) (citing *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006)).

Dora argues that insufficient evidence was presented to establish that it is in the best interests of the children to have her parental rights terminated. As noted above, in October 2010, the family became involved with DHS following an incident where Dora, after learning B.L. had lied, heated a tortilla on the stove, then placed the hot tortilla in B.L.'s mouth as his punishment. B.L.'s injuries included burns and severe blistering around his lips. The children were immediately removed from Dora's care and have not returned since that time.

Since their removal from Dora's care, the children opened up to their foster parents and caseworkers about various forms of abuse they suffered while in Dora's care. B.L. reported he and M.R. were hit with shoes, belts, hangers, and other objects around the house. M.R. similarly stated she was hit with a belt and indicated the hitting was done to the upper thigh and buttocks regions. B.L. also reported that Dora tied his hands behind his back, put a rag in his mouth, and then "threw" him in a closet and left him there for a "long time." As for a round scar on his right shoulder, B.L. explained Dora had burned him with a cigarette when she was mad at him. It was also alleged that Dora pulled the children's hair, and B.L. stated he and M.R. were only allowed to eat once a day while living with Dora.

While in Dora's care B.L. was prohibited from using the bathroom at night, and was instead instructed to urinate on his bedroom wall so the flushing of the

toilet would not wake Dora. He also reported that Dora threw hot water at the children in the bathtub, and would turn only the hot water on and hold M.R. in it. Dora would also place the children in a bathtub of cold water when they were in trouble. One time, B.L. shut and locked the door while taking a bath because he was scared Dora would hit him. Dora told him to open the door so she could show him how to use the hot and cold water, promising she would not hit him. B.L. opened the door and was not only hit by Dora, but had his shirt ripped off and was given a bloody lip.

In an interview with DHS on February 25, 2011, Dora admitted to many of the above allegations; she had locked B.L. in a closet with his hands tied, hit the children with a belt, pulled M.R.'s hair, spanked them with a hanger, hit them with a hanger, and hit them with a sandal. An addendum to the DHS report on March 23, 2011, noted that Dora also admitted to pouring hot water on the children while they were in the bathtub.

During this period it was also discovered that Dora's brother and the children's uncle Alex, who resided with the family, had physically abused the children and had sexually abused M.R. B.L. indicated Alex had hit him with belts, kicked him, and thrown shoes at him. M.R. also reported being touched by Alex and identified the region in which she was touched as her vaginal area, and that her pants were pulled down and Alex's hand was moving during the incident. Alex admitted to sexually abusing M.R. He was arrested and charged with sexual abuse in the second degree.

The above described incidents have instilled in the children a genuine fear of Dora. In its report to the court on April 27, 2011, DHS stated that in early

January 2011, following her release from jail, Dora requested visits with her children. When asked about beginning visits with their mother, both children refused. The children began seeing a therapist in early 2011. After seeing the children for only a few weeks, the therapist recognized that the children had been consistent in the reporting of physical and emotional abuse to herself and the foster parents, and that as of February 14, 2011—four months after their removal from Dora's care—neither child "verbalize[d] a desire to meet with Dora and both share fears and concerns about a meeting taking place." Moreover, B.L. stated even if safety measures were taken and his visit with Dora was supervised, he was unwilling to meet with her out of fear of being hurt. On March 30, 2011, the therapist reported both B.L. and M.R. were suffering from nightmares that Dora would come and steal them, as well as exhibiting sadness and anxiety that they would be returned to Dora. The therapist wrote in a letter dated May 11, 2011, that she would not reschedule the children for therapy, as she "believe[d] that both children associate services at [her] office with attempts to reunify with their mother" and that an in-home worker would be able to address the children's needs.

Since their removal from Dora's care, the children have made good progress in their foster home. They have developed normal eating habits, have gained weight, are up to date on their immunizations, can take baths without fear of the water temperature being too hot, have made academic and developmental progress, and live in a safe environment free of abuse. Dora too has made some progress, as she is going to counseling, is cooperating with and responding to services provided by DHS and other service providers, and is taking classes to

learn English. However, like the district court, we find the abuse Dora experienced in her past, as well as her denial regarding the extent of abuse she inflicted on her own children, is not something that can easily be remedied in a short period of time and she has a very long road ahead of her before she can safely parent the children she so severely abused. Under these circumstances we recognize that "at some point, the rights and needs of the child rise above the rights and needs of the parents." *C.S.*, 776 N.W.2d at 300. As the district court stated:

> Although the court has sympathy for Dora and the abuse she experienced, that sympathy cannot overshadow the fact that B.L. and M.R. were the victims of substantial abuse themselves, the amount of which may take years to address and correct in them as Dora deals with her own issues.

Because "children too have rights which should be jealously guarded by the courts," we agree with the ruling of the district court and affirm that termination of the mother's parental rights was in the best interests of the children. *Stafford v. Taylor*, 158 N.W.2d 621, 624 (Iowa 1968) (internal quotation marks omitted).

**VI. Additional Time**

Dora also maintains sufficient evidence was presented to justify granting her an additional six months to work toward reunification with the children. The State and guardian ad litem respond by stating error was not preserved on appeal. An issue that is not raised in district court may not be raised for the first time on appeal. *C.S.*, 776 N.W.2d at 299. Because Dora never requested an additional six months for reunification at the district court hearing, this issue was not properly preserved for our review. Moreover, even if the issue had been timely raised, we would still find that six months would be inadequate to remedy Dora's

longstanding abusive behavior toward the children or address her own personal problems.

## VII. Ineffective Assistance of Counsel

Dora's final argument regards ineffective assistance of counsel. Dora's entire argument is as follows: "In the event that any of the preceding issues is found not to have been preserved, Petitioner alleges ineffective assistance of counsel." She then cites one case, *In re A.R.S.*, 480 N.W.2d 888 (Iowa 1992). The State and guardian ad litem argue this issue was not preserved on appeal.

We note that Iowa Rule Appellate Procedure 6.201(1)(a) provides:

> The appellant's trial counsel shall prepare the petition on appeal. Trial counsel may be relieved of this obligation by the district court only upon a showing of extraordinary circumstances.

While it would be laudable for counsel to raise his own issues of ineffectiveness on appeal, the rules clearly provide that counsel need not take the appeal, should "extraordinary circumstances" exist. This rule allows trial counsel to withdraw if, for example, a conflict of interest arose, or trial counsel perceived his or her own representation so flawed such that new appellate counsel be appointed to pursue the appeal, which may include an ineffective claim. Here, trial counsel prepared the petition on appeal, which included a timely claim for ineffective assistance of counsel.

Termination of parental rights proceedings are civil, not criminal, and therefore "no sixth amendment constitutional protections [are] implicated." *In re J.P.B.*, 419 N.W.2d 387, 390 (Iowa 1988). Nonetheless, we apply the same standards adopted for counsel in termination proceedings as those appointed in criminal proceedings. *In re D.W.*, 385 N.W.2d 570, 579 (Iowa 1986). A party

claiming ineffective assistance of counsel is therefore still required to show (1) that counsel's performance was deficient, and (2) that actual prejudice resulted. *Id.* at 580.

Neither of the two requisite showings regarding ineffective assistance of counsel were made on appeal. Moreover, in this instance, while some error was not preserved for our appellate review, we do not find that Dora was prejudiced by any failures of her trial counsel. On our review of the record, the result would have been unchanged.

We affirm the district court's termination of Dora's parental rights.

**AFFIRMED.**