

IN THE COURT OF APPEALS OF IOWA

No. 3-196 / 12-2072
Filed March 13, 2013

**IN THE INTEREST OF K.J. AND E.J.,
Minor Children,**

**M.J.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

A mother appeals the district court's order terminating her parental rights.

AFFIRMED.

Felicia M. Bertín Rocha of Bertín Rocha Law Firm, Urbandale, for
appellant mother.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Annette Taylor, Assistant
County Attorney, for appellee State.

Nancy Pietz of Pietz Law Office, Des Moines, for appellee father.

Michael Bandstra of Bandstra Law Office, Des Moines, attorney and
guardian ad litem for minor children.

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

VOGEL, P.J.

A mother, Michelle, appeals the district court's order terminating her parental rights to her two children: K.J., born 2004, and E.J., born 2005.¹ Her parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d) (2011) (child adjudicated child in need of assistance (CINA) for neglect, circumstances continue despite services) and (i) (child CINA, child was in imminent danger, services would not correct conditions). On appeal, Michelle argues the State failed to prove the statutory elements by clear and convincing evidence, the best interests of the children were not served, reasonable efforts for reunification were not made, and various constitutional rights were violated.

I. Standard of Review

We review termination proceedings de novo. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The grounds for termination must be proved by clear and convincing evidence. *Id.* Our primary concern is the best interest of the child. *Id.*

II. Background Facts and Proceedings

This family came to the attention of the Department of Human Services (DHS) in the autumn of 2009 in large part because Michelle was in a relationship with a man—Matthew—who is on the sex offender registry. The children have been moved around a great deal. In late 2009, they were in the custody of their father, who resided with his mother, the children's paternal grandmother. The children were formally removed from the care and custody of their parents on November 30, 2009. Shortly thereafter, Michelle married Matthew. The children

¹ The children's father's parental rights were also terminated. He does not appeal.

were adjudicated as CINA January 8, 2010. It appears in the record the children were placed in the care of their paternal grandmother, and then in July 2011, they were placed in a fifty-fifty custody arrangement between their grandmother and Michelle. They were later placed back in Michelle's custody because of health and safety concerns with the grandmother. This was confirmed in a review hearing on October 19, 2011. Michelle had made some progress. However, in April, 2012, after Michelle continued to expose the children to known sexual offenders and, as DHS puts it, "the mother was also coaching the girls to be fearful of DHS and services providers and asking them to keep secrets," the children were removed and placed into a pre-adoptive foster home. A termination petition was filed shortly thereafter.

III. Clear and Convincing Evidence

The State bears the burden of proving the statutory elements by clear and convincing evidence. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). Clear and convincing evidence is evidence leaving no serious or substantial doubt about the correctness of the conclusions drawn from it. *Id.*

One of the greatest impediments against reunification is Michelle's inability to make correct decisions regarding whom she should expose her children to, particularly men on the sex offender registry. During the pendency of this case, Michelle chose to marry Matthew even though DHS advised her many times to end that harmful relationship for the sake of protecting the children. Michelle eventually divorced Matthew on August 9, 2011, but claimed she ended the relationship six months prior for the purpose of reunifying with her children. However, the district court found, and we agree, Michelle did not end her

relationship with Matthew even after the divorce and continued to expose her children to him—an adjudicatory harm. Evidence of the continued relationship is shown in multiple ways. First, while in Michelle’s care, the children began to report to service providers that Matthew still spent time with them. Second, while Michelle claims it was a “four to five minute” lapse in judgment and not indicative of a relationship, there are multiple, lengthy recorded phone conversations between Michelle and Matthew while he was in jail. These conversations included declarations of love and longing and discussions of financial security. While in jail, he discussed paying “their” rent, and refers to the children as “his daughters.” The conversations were clearly not the first time the two had spoken in eighteen months, as Michelle testified, but rather demonstrative of a continued relationship.

In addition to her unwillingness to make proper relationship decisions, Michelle was also not cooperative with DHS and service providers. Michelle claims “the Department systematically began to destroy the parent-child bonds between herself and her children and unreasonably denied contact between herself and the children.” However, it was Michelle who impeded DHS’s efforts to help repair the parent-child relationship. For example, Michelle carried two phones but only provided one phone number to DHS. She told Matthew in one of the recorded jail conversations, one phone is for DHS and one is for other people. Michelle did not give her phone records to her Family Safety, Risk, and Permanency (FSRP) service provider as requested because she said she did not trust him. She even requested her apartment manager’s husband escort the FSRP provider off the property if he were to stop by. Moreover, when the

children were removed from her care on March 8, 2012, Michelle's response was to discontinue communication with DHS and other service providers for several weeks, then bragging to Matthew in a recorded jail conversation about her intentional failure to cooperate with services. At the termination hearing, she changed her tune and testified she didn't return DHS's phone calls or cooperate with services immediately after the children's placement in foster care because, she "wanted to make sure that [she] was protecting [her]self." At the time of the termination hearing, her cooperation was still so lacking that not one professional could support increased visitation of any kind let alone reunification with the children.

Based on our de novo review, we find the State proved by clear and convincing evidence the children would still be exposed to adjudicatory harm, that is inappropriate people and the dangers related to that exposure, despite services offered.

IV. Reasonable Efforts

Michelle next claims DHS did not make reasonable efforts to reunite her with her children subsequent to the March 2012 removal. While the State has the obligation to provide reasonable reunification services, Michelle had the obligation to demand other, different or additional services prior to the termination hearing. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). All prior hearings before the termination hearing were uncontested, except for the permanency hearing when Michelle asked for but was denied an extension of time. Michelle did not demand services other than those provided, and for that reason, the issue of whether services were adequate has not been preserved for

appellate review. *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). Even if this issue were preserved, Michelle now claims she requested more visitation and was denied that opportunity. However, this is contrary to the record as (1) she bragged to Matthew about her refusal to cooperate with service providers; and (2) she missed her first two scheduled visits after the children entered foster care, one because she overslept and the other because she claims she did not know the date. This is not consistent with a belated claim of inadequate services. Moreover, according to the DHS report to the court, DHS has invested almost \$35,000 into services for this family since 2009 with little to no alleviation of the protective concerns. Adequate services were offered and Michelle's argument fails.

V. Best Interest and Constitutional Concerns

Next, Michelle claims termination was not in the children's best interests. It is well-settled law we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child. *In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010). Section 232.116(2) requires us to "give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." *Id.*, (citing Iowa Code § 232.116(2)). Michelle claims the strong bond between her and the children militates against termination. We disagree. There is clearly discord between Michelle and the children when Michelle consistently accused the children of

lying. Moreover, the children's therapist reported the children have fear and anxiety over their mother's statements regarding the foster system.

The children are in a pre-adoptive family and are thriving there. One service provider testified the girls are more relaxed and able simply to be children in their new foster setting. The children's guardian ad litem supports termination. Michelle cannot provide a home for the children at this time as she resides in a one bedroom apartment with her brother and her brother's fiancée. Michelle has been given long enough to be able to parent these children safely and termination is in their best interests.

Finally, Michelle makes a general argument her "procedural due process rights, substantive due process rights, right of familial association and the right to have the care, custody, and control of her children were violated under the Fourth, Fifth, and Fourteenth Amendment and the Federal Constitution and the Iowa Constitution under Article 1, section 1." A random mention of an issue, without analysis, argument, or supporting authority, is insufficient to prompt our consideration. *State v. Mann*, 602 N.W.2d 785, 788 n. 1 (Iowa 1999). Nor was this issue raised and decided below. *See in re A.B.*, 815 N.W.2d 764, 774 (Iowa 2012) ("First, the general rule that appellate arguments must first be raised in the trial court applies to CINA and termination of parental rights cases."). We therefore will not address Michelle's vague constitutional argument.

VI. Conclusion

The State has proved by clear and convincing evidence the statutory elements. Michelle was offered sufficient services and termination is in the children's best interests.

AFFIRMED.