

**IN THE COURT OF APPEALS OF IOWA**

No. 6-793 / 06-1291  
Filed November 16, 2006

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

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

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

A mother appeals the termination of her parental rights to her children.

**AFFIRMED.**

Yvonne C. Naanep, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, John P. Sarcone, County Attorney, and Andrea Vitzthum,  
Assistant County Attorney, for appellee.

Jessica Miskimins, Des Moines, guardian ad litem for minor children.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

**EISENHAUER, J.**

A mother appeals the termination of her parental rights to her children, now seventeen and fourteen years old. She contends the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the children's best interest. She also contends the juvenile court erred in denying her motion for recusal of the trial judge. We review the juvenile court's order terminating the mother's parental rights de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). We review the court's denial of the mother's motion for recusal for abuse of discretion. *State v. Fami*, 325 N.W.2d 107, 110 (Iowa 1982).

We conclude the court did not abuse its discretion in denying the mother's motion for recusal. An appearance of impropriety is not sufficient to merit recusal. *In re C.W.*, 522 N.W.2d 113, 117 (Iowa Ct. App. 1994). Rather, actual prejudice must be shown before recusal is required. *Id.* The mother argues recusal was appropriate because she had filed a civil suit in November 2005 naming Judge Cohen as a defendant. In its ruling denying the mother's motion, the court stated:

[T]he undersigned judge has never been served with notice of a lawsuit, has never read any of the pleadings associated with a district court lawsuit, and, therefore, cannot be prejudiced by a document that may or may not exist and to which this Judge has never been exposed.

Because actual prejudice was not shown, we affirm the denial of the mother's motion for recusal.

We next turn our attention to the propriety of the court's order terminating the mother's parental rights. Parental rights were terminated pursuant to Iowa Code section 232.116(1)(f) (2005) (child four years of age or older, adjudicated in

need of assistance, removed twelve of the last eighteen months, and cannot be returned to the custody of the child's parents as provided in section 232.102). The only question is whether the children can be returned to the mother's custody without the risk of some harm that would justify a child in need of assistance adjudication. Iowa Code § 232.116(1)(f)(4).

We conclude the children cannot be returned to the mother's care. The mother has continually demonstrated an inability to place her children's needs ahead of her own. Despite the children being out of her care for almost three years and being provided numerous services, the mother never progressed to unsupervised visits with the children. She has routinely disobeyed court orders during the pendency of this case, including exposing her children to her abusive paramour. The paramour broke into the mother's home on one occasion while she had visitation with the children, threatened her with a glass bottle, grabbed B.R., and called him a racist bastard." Despite this event and the court order preventing her from exposing the children to the paramour, the mother continued to have a relationship with him and allow him in her home while her children were present. As recently as September 28, 2005, she was found in contempt of court for allowing contact between one of the children and the paramour. The future can be gleaned by the mother's past performance. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). The mother is unwilling or unable to protect her children. Termination is appropriate.

We also conclude termination is in the children's best interest. The children, while conflicted over the prospect of termination, did not oppose the termination of the mother's parental rights. The mother's behavior over the years

has caused the children a great amount of anxiety and stress. The children's therapist testified that the mother's continued ability to disrupt the children's lives was problematic. In contrast, the children are thriving in their current placement with their paternal aunt. The aunt is willing to adopt them. The evidence shows termination is in the children's best interest. Accordingly, we affirm.

**AFFIRMED.**