

IN THE COURT OF APPEALS OF IOWA

No. 8-635 / 08-1025
Filed September 17, 2008

**IN THE INTEREST OF N.S., M.S., T.S., and J.J.,
Minor Children,**

M.S., Mother,
Appellant,

A.S., Father of N.S., M.S., and T.S.,
Appellant.

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District
Associate Judge.

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

Christopher Kragnes of Kragnes & Associates, P.C., Des Moines, for
appellant mother.

Stephie N. Tran, Des Moines, for appellant father.

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

Kimberly Ayotte of Youth Law Center, Des Moines, guardian ad litem for
minor children.

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

EISENHAUER, J.

M.S. and A.S. appeal the termination of their parental rights to their children. They contend the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the children's best interest. We review these claims de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The juvenile court terminated the rights of M.S, the mother, and A.S., the father, to M.S and T.S. pursuant to Iowa Code section 232.116(1)(h) (2007), to N.S. and J.J pursuant to section 232.116(1)(f), and to all four children pursuant to section 232.116(1)(d).¹ 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 section 232.116(1)(d) where:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

The parents dispute the second element has been proved.

We conclude clear and convincing evidence proves the circumstances that led to the child in need of assistance adjudication continue to exist despite the parents' receipt of services to correct the circumstances leading to the adjudication. The children were removed from the parents' care and adjudicated

¹ A.S. is the father of three of the children but not J.J. J.J.'s father does not appeal.

to be children in need of assistance because of substance abuse concerns. Problems in the family were identified as including domestic violence, substance abuse, criminal behavior, and need for mental health treatment.

Two of the children were returned to M.S.'s custody and again removed after she failed to participate in a residential treatment program and allowed the children unsupervised contact with A.S. Although M.S. has participated in substance abuse treatment programs during the pendency of this case, there are concerns she does not fully appreciate her chemical-dependence issues. A.S. has not participated in substance abuse treatment.

The parents also have a history of domestic abuse. This problem remains largely unaddressed as A.S., who has a lengthy history of criminal convictions, including violent acts, has failed to participate in the services offered to address the issue. M.S. has continued to see A.S. and allow him access to the children despite a juvenile court order prohibiting it and an agreement with the Department of Human Services. At the time of termination, M.S. gave birth to another child she conceived with A.S. Although M.S. now claims she no longer desires to have a relationship with A.S., her past conduct indicates otherwise. See *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989) (holding a parent's future behavior can be judged by his or her past acts).

Termination is also in the children's best interest. A.S. has been largely absent from the children's lives. M.S. has failed to protect them and has chosen a relationship with A.S. at the expense of a relationship with them. She was given an additional six months to reunite with her children, yet was unable to prove she could adequately parent all four children. While the law requires a "full

measure of patience with troubled parents who attempt to remedy a lack of parenting skills,” this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). A child should not be forced to endlessly suffer in parentless limbo. See *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997). At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

At the time of termination, N.S. and M.S. were doing well in a foster home that intended to adopt them. Following termination, T.S. and J.J. were going to be moved to a preadoptive foster family that was close to the family adopting N.S. and M.S., allowing the children to have continuing contact. We conclude termination is in the children’s best interest. Accordingly, we affirm.

AFFIRMED.