

IN THE COURT OF APPEALS OF IOWA

No. 1-649 / 11-1047
Filed September 8, 2011

**IN THE INTEREST OF H.C. and A.C.,
Minor Children,**

P.A.C. JR., Father,
Appellant,

R.A.D., Mother,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother and father appeal from the district court order terminating their parental rights to their two children. **AFFIRMED.**

Les Blair III of Blair & Fitzsimmons, P.C., Dubuque, for appellant-father.

MaryBeth A. Fleming of Norman, Fleming & Norman, Dubuque, for appellant-mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee.

John Nemmers, Dubuque, attorney and guardian ad litem for minor children.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

MULLINS, J.

A mother and father appeal from the district court order terminating their parental rights to their two children. The mother asserts that termination is not in the children's best interests and she should have been given an extension. The father also argues that he should have been given an extension. Because we find termination was in the children's best interests and the district court properly denied both parents' request for an extension, we affirm.

I. Background Facts and Proceedings.

Both the mother and father have mental health issues and a long history of using methamphetamine and marijuana. In April 2010, the children (born 2007 and 2009) came to the attention of the Iowa Department of Human Services (DHS) due to domestic abuse and drug abuse in the home. A hair stat test on the younger child was positive for methamphetamine. The children were placed with a family member, but then moved to a foster home the following month.

Both parents were offered multiple services, but their participation was minimal and sporadic. Following the children's removal, the mother continued to use methamphetamine. She initially had the opportunity for inpatient treatment, but later explained she simply did not fill out the paperwork to be admitted. She was jailed in December 2010, but when she was released three weeks later she continued to use methamphetamine. Ultimately she violated her probation by testing positive for methamphetamine and marijuana and was jailed again in April 2011. The father was involved with drug court due to his history of drug convictions and a recent first-degree theft conviction. He absconded from the

residential facility and was not located until the end of June 2010. He was jailed until September 2010 and then returned to the residential facility.

A hearing was held in May 2011. Both the mother and father requested an extension of time to seek reunification with the children. The district court found that given the children's age and time they had been out of the home, coupled with the fact that the parents had already been given an extension, another extension was not warranted and denied their request.

The mother testified she was currently in a residential treatment facility and had been sober for forty-three days. She was unsure of whether she would be required to go to a correctional facility or a halfway house following her release. She did not have employment, a place to live, or transportation.

The father was in a similar situation. He testified he was also in a residential treatment facility. While in drug court, he had been sent to the county jail multiple times and at least one of those times was because he tested positive for drugs. He was planning on moving into a halfway house following his release from the residential facility.

In June 2011, the district court terminated the mother and father's parental rights to the children pursuant to Iowa Code section 232.116(1)(h) (2011). The mother and father appeal.

II. Standard of Review.

Our review is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Although we give weight to the district court's factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the children. *Id.*

III. Mother's Appeal.

The mother argues that termination is not in the children's best interests and she should have been given an extension of time to pursue treatment for her drug addiction and reunification with the children. In determining a child's best interests, "the court shall 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." *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (quoting Iowa Code § 232.116(2)).

The mother had mental health issues and has been using methamphetamine for over ten years. DHS workers testified the mother was bonded with the children and interacted very well with them, but there were also times when she was upset or "out of control" in front of the children. The quality of her visits with the children had also deteriorated, most likely due to her continuing drug usage. From March 2010 to March 2011, she completed eighteen drug tests and only one was clean. In April 2011, the month prior to the termination hearing, she tested positive for methamphetamine and marijuana.

The mother had completed a drug treatment program in 2007, but it was unsuccessful. Throughout the pendency of this case, the mother has not been able to maintain sobriety outside of a jail or a facility. See *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (explaining that after completing several inpatient and outpatient programs, the parent reverted to his old ways). The mother's addiction has prevented her from providing the children a safe and stable home. The children have bonded with their foster family, who have provided a safe and

stable home and are willing to adopt the children. A DHS worker testified that since April 2010, the parents have entered and exited the children's lives multiple times and the children were in need of a permanent home. "At some point, the rights and needs of the child[ren] rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997); see also *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997) (explaining that once the statutory time frame has been met, "patience with parents can soon translate into intolerable hardship for their children").

The mother had already received one ninety-day extension. She did not utilize that time to seek reunification with her children, but continued to use methamphetamine. The children should not be forced to wait, hoping that someday their mother can regain custody. *P.L.*, 778 N.W.2d at 41 (noting it is "well-settled law that 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"). The children are in need of permanency and have found a family willing to adopt them. Therefore, we find that termination was in the children's best interests and the district court appropriately denied the mother's request for more time.

IV. Father's Appeal.

The father states there was not clear and convincing evidence his parental rights should be terminated. His parental rights were terminated pursuant to Iowa Code section 232.116(1)(h) (providing for termination when (1) the child is

three years of age or younger; (2) the child has been adjudicated to be in need of assistance; (3) the child has been removed from the parent's physical custody for the last six consecutive months; (4) the court has found clear and convincing evidence the child cannot be returned to the parent's custody). He, however, does not argue that the statutory ground for termination was not proved. He acknowledged he was currently residing in the residential facility and the children could not be currently returned to his care. Rather, he argues that he can be an adequate parent once he is released and he "should have been allowed the requested extension."

The evidence demonstrated that the father had mental health issues and a long history of illegal drug use, including using methamphetamine since he was a teenager. He had previously participated in drug treatment programs multiple times, which were unsuccessful. He was currently participating in a residential treatment program, but his progress was inconsistent and a DHS worker testified he was being moved back to level one. Further, he had not participated in services to address his parenting deficiencies. When a DHS worker was asked about placing the children with the father, she indicated that the children would be at risk of neglect. The father cannot resume care for the children now or in the near future. Once the statutory time frame has been met, "patience with parents can soon translate into intolerable hardship for their children." *C.K.*, 558 N.W.2d at 175. The father had also already received one ninety-day extension, which did not result in him being realistically closer to regaining custody of his children. The children are in need of a permanent home and they have found a

home willing to adopt them. We find the grounds for termination were proved by the State and the district court properly denied the father's request for an extension. Therefore, we affirm.

AFFIRMED.