

IN THE COURT OF APPEALS OF IOWA

No. 7-254 / 07-0340
Filed May 9, 2007

**IN THE INTEREST OF N.D.R., I.S.B., and M.M.G.,
Minor Children,**

**L.M.G., Mother,
Appellant.**

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, District Associate Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Mary Pilcher-Hayek of Kennedy, Cruise, Frey & Briscoe, L.L.P., Iowa City, for appellant mother.

Christine Boyer, Iowa City, for father of I.S.B.

Clovis Bowles, Central City, for father of M.M.G.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, J. Patrick White, County Attorney, and Kristin Parks, Assistant County Attorney, for appellee State.

W. Eric Nelson of Nelson Law Office, Coralville, guardian ad litem.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

MAHAN, P.J.

Lisa appeals the termination of her parental rights. We affirm.

I. Background Facts and Proceedings

Lisa is the mother of N.D.R., born in December 2001; I.S.B., born in May 2004; and M.M.G., born in August 2005. The two oldest children, N.D.R. and I.S.B., were removed on April 18, 2005, after a report that drugs were being sold from Lisa's home. The children's hair tested positive for cocaine metabolite, cocaine exposure, and marijuana exposure.¹ N.D.R. and I.S.B. were adjudicated children in need of assistance (CINA) on December 1, 2005.² A trial home placement commenced January 28, 2006. The placement was terminated on March 20, 2006, after all three children tested positive for exposure to THC. M.M.G. was adjudicated CINA on May 10, 2006. None of the children have been in their mother's care since the last removal in March 2006.

Service providers have noted that Lisa is a kind, patient, and caring mother. However, she continues to make poor choices regarding the individuals she allows to have contact with her children. She has not been candid about her relationships with various men throughout the proceedings. At the time her parental rights to her first child were terminated,³ she was involved with a violent felon with a history of drug offenses and child sexual abuse. As a result of that relationship, N.D.R. was born.⁴ Later, Lisa moved to Tennessee with N.D.R.

¹ The youngest child was not yet born.

² The hearing was held May 18, 2005.

³ This termination occurred in 2002 and involved a child who is not part of these proceedings.

⁴ During the pendency of the proceedings, the parties learned this father had died from natural causes related to drug use.

because she was not getting along with the father and to avoid a child abuse investigation by the Iowa Department of Human Services (DHS). Strange men have been present at her home during her children's visitation. She lied to service providers about her relationship with these men. At the time of trial she was pregnant with a child with two possible putative fathers. Both have extensive criminal histories, including multiple felony drug charges. Lisa has received services concerning exposing her children to inappropriate men, drug use, domestic violence, and sexual offenders. All of these issues, however, continue.

The juvenile court terminated Lisa's parental rights pursuant to Iowa Code sections 232.116(1)(d), (g), and (i) (2005) with respect to all three children; section 232.116(1)(f) with respect to N.D.R.; and section 232.116(1)(e) with respect to I.S.B. and M.M.G. Lisa appeals.

II. Standard of Review

We review the termination of parental rights de novo. *In re D.G.*, 704 N.W.2d 454, 456 (Iowa Ct. App. 2005). The State must prove the circumstances for termination by clear and convincing evidence. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). Our primary concern is the best interests of the children. *Id.* In determining the children's best interests, we look to both long-term and immediate needs. *Id.*; *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

III. Merits

Lisa argues the juvenile court erred when it (1) failed to enter its children-in-need-of-assistance order until six and a half months after the adjudication hearing; (2) scheduled hearings for adjudication, disposition, reunification, and

termination with respect to all of the children to be heard at once; and (3) did not remove the guardian ad litem (GAL) for his alleged failure to perform his duties.

We must conclude Lisa's first issue has not been properly preserved for our review. Lisa never filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) or an appeal of the juvenile court's final disposition order entered January 13, 2006. See *Eaton v. Meester*, 464 N.W.2d 691, 692 (Iowa Ct. App. 1990) (noting that in order for this court to have jurisdiction, either appeal must be filed thirty days after a final order). Because she did not file a motion or appeal, her due process claim is barred. *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) (holding even constitutional issue cannot be raised for the first time on appeal); *In re D.S.*, 563 N.W.2d 12, 15 (Iowa Ct. App. 1997) ("The failure to appeal an order causes the principles of *res judicata* to bar further actions.").

Lisa's second issue must also fail. She did not file her motion to amend the scheduling order and continue the hearing until November 6, 2006. Thus, her complaints with respect to two scheduling orders entered in June and August 2006, respectively, have been waived. *K.C.*, 660 N.W.2d at 38. Further, it was clear the issue at the termination hearing was termination of Lisa's parental rights. N.D.R. and I.S.B. were both adjudicated CINA in December 2005. M.M.G. was adjudicated by Lisa's stipulation in May 2006. The State filed for termination as to the parental rights of all three children on October 31, 2006. By November 13, 2006, the only issues available for the hearing were the dispositional hearing for M.M.G. and the termination of Lisa's rights to all three children. Whether M.M.G. could be returned to Lisa's care was an issue common to both disposition and termination. Finally, the termination hearing

began on November 13, 2006, but was continued until February 6, 2007. Lisa was able to cross-examine witnesses and present her own witness and exhibits. Therefore, Lisa had both notice and opportunity to defend against the allegations against her. *In re K.L.C.*, 372 N.W.2d 223, 226 (Iowa 1985).

Finally, we must conclude the district court did not abuse its discretion in refusing to remove the GAL. Lisa had complaints about the GAL throughout the juvenile proceedings. However, she never notified the court of her dissatisfaction until November 2, 2006. “[V]oicing complaints regarding the adequacy of services to a social worker is not sufficient. The parent must inform the juvenile court of such challenge.” *In re C.H.*, 652 N.W.2d 144, 148 (Iowa 2002). Further, the GAL’s report indicates he adequately represented the children and their interests by staying in contact with DHS, the foster families, and attempting contact with the children through Lisa’s counsel.

The juvenile court’s ruling terminating Lisa’s parental rights is affirmed.

AFFIRMED.