

IN THE COURT OF APPEALS OF IOWA

No. 8-638 / 08-0984
Filed August 27, 2008

**IN THE INTEREST OF T.K. and B.B.,
Minor Children,**

**N.W.B., Father,
Appellant,**

**T.J.K., Mother,
Appellant.**

Appeal from the Iowa District Court for Des Moines County, Michael Dieterich, District Associate Judge.

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

Ronald Ellerhoff, Burlington, for appellant father.

Alan Waples of Wittkamp & Waples, Burlington, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, and Patrick C. Jackson, County Attorney, for appellee State.

Brent Ruther, Burlington, for minor children.

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

HUITINK, P.J.

Tammy appeals from the order terminating her parental rights to her two children, T.K., age seven, and B.B., age four. We affirm.

I. Background Facts and Prior Proceedings

The Iowa Department of Human Services (DHS) became involved with T.K. and B.B. when alerted that Tammy was under the influence of marijuana while supervising her children. From 2001 to 2006 Tammy was involved in nine founded child abuse reports, including denial of critical care, failure to provide proper supervision, and presence of illegal drugs in a child's body. Of these nine reports, seven involved drug related incidents. In 2001 T.K. was born testing positive for marijuana, and in 2003 he tested positive for methamphetamines. T.K. and B.B. were removed on November 2, 2006, after it was discovered that a known sex offender was spending time with the children in their home. Both were adjudicated a child in need of assistance (CINA) on November 13, 2006, pursuant to Iowa Code section 232.2(6)(c)(2) (2005).

Both children were placed in foster care, and Tammy was granted supervised visits. On March 8, 2007, she was allowed visits on a semi-supervised basis, but on March 30, 2007, she tested positive for cocaine, and all visits were thus returned to supervised. From July 3, 2007, to the present, the children have remained in the same foster home.

Since the children were removed and services began, Tammy has tested positive for drugs three times: March, April, and June 2007, two of these tests being positive for cocaine. In May 2007 she completed in-patient substance abuse treatment, but upon her release, as previously mentioned, promptly tested

positive for cocaine in June 2007. She also testified that she continues to drink alcohol. Over the past few years, Tammy held several jobs and lived in several locations, moving and changing jobs five times at a minimum. As of the termination hearing (May 2008), she had obtained employment and maintained a home since December 2007.

On March 3, 2008, the State filed the present petition to terminate both parents' parental rights. At the termination hearing, the evidence indicated the parents did not adequately participate in or perform the services assigned to them by previous court orders. Both children had been removed from their parents for at least twelve of the last eighteen months, pursuant to Iowa Code section 232.96. The trial court found it was not in the best interests of the children to remain with their parents. On May 29, 2008, the trial court entered an order terminating the parental rights of both parents pursuant to section 232.116(1)(f).

On appeal, Tammy¹ claims (1) there was insufficient evidence to terminate her parental rights, (2) reasonable efforts were not made to reunite her with her children, (3) she should have been given an additional six months to achieve reunification, and (4) the district associate judge prejudged her case prior to termination.

II. Standard of Review

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Grounds for termination must be proved by clear and convincing evidence, and our primary concern is the child's best interests. *Id.*

¹ The appeal of N.W.B., father, was dismissed as untimely.

III. Merits

Statutory Grounds. Tammy claims there was insufficient evidence to terminate her rights. We disagree. Under section 232.116(1)(f), a parent's rights may be terminated if the court finds by clear and convincing evidence (1) the child is four years or older, (2) the child has been adjudicated in need of assistance, (3) the child has been removed from the home for at least twelve of the last eighteen months, and (4) the child cannot be returned home at the present time. The first three elements are not in dispute; the only question is whether T.K. and B.B. could have been returned to Tammy's care at the time of the termination hearing.

Like the trial court, we find clear and convincing evidence indicates the children cannot be returned to Tammy's care. As noted earlier, the risks of harm resulting in their removal were related to Tammy's chronic substance abuse. Although Tammy has received substance abuse treatment, her prognosis is poor. We have repeatedly held that a parent's unresolved substance abuse presents a clear danger to the children in their care. *See, e.g., In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993). We also note testimony and reports indicating Tammy's relationship with a known sex offender and recent shoplifting arrest as further evidence of Tammy's inability to provide a safe and stable home for the children. We accordingly affirm on this issue.

Reasonable Efforts. The record indicates Tammy has received a variety of services intended to facilitate reunification. DHS provided her with family skill development, parent skill supervision, substance abuse evaluation, substance abuse treatment, family team meetings, mental health evaluation, and medication

management. While she made an attempt at substance abuse treatment, she quickly relapsed, and has not taken advantage of any of the other numerous services provided. There is no merit in Tammy's claim to the contrary, and we affirm on this issue. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (parent required to actively and positively respond to services).

Additional Time. Tammy also argues the court erred by not granting her an additional six months to achieve reunification. Our legislature has established a twelve-month period for parents to demonstrate they can parent. Iowa Code § 232.116(1)(f); see *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). This time period has elapsed, and Tammy still does not have the ability to adequately provide for T.K.'s and B.B.'s needs. We affirm on this issue.

Preservation of Error. Upon de novo review of the record, we find error was not preserved regarding Tammy's claim that the district associate judge prejudged the case prior to the termination hearing. During the permanency hearing, the judge ordered that the Des Moines County Attorney file a petition for termination. Because the same judge presided over both the permanency and termination hearings, Tammy believed he prejudged the termination decision prior to the termination hearing. However, "[u]nder our rules of civil procedure, an issue which is not raised at the trial court may not be raised for the first time on appeal." *In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa 1997). Therefore, when Tammy did not present this issue to the juvenile court and request that the judge recuse himself, error was not preserved, and the claim is accordingly waived.

Best Interests. Even where there is a statutory basis to terminate parental rights, the termination must still be in the best interests of the children.

In re M.S., 519 N.W.2d 398, 400 (Iowa 1994). Rather than accept services from DHS, Tammy habitually denied such services, further endangering her children with her continued substance abuse, poor choices of friends, and an inability to maintain stability. T.K. and B.B. have waited twenty-one months for Tammy to make their care a constant concern. They should not be forced to wait any longer. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) (“The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.”); see also *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (“A child’s safety and the need for a permanent home are now the primary concerns when determining a child’s best interests.”). The children have shown great improvement while in foster care and have bonded with their foster family as well as each other. In light of the foregoing, we find termination is in the best interests of T.K. and B.B. Accordingly, we affirm the juvenile court’s termination order in its entirety.

AFFIRMED.