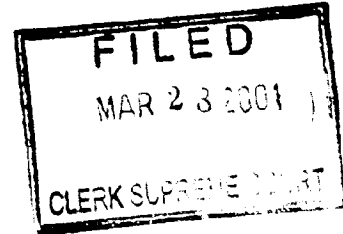


IN THE COURT OF APPEALS OF IOWA

No. 1-149 / 00-1420
Filed March 28, 2001

IN THE INTEREST OF
D.R. and R.R.,
Minor Children,

P.R., Mother,
Appellant.



Appeal from the Iowa District Court for Hardin County, Peter B. Newell,
District Associate Judge.

Mother appeals from the juvenile court order terminating her parental
rights to two of her children. **AFFIRMED.**

James L. Beres of Letz, Sween & Beres, P.C., Eldora, for appellants.

Thomas J. Miller, Attorney General, Tabitha Gardner, assistant Attorney
General, and Richard Dunn, County Attorney for appellee-State.

Larry Johnson of Walters & Johnson, Iowa Falls, for minor children.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

ZIMMER, J.

A mother appeals the decision of the juvenile court which terminated her parental rights. She claims the juvenile court should have recused himself. She also claims the State did not present sufficient evidence to justify termination of her parental rights. We affirm.

Penny and Alan are the parents of Rusty, born in May 1990, and Dusty, born in February 1994. The parents had a history of alcohol and substance abuse, uncleanness in the home, and problems supervising the children.

In January 1999, the Department of Human Services (DHS) issued a founded report of denial of critical care because Penny threatened to commit suicide after an argument with Alan over his affair with her fourteen-year-old niece. An older child, Billy, sought assistance and Penny was taken to the hospital, where she tested positive for marijuana.¹ Penny was hospitalized for psychiatric reasons for a short period of time.

Later in January 1999, DHS issued a founded report of denial of critical care against the parents because they had allowed a maternal uncle to care for the children, even though they knew he had previously hit Rusty in the nose with a book, giving him a bloody nose. They also allowed a different maternal uncle to care for the children, although he had previously pled guilty to assaulting Billy.

In March 1999, Alan became intoxicated and threatened an acquaintance with a knife in the presence of the children. DHS issued another founded report of denial of critical care. Alan was arrested and charged with child endangerment due to this incident. Rusty and Dusty were removed from the

¹ The present appeal involves only Rusty and Dusty, and does not involve Penny's two older children, who are also in foster care.

home and placed in foster care. They were adjudicated to be children in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c), and (n).

Penny and Alan separated. Penny was arrested for attempting to run over Alan with her car. By April 1999, Penny and Alan had reunited, but then separated again. Penny moved in with a boyfriend, Paul, in another town. Paul has a criminal history. Penny did not tell DHS workers where she was living for a period of time. She did not participate in services, except for supervised visitation. Penny came to one supervised visit smelling of alcohol. She had problems focusing on both children during visits. Penny was told not to bring Paul to visits, but he continued to be "lurking around" during visitation time.

In January 2000, Penny had a psychological evaluation. She was diagnosed with an adjustment disorder, depression, a panic disorder, and a history of substance abuse. Individual therapy was recommended. Penny obtained employment. In April 2000, the State filed a petition to terminate the parental rights of Penny and Alan to the children. By May 2000, Penny had begun to make some progress with services. She completed a substance abuse treatment program and attended a batterer's education program.

On August 22, 2000, the juvenile court entered an order terminating the parental rights of Penny and Alan to Rusty and Dusty under section 232.116(1)(e). The court found the children could not be returned to the parents' care. The court found:

It is fair to say that [the parents'] lives have stabilized, but neither of the parents have demonstrated a willingness to prioritize their Children. These parents have no experience in providing a safe, nurturing, and secure home for children. In the Court's opinion it would take these parents a significant amount of time to learn how to prioritize and care for these Children. It is unfair to

hold these Children in limbo until such time as their parents demonstrate a desire or an understanding of their needs.

Penny appeals the termination of her parental rights.

I. Scope of Review

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. Recusal

Penny contends the juvenile court judge abused his discretion by not recusing himself from this case. In a permanency order dated April 22, 2000, the juvenile court ordered the county attorney or the attorney for the children to institute proceedings to terminate the parent-child relationship. Penny claims that by ordering a termination petition to be prepared, the juvenile court became involved in the case.

Penny has not preserved this issue for our review. She did not file a motion before the juvenile court asking the judge to recuse himself. See *State v. Wells*, 522 N.W.2d 304, 310 (Iowa Ct. App. 1994). An issue not presented in the juvenile court may not be raised for the first time on appeal, even an issue of constitutional dimensions. *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994).

III. Sufficiency of the Evidence

Penny asserts the district court failed to present sufficient evidence to warrant termination of her parental rights. In particular, she claims the State failed to show the children could not be returned to her care, which is an element of section 232.116(1)(e). She states she has made recent progress by obtaining employment and separating from Alan.

While we recognize the law requires a full measure of patience with troubled parents who attempt to remedy a lack of parenting skills, Iowa has built this patience into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). At some point, the rights and needs of the children rise above the rights and needs of the parents. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The legislature, through section 232.116 directs us to that point. *Id.* Once the limitation period found in section 232.116(1)(e) lapses, termination proceedings must be viewed with a sense of urgency. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting. *C.B.*, 611 N.W.2d at 495.

In the present case, Penny made only minimal progress with services before the petition to terminate her parental rights was filed. Her lack of participation in services suggests a lack of interest in her children. Furthermore, the evidence showed Penny had problems supervising the children even during her weekly one hour of supervised visitation. She was unable to focus on both children at one time. Thus, when she was dealing with one child, the other child would be without effective supervision. We find the evidence shows the children

could not be returned to Penny's care at the present time. Penny's parental rights were properly terminated.

We affirm the decision of the juvenile court.

AFFIRMED.