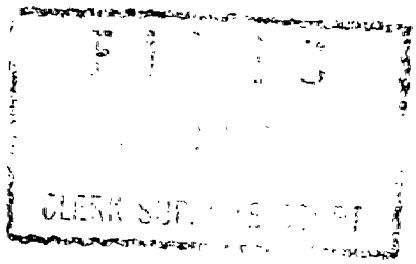
IN THE COURT OF APPEALS OF IOWA



No. 5-310 / 95-126

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

L.P., Mother,

Appellant.

Appeal from the Iowa District Court for Polk County, Constance C Welu, Juvenile Judge.

Mother appeals the district court's order terminating her parental rights over her two minor children. **AFFIRMED.**

Barbara J. Diment of the Diment Law Office, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, Kathrine S Miller-Todd, Assistant Attorney General, and Ray Blase, Assistant County Attorney, for appellee-State.

Nicole Garbis of the Youth Law Center, Des Moines, guardian ad litem for minor children.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

HAYDEN, P.J.

Lori is the mother of R.P., born January 1, 1990, and D.R., born August 16, 1986. Gene is the father of R.P. and does not appeal the termination of his parental rights. Terry is the father of D.R. and is not a party to this action.

In February 1993 the State filed a petition alleging R.P. and D.R. were children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(n) (1993). On April 8, 1993, the court granted the State's application for an order of temporary removal of the children from Lori's custody.

On April 29, 1993, the court adjudicated the children CINA and ordered they remain in the custody of the department of human services (DHS) for placement in foster care. In September 1993, pursuant to a modified dispositional order, D.R. was placed in his father's custody, and R.P. was placed in the custody of DHS for foster care placement.

In October 1994 the State filed a petition for termination of Lori's parental rights. After a December 1994 hearing the court found Lori had been diagnosed with dependent personality disorder and borderline personality disorder and that she is an alcoholic. It determined despite numerous services provided to Lori she was in "no better position to care for R.P. today than she was over a year ago." The court further determined Lori had voluntarily had no contact with D.R. for the past six or seven months and D.R. had no desire to see Lori.

On December 16, 1994, the court's order terminating Lori's parental rights pursuant to Iowa Code section 232.116(e) was filed. The order was mailed to the parties on Monday, December 19, 1994. Apparently Lori's counsel received the order on December 20, 1994, but did not forward it to Lori until on or about January 5, 1995. Lori notified her attorney of her intent to appeal on January 11, 1995.

On January 18, 1995, more than thirty days after the entry of the termination order, Lori filed her notice of appeal. Later Lori filed a motion for extension of time to file notice of appeal. On February 13, 1995, the supreme court ordered this issue to be briefed and submitted with Lori's appeal.

In *Uchtorff v. Dahlin*, 363 N.W.2d 264, 267 (Iowa 1985), our supreme court held "[a] direct appeal, taken at the time notice of the order is received but outside the thirty-day period, is doomed to failure by [the] Iowa Rule[s] of Civil Procedure." At the time of the appeal considered in *Uchtorff, id.*, Iowa Rule of Appellate Procedure 20(b) was not in effect. Iowa Rule of Appellate Procedure 20(b) provides that:

> (b) The supreme court or a justice thereof may extend the time for filing of a notice of appeal if the supreme court or justice determines that a failure to file a timely notice of appeal was due to the failure of the clerk of the trial court to notify the prospective appellant of the entry of the appealable final judgment or decision . . . .

The mother argues rule 20(b) should be interpreted to allow for delayed appeals. This we cannot do. The plain language of the rule is clear it only applies if the clerk fails to notify the prospective appellant during the appeal period thus making a timely appeal difficult or impossible. The juvenile court order was received by the mother's

attorney within four days of its entry. This is not an unreasonable length of time The mother still had twenty-six days to file an appeal. The mother's motion for extension to file a notice of appeal must be denied.

Further, even if we were to reach the merits of this case, it would not change the end result. We have reviewed the record, and it is clear the juvenile court correctly decided to terminate the mother's parental rights. The mother was in no position to parent the children. She was not adequately addressing her substance abuse and mental health issues. Her visits with D.R. were almost nonexistent, and her visits with R.P. were still supervised because of her inappropriate behavior. It was not in the best interests of the boys to continue this relationship. D.R. is doing well with his father, and R.P. is with a couple who are willing to adopt him. These children should not be forced to endlessly await the maturity of their mother. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). These children need stability and permanence which the mother is not capable of providing.

We deny the mother's request for an extension to file her notice of appeal. If we reached the merits, we would affirm the juvenile court's decision to terminate the mother's parental rights. The children's best interests mandate we do so.

AFFIRMED.