

IN THE COURT OF APPEALS OF IOWA

No. 0-998 / 10-1864
Filed February 9, 2011

**IN THE INTEREST OF N.J.D.,
Minor Child,**

**D.K.D., Mother,
Appellant,**

**B.M.D., Father,
Appellant.**

Appeal from the Iowa District Court for Union County, Monty W. Franklin,
District Associate Judge.

A mother and father appeal the termination of their parental rights to their
child. **AFFIRMED.**

Loretta L. Harvey, Creston, for mother.

Jane Orlanes of Orlanes Law Office, P.L.C., Des Moines, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Timothy R. Kenyon, County Attorney, for appellee.

Todd Nielsen of Steffes, Kenyon & Nielsen, P.C., Creston, attorney and
guardian ad litem for minor child.

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

EISENHAUER, P.J.

A mother and father appeal the termination of their parental rights to their child. They contend the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the child's best interest. The mother also contends the State failed to make reasonable efforts to reunite her and the child. We review these claims de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The child, born in October 2007, came to the attention of the Department of Human Services (DHS) in October 2008 because both parents were incarcerated and the babysitter the mother had arranged to care for the child felt she could no longer care for him. The child was placed in foster care for thirty days. The child again came to the attention of the DHS in May 2009 after the mother relapsed to methamphetamine use. The father was still in prison. The child was removed from the mother's care after she was arrested for shoplifting in July 2009. It was also alleged she was abusing prescription drugs and alcohol. On August 24, 2009, the child was adjudicated in need of assistance.

The child was returned to the mother's care on December 30, 2009. The mother had been living with the paternal grandmother since August 2009, had obtained employment, and was following the case plan. However, the mother moved into her own residence the following month and one week later was arrested for shoplifting. The mother was allowing men who had not been approved by the DHS to be in the home. This included the mother's new boyfriend, who physically abused the mother while the child was in her care.

Although the mother insisted the child had not witnessed any physical violence, the child stated, "Mommy has owies on her face. Jared pushed my mommy on her face and I cried." In spite of the abuse, the mother stated she wanted to remain with the boyfriend because she loved him. The mother also admitted having relapsed and was injecting methamphetamine. The child was removed and placed in foster care on March 19, 2010. The child was moved to the paternal grandmother's care on April 3, 2010.

In April 2010, the mother moved to Missouri. She did not attend the permanency hearing on April 15, 2010. At the May 27, 2010 permanency hearing, the juvenile court ordered the county attorney to file a petition to terminate. On the same day, the mother was sentenced to thirty days incarceration on a theft charge. Upon her discharge, she began abusing drugs again. On July 22, 2010, on application by the DHS case manager and the mother's substance abuse counselor, the mother was involuntarily committed to a residential treatment facility for twenty-eight days. However, the DHS was unable to obtain any report from the facility to indicate if the treatment was successful.

The child's father was in prison from November 2008 until August 2010. He had only been out of prison for three weeks at the time of the termination hearing and had not seen his son since his release. The mother and father reunited on his release from prison and asked the court for more time to regain custody of their son.

Following a termination hearing on September 20, 2010, the juvenile court terminated the mother's parental rights pursuant to Iowa Code sections 232.116(1)(d), (g), (h), (i), and (l) (2009). The court terminated the father's parental rights pursuant to Iowa Code sections 232.116(1)(d), (h), and (i). We need only find grounds for termination existed under one section to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999).

To terminate under section 232.116(1)(h) the State must prove the following by clear and convincing evidence:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

There is no dispute the first three elements have been proved. Instead, the question is whether the State proved the child cannot be returned to either parent's care as provided in section 232.102. We find he cannot.

Clear and convincing evidence shows the child cannot be safely returned to the mother's care. Although the mother had substance abuse treatment shortly before the termination hearing, she has not demonstrated her ability to maintain sobriety. Just the year before, the mother had made the necessary improvements between August and December to allow the child to be returned to her care. A matter of weeks later, she had relapsed to using methamphetamine

and was involved in an abusive relationship in which the child was witness to her physical abuse.

We look to the parent's past performance because it may indicate the quality of care the parent is capable of providing in the future. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Given the mother's history of substance abuse and her prior relapse, her prognosis for continued sobriety is guarded at best. Issues regarding her dysfunctional relationship with the father, with whom she had reunited, also continue to persist. Children should not be forced to endlessly await the maturity of a natural parent. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

We likewise conclude termination of the father's parental rights was appropriate under section 232.116(1)(h). The father's imprisonment during the pendency of this case has presented hurdles in reuniting him with his child. He has no real relationship with his child and demonstrated "very minimal" parenting skills. The father's conviction, and resulting imprisonment, does not excuse his lack of relationship with the child. *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993).

We further find termination is in the child's best interest. As stated, the mother has a long history of substance abuse with a poor prognosis for continued sobriety. Her pattern of engaging in abusive relationships poses a danger for the child. The father had been incarcerated throughout the majority of the case and his contact with the child was limited to letters he sent. There is virtually no bond between the father and the child. The child has been removed

from the custody of his parents three times. Twice the child has been reunited with his mother only to face return to foster care. It is not in the child's best interest to face this uncertainty.

The parents ask for additional time to be reunited with the child, noting the child is in the care of a relative as provided in section 232.116(3)(a). The exceptions to termination listed in section 232.116(3) are permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). The court has discretion, based on the unique circumstances of each case and the best interest of the child, whether to apply the factors in this section to save the parent-child relationship. *Id.*

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *C.B.*, 611 N.W.2d at 494. The crucial days of childhood cannot be suspended while the mother experiments with ways to face up to her own problems. *See In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997).

As the district court found,

[The child] needs consistency, stability, structure, and permanency in an appropriate home with sober and protective parents who exhibit good judgment and appropriate parenting skills and abilities. Unfortunately, this does not describe either [the mother] or [the father]. . . . [The child] deserves stability, permanency, a safe home, and appropriate care now and in the future and has waited over a year for his parents to show that either or both have the ability to provide these things for him. He should not have to wait any longer.

The child simply cannot wait for responsible parenting. *Id.* at 175.

Finally, we reject the mother's contention the DHS failed to make reasonable efforts to return the child to her care as required by section 232.102(7). The reasonable efforts requirement is not a strict substantive requirement for termination. *C.B.*, 611 N.W.2d at 493. Instead, the services provided by DHS to reunify parent and child after removal impacts the State's burden of proving the child cannot be safely returned to the care of a parent. *Id.* The mother sought additional visitation with the child. Even if additional visitation had been feasible, it would not have allowed for reunification as it would not have addressed the mother's issues with substance abuse or her dysfunctional relationships with men.

Because the State proved the grounds for termination and termination is in the child's best interest, we affirm the juvenile court order terminating the mother and father's parental rights to their child.

AFFIRMED.