

IN THE COURT OF APPEALS OF IOWA

No. 1-477 / 11-0517

Filed July 13, 2011

**IN THE INTEREST OF I.D.K.,
Minor Child,**

**S.M.D., Mother,
Appellant,**

**N.J.K., Father,
Appellant,**

**V.T., Grandmother,
Intervenor-Appellant.**

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A mother and father separately appeal the district court's order terminating their parental rights. **AFFIRMED.**

Marc A. Elcock of Elcock Law Firm, P.L.C., Des Moines, for appellant mother.

Steven E. Clarke of Pargulski, Hauser & Clarke, Des Moines, for appellant father.

Robert A. Wright of Wright Law Office, Des Moines, for intervenor-appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee State.

Charles Fuson of Youth Law Center, Des Moines, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., Vaitheswaran, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VOGEL, P.J.

Stephanie and Nicholas separately appeal the district court's order terminating their parental rights to their child, I.K. (born 2009). The district court terminated Stephanie's rights under Iowa Code sections 232.116(1)(d) (child CINA for abuse or neglect, circumstances continue despite receipt of services) and (h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home). The district court terminated Nicholas's rights under section (h). We affirm.

Our review of termination of parental rights cases is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). When the district court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Stephanie and Nicholas both appeal, asserting the State failed to prove by clear and convincing evidence the code paragraphs the district court terminated under. The family came to the attention of the Iowa Department of Human Services (DHS) after Stephanie, Nicholas, and I.K. tested positive for methamphetamine in November 2009; I.K. was removed and placed in foster care, where she has remained. I.K. was adjudicated a child in need of assistance (CINA) in December 2009, and in its disposition order, the court found, "both parents have significant substance abuse issues that remain unresolved." Both Stephanie and Nicholas have an extensive history of substance abuse, and neither has consistently provided drug screens.

Stephanie relapsed in June 2010 and has not completed drug treatment. Nicholas was arrested for a probation violation in March 2010.

In her report to the court, DHS worker Nicole Langley, reported that Stephanie does not have “housing, or a driver’s license and relied on others to provide her with housing and the things she needs. Stephanie has failed to obtain employment, and has no source of income to be able to provide for herself and [I.K.]” The district court found that despite the offer of services, Stephanie’s drug use continued throughout the pendency of this case. In a letter dated October 20, 2010, Langley reported, “Stephanie has still not provided UA’s for the Department since March 18, 2010, despite being told at every visit this worker has with Stephanie monthly the importance of doing so.” We agree with the district court’s conclusion that Stephanie remains unable to parent I.K., and clear and convincing evidence supports termination under 232.116(1)(h). *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (“Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.”).

At the time of the termination hearing, Nicholas was incarcerated.¹ He was in a work-release program at the time the termination order was entered; upon his release, he filed a motion to reopen the record to have visitation with

¹ Nicholas also asserts the court erred in failing to order relative placement of I.K. with his mother, Virginia. Virginia, the grandmother-intervenor filed an appeal, which was dismissed as untimely. Even if timely, we would have found the district court did not abuse its discretion in not ordering relative placement. DHS considered Virginia as a placement option, but reported that “due to her history of prescription drug abuse, her tenuous relationship with Nicholas, as well as her lack of cooperation with CPA in the past,” she was not an appropriate placement option.

I.K. He asserts the district court erred in denying his motion. While Nicholas did participate in some services while incarcerated, Langley testified that I.K. should “absolutely” not be placed with Nicholas, should he be released, as he had not shown sobriety outside of the prison setting or the ability to provide a safe home for I.K. The district court found that Nicholas had not addressed his drug or violence problems such that he could parent I.K. and provide her a safe environment; even if released from the work release facility, it would take at least a year of services before placement in his care could be considered. We agree with the district court’s conclusion that clear and convincing evidence supports termination under 232.116(1)(h). We further agree the district court did not abuse its discretion in denying Nicholas’s motion to reopen the record. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993) (“A child should not be forced to endlessly suffer the parentless limbo of foster care.”); *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (“Children simply cannot wait for responsible parenting.”).

Both parents assert termination of their parental rights is not in I.K.’s best interests. Even if a statutory ground for termination is met, a decision to terminate must still be in the best interest of a child after a review of Iowa Code section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 37, 40 (Iowa 2010). We consider the child’s safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. *Id.* Both parents also assert they should have been granted additional time for reunification. At the time of the termination hearing, I.K. had been out of their care for over a year. Stephanie had not addressed her substance abuse problems, and Nicholas was still incarcerated, with

rehabilitation needed after his release. The district court was correct in concluding that neither Stephanie nor Nicholas was prepared to parent I.K., and that I.K. is in need of a permanent home. *In re 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.”). We conclude termination of Stephanie and Nicholas’s parental rights was in I.K.’s best interests as set forth under the factors in section 232.116(2).

AFFIRMED.