

IN THE COURT OF APPEALS OF IOWA

No. 1-613 / 11-0911
Filed August 10, 2011

**IN THE INTEREST OF J.T.,
Minor Child,**

**C.M.T., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara Liesveld,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Kara McFadden, Cedar Rapids, for appellant mother.

Lorraine Machacek, Cedar Rapids, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Jerry Vander Sanden, County Attorney, and Kelly Kaufman,
Assistant County Attorney, for appellee State.

Melody Butz of Butz Law Offices, P.L.C., Cedar Rapids, for minor child.

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

EISENHAUER, P.J.

A mother appeals the termination of her parental rights to her child. She contends the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the child's best interests. We review her claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The child, now five years of age, was adjudicated in need of assistance in February 2007 after the mother repeatedly left him in the care of relatives in disregard of the relatives' wishes. The mother was abusing alcohol, marijuana, and cocaine. The child was removed from the mother's care and placed with relatives.

A trial home placement began in March 2008 but ended in July 2008 after the mother allowed the child to have contact with her paramour in violation of a no-contact order. A return home occurred in September 2008. The child was again removed from the mother's care for the final time in May 2010 after the mother was arrested for assaulting the maternal grandmother while intoxicated and in the presence of the child.

The State filed a petition to terminate the mother's parental rights to the child on January 12, 2011. A hearing was held in April 2011, and on May 31, 2011, the juvenile court entered its order terminating the mother's parental rights pursuant to Iowa Code sections 232.116(1)(f) and (l) (2011). The State concedes termination was improper under section 232.116(1)(f) because the child had not been out of the mother's care for the requisite period of time. However, we may still affirm termination if we find the State met its burden of proving clear and convincing evidence termination was appropriate pursuant to

section 232.116(1)(f). See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (“When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.”).

Termination is appropriate under section 232.116(1)(f) where:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child’s parents for placement pursuant to section 232.102.
- (2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.
- (3) There is clear and convincing evidence that the parent’s prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child’s age and need for a permanent home.

The mother disputes the State proved the second and third elements.

We conclude the evidence shows the mother has a severe, chronic substance abuse problem and presents a danger to herself or others. Despite receiving four years of services to address her substance abuse issues, the mother was unable to demonstrate long-term sobriety. Twice arrested for operating a motor vehicle while under the influence of alcohol, she had two substance abuse evaluations both recommending inpatient treatment. She failed to complete the treatment. She is on probation until December 2011. As noted above, in May 2010 she was intoxicated and aggressive with her mother and her sister in front of her children and was arrested. Her last relapse was only a month before the termination hearing, and the mother both assaulted her companion and was assaulted herself, receiving two black eyes, bite wounds, bruises, and scratches.

We also conclude the mother's prognosis indicates the child will not be able to be returned to the mother's custody within a reasonable period of time. The child has already spent over half his life outside the mother's care. At some point, the rights and needs of the child outweigh the rights and needs of the parent. *In re C.S.*, 776 N.W.2d 297, 300 (Iowa Ct. App. 2009). The mother has had over four years to show she can maintain sobriety and despite attendance at multiple treatment programs, the mother has been unable to do so. The quality of the mother's past care of the child is indicative of the quality of her future care. See *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989). Because the child cannot be returned to the mother's care within a reasonable time, we conclude the State has proved the grounds for terminating the mother's parental rights under section 232.116(1)(f).

The mother also contends termination is not in the child's best interests. In determining best interests, we must 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. *P.L.*, 778 N.W.2d at 37. Upon our de novo review, we conclude the child's best interests are served by termination. The mother has not achieved a significant period of sobriety. She continues to associate with other substance abusers. The mother does not have a stable employment history and had only been working at her job three days before the termination hearing. She did not have a stable residence. The child has been out of his mother's care nearly half his life. As stated by the trial judge:

This Court has allowed her more time than the best practice time standards allow in the hope she would grow up and be able to parent her children, however, based on her past performance and continued relapses the child's interest now rises above that of the parents and must come first.

The child needs a safe and stable environment, which the mother cannot provide.

We affirm the order terminating the mother's parental rights to her child.

AFFIRMED.