

**IN THE COURT OF APPEALS OF IOWA**

No. 8-805 / 08-1335  
Filed October 15, 2008

**IN THE INTEREST OF D.L.-M.,  
Minor Child,**

**M.K.L., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Louise M. Jacobs,  
District Associate Judge.

A mother appeals from the order terminating her parental rights to a  
daughter. **AFFIRMED.**

Alexandra Nelissen of Nelissen & Juckette, P.C., Des Moines, for  
appellant mother.

Meegan Keller, Altoona, for appellee father.

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

Michelle Saveraid of Youth Law Center, Des Moines, for minor child.

Considered by Huitink, P.J., and Vogel and Eisenhauer, JJ.

**VOGEL, J.**

A mother appeals from the order terminating her parental rights to her daughter, D.L.-M., who was born in October of 1999. The child was first removed from her mother's care on April 9, 2007, after the mother, who was then under the influence of methamphetamine, was stopped while driving a car with the child as a passenger. The child was adjudicated to be in need of assistance (CINA). After a hearing on the State's petition, the juvenile court terminated the mother's parental rights on August 1, 2008, under Iowa Code sections 232.116(1)(d), (e), (f), and (l) (2007). The mother appeals.

We review the termination of parental rights *de novo*. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the child. *Id.* If the juvenile court terminates parental rights on more than one statutory ground, we need only find that the evidence supports termination on one of the grounds cited by the juvenile court to affirm. *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000). However, our review of the juvenile court's failure to appoint counsel is for abuse of discretion. See Iowa Code § 232.89(4) (providing the court "*may* appoint a separate guardian ad litem"), (emphasis added).

We first address the mother's contention the State did not sufficiently prove the statutory requisites for termination. Section 232.116(1)(f) requires the State to establish, among other things, that the child cannot be returned to the

parent's custody "as provided in section 232.102."<sup>1</sup> The mother has a significant history of drug use and related crime, having used drugs for thirteen years at the time of the termination hearing, and she has spent a total of twenty-two months in Mitchellville prison due to convictions for possession of a controlled substance. From the inception of this CINA case, she has been involved in numerous treatment programs and was unsuccessfully discharged from several. While being on probation and participating in drug court, the mother was sent to jail at least five times for failing to comply with drug court rules. These stretches of incarceration cost her many chances to have contact with her child and she had not even progressed to unsupervised visitation at the time of the termination hearing. We find that the mother's failure to significantly and successfully address her drug usage provides a serious risk of harm to the child.

In addition, the child's individual therapist, Jeanne White, opined that if returned to the mother's care, the child would suffer harm due to the mother's inability to provide a safe and stable environment. Social worker Heather Hewitt testified that the mother's substance abuse history provided a risk of harm to the child, and she could envision no situation where the child could be returned to the mother's care within the next six months. As she stated in her report to the court, the mother

has yet to understand the correlation between her substance use and the impact that it has had on [the child] and on her parenting of [her]. Providers have been addressing this with [the mother] and there has been little progress.

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<sup>1</sup> Section 232.102(5)(a)(2) provides that whenever possible the child should be returned to the parent unless to do so would subject the child to adjudicatory harm.

Accordingly, as we agree with the juvenile court that there exists clear and convincing evidence that to return the child to her mother's case would subject her to adjudicatory harm, we affirm the termination under section 232.116(1)(f).

We next address the mother's claim termination was not in the best interests of the child. As noted, the mother has a long history of drug use, failed treatments, and inability to maintain her sobriety. These issues have plagued the mother for the child's entire life and the child has been in foster care since April 2007, waiting for her mother to face up to the obstacles that prevent reunification. Moreover, the child is thriving in foster care with her paternal aunt and uncle. Therapist Jeanne White testified as to how the child had "blossomed" under the care of her foster parents, and that she is far more secure and playful than she was while under the care of her biological mother. She also related that the child told her "her mom didn't feel like a mom to her anymore." Accordingly, we find termination is in the child's best interests.

Finally, the mother maintains the juvenile court abused its discretion in denying her request to bifurcate the roles of the child's attorney and guardian ad litem. The Iowa Code provides that the same individual may serve as both attorney and guardian ad litem. Iowa Code § 232.89(4). This "obviates the expensive and burdensome practice of appointing both a guardian ad litem and attorney for each child in a family to ensure that the child's expressed wishes as well as best interests are advocated." *In re J.P.B.*, 419 N.W.2d 387, 391 (Iowa 1988). However, section 232.89(4) further provides:

the court may appoint a separate guardian ad litem, if the same person cannot properly represent the legal interests of the child as legal counsel and also represent the best interest of the child as

guardian ad litem, or a separate guardian ad litem is required to fulfill the requirements of subsection 2.

We conclude the court did not abuse its discretion in failing to appoint a separate attorney to advocate for the child's wishes. First, the guardian ad litem denied that the child had ever expressed a clear intention to remain with her mother. In addition, the guardian ad litem did not believe the child, age nine, was mature enough to advocate for her wishes. In light of this, there was no need for separate legal representation for the child. *But see In re A.T.*, 744 N.W. 2d 657 (Iowa Ct. App. 2007) (holding a separate attorney should have been appointed for twelve-year old, mature child, who expressed a clear preference to stay with her mother).

**AFFIRMED.**