

IN THE COURT OF APPEALS OF IOWA

No. 7-452 / 07-0901

Filed July 12, 2007

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

**S.L.B., Mother,
Appellant.**

Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

A mother appeals from the order terminating her parental rights to a son.

AFFIRMED.

Jennifer Olsen, Davenport, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, William E. Davis, County Attorney, and Gerda C. Lane,
Assistant County Attorney, for appellee State.

Stephen Newport of Newport & Newport, P.L.C., Davenport for intervenor.

Robert Phelps, Bettendorf, for appellee father.

Martha Whitmer, Davenport, guardian ad litem for minor child.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

Setara is the mother of Jeremiah, who was born in March 2004. The family came to the attention of the juvenile court system after hand marks were found on Jeremiah's body. Setara admitted having lost her patience and slapping him. She was later convicted of an aggravated misdemeanor based on this incident, and Jeremiah was adjudicated to be a child in need of assistance under Iowa Code sections 232.2(6)(b) and (c)(2) (2005). On July 27, 2005, Jeremiah was removed from his mother's custody and placed in foster care with his maternal grandmother, with whom he has resided ever since.

On January 24, 2007, the State filed a petition seeking to terminate Setara's parental rights to Jeremiah. Following a hearing on the petition, the court granted the State's request and terminated Setara's rights under sections 232.116(1)(b), (d), (e), (h), and (j). Setara appeals from this order, contending the court erred in concluding termination of her parental rights was in Jeremiah's best interests.

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). While the district court terminated the parental rights on more than one statutory ground, we will affirm if at least one ground has been proved by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Our primary concern is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

Iowa Code section 232.116(3) provides that the court need not terminate the parent-child relationship if a relative has legal custody of the child or if there is "clear and convincing evidence that the termination would be detrimental to the

child at the time due to the closeness of the parent-child relationship.” On appeal, Setara relies on these provisions and asserts that because her mother has custody of Jeremiah and because there was an undeniable mother-child bond, the court should have declined to terminate their relationship.

Like the juvenile court, we must first acknowledge that at the time of the termination, and since his removal in July of 2005, Jeremiah has been in the care of his maternal grandmother. Likewise, we must also recognize that many positive attributes of Setara were presented at trial. The juvenile court found her “pleasant appearing” and noted that she “presents herself well.” She apparently possesses decent parenting skills, achieved some goals, presented her case plan, and stabilized her housing and employment situations to a small degree. Finally, all agree that there is a fairly substantial bond between mother and child. In fact, family counselor Jennifer Lyons testified that even though she would recommend termination, she still believed it would be in Jeremiah’s best interests to maintain some level of contact with Setara.

However, the ultimate question for the juvenile court, and for this court on appeal, is whether Jeremiah’s best interests would be served by severing his mother’s legal relationship with him. Upon careful consideration, we conclude they would be. The positive attributes set forth at the start of the juvenile court’s opinion do not present a full picture of Setara’s commitment to reunifying with her child.

Setara has failed to take seriously the steps necessary for reunification. It is clear that Jeremiah does not take a position of primary importance in Setara’s life. Instead, she has chosen to pursue a relationship with her paramour, Dionte,

at the expense of parenting her son. Dionte had a previous confirmed child abuse report for a physical injury to a previous paramour's child. While Setara was convicted of the abuse that led to Jeremiah's adjudication, there is some indication in the record that Dionte was actually the one who committed the abuse and that Setara took the blame to protect him. Thus, service providers were immediately concerned with Setara's relationship with him, and Setara initially denied a continuing relationship. However, they secretly pursued such a relationship. Their association has led to a history of emotional and physical abuse, violence, and drug use. Twice during this case a service provider found marijuana in Setara's home. Seemingly unconcerned, she claimed the drugs belonged to the boyfriend. Moreover, Dionte has ignored requests from DHS to participate in services that would alleviate concerns about him and foster a reunification between mother and child. In particular, he refused to participate in domestic violence counseling and substance abuse treatment. It is believed he continues to abuse drugs. The juvenile court found, and we agree, that the adjudicatory harm has not been resolved and a high risk of adjudicatory harm remains. Further, there is clear and convincing evidence that the child cannot be returned to the custody of Setara.

Setara has failed to take advantage of the many opportunities she has been offered to have significant contact with her son. Jennifer Lyons testified that since the permanency hearing in November of 2006, Setara had not maintained "significant and meaningful contact with Jeremiah." In the two months prior to that hearing, Setara attended seven scheduled visits, while in the five months after the hearing, she only attended six such visits. While she did

have additional “informal” visits through her mother, those visits were small in number as well when considered with the fact she basically had an “open door policy” and could have visited at any time. Again, this reflects a pattern of failing to put forth the effort indicative of a parent who understands and is concerned with the possibility of losing her parental rights.

Jeremiah’s grandmother, under whose care he has thrived, plans to adopt him. This goal is reflected in DHS’s permanency plan. In fact, this home is the only home Jeremiah has ever known. His grandmother has taken seriously her role as his caretaker, and there is no reason to believe this would not continue. It is likely that in the event she would adopt him, Setara would maintain some level of contact with Jeremiah following the termination.

As the juvenile court found, Setara’s attitude toward permanency and reunification can best be described as “indifferent.” Faced with the consequence of termination, she chose to pursue a clandestine relationship with a troublesome character and failed to take advantage of the opportunities afforded to spend precious time with her child. Perhaps this can be attributed to Setara’s youth and immaturity; however, when Jeremiah’s best interests are at stake, those justifications cannot control. He should not be forced to endlessly await the maturity of his natural parent. See *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983); see also *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring) (“A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests.”). 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. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). Setara has been extended considerable patience, and has not yet made the simple sacrifices demanded of a parent. We therefore affirm the termination of her parental rights to Jeremiah.

AFFIRMED.