

IN THE COURT OF APPEALS OF IOWA

No. 9-508 / 09-0729

Filed July 22, 2009

**IN THE INTEREST OF E.R.M.,
Minor Child,**

T.M., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A mother appeals from the district court's order terminating her parental
rights to her daughter. **AFFIRMED.**

Amanda Demichelis of Demichelis Law Firm, Chariton, for appellant
mother.

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

Kimberly Ayotte of Youth Law Center, Des Moines, for minor child.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

VOGEL, J.

Tijana appeals the termination of her parental rights to her daughter, E.R.M., born in June 2007.¹ She asserts there was not clear and convincing evidence to support the district court findings, and termination was not in E.R.M.'s best interests. We affirm.

The district court terminated Tijana's rights under Iowa Code sections 232.116(1)(d) (child CINA for physical or sexual abuse (or neglect), circumstances continued despite receipt of services), (e) (child CINA removed from home for six consecutive months, and no significant or meaningful contact during that time), (h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home), and (l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time) (2007). We review termination of parental rights cases de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). E.R.M. came to the attention of the Iowa Department of Human Services (DHS) in April 2008 with several bruises on her buttock, determined to have been inflicted by Tijana's boyfriend. In May 2008, the boyfriend was arrested for domestic abuse assault and child endangerment. On May 28, 2008, the State's application for temporary removal of E.R.M. was granted. With the district court finding E.R.M. was "in imminent risk of harm from domestic violence, physical abuse, and lack of supervision," E.R.M.'s removal from Tijana's care was confirmed on June 16, 2008, and she was adjudicated a child in need of assistance (CINA) pursuant to

¹ The parental rights of E.R.M.'s biological father were also terminated. He does not appeal.

Iowa Code section 232.2(6)(b) and (c)(2) on July 10, 2008. The State filed a petition to terminate parental rights in December 2008, and after a hearing, Tijana's rights were terminated on April 29, 2009.²

Although Tijana argues that E.R.M. could have been returned to her care, we agree with the district court that "[Tijana] has made no reasonable effort to resume care of [E.R.M.] despite being given the opportunity to do so." Following E.R.M.'s removal, Tijana was afforded frequent visitation, but her attendance was so sporadic that after four months visits were suspended. DHS subsequently tried to work out a system for Tijana's participation in visits, but Tijana failed to make herself available for these visits. She had inconsistent contact with E.R.M. from July through September 2008, and had no contact from late September 2008 to April 2009, except for a brief, unauthorized visit on Christmas Day, 2008.

Tijana has also struggled with alcohol abuse. DHS offered numerous services to Tijana, including Family, Safety, Risk, and Permanency services, with healthy relationship classes, substance abuse evaluation and treatment, and Visiting Nurse Services.

While Tijana did participate in some counseling services shortly before the termination proceedings, she has not proved that she can provide a safe home for E.R.M. Tijana's domestic abuse counselor, Sharon Rutz, testified during her deposition that she was uncertain regarding the safety of Tijana's living situation, and "[Tijana] could use all the support she could get." In January, 2009, Tijana was again involved in a domestic abuse incident with the boyfriend

² Tijana voluntarily agreed to the termination of her parental rights in February 2009, but later withdrew her consent. See Iowa Code section 232.116(1)(a).

who previously injured E.R.M. Even after consistent recommendations from DHS, Tijana failed to extricate herself from this violent relationship. Further, the district court found that “[B]ecause Tijana has not taken the opportunity to benefit from treatment to resolve her addiction, a severe, chronic substance abuse problem persists.” The record supports these findings. “When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). At some point, the rights and needs of the child rise above the rights and needs of the parents. *Id.* We affirm the findings and termination of Tijana’s parental rights to E.R.M.

Even where there is a statutory basis to terminate parental rights, the termination must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). To determine what is in the best interests of the child, evidence of the parent’s past performance is the best indicator of the quality of future care for the child. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). There is clear and convincing evidence that substantial progress has not been made due to Tijana’s lack of compliance with the services offered. E.R.M. is in need of a safe and permanent home, and has done well in her pre-adoptive home. *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (stating children’s safety and their need for a permanent home are the defining elements in determining a child’s best interests). Upon our de novo review of the record,

we agree with the district court that it is in E.R.M.'s best interests that the parental rights of Tijana are terminated.

AFFIRMED.