

IN THE COURT OF APPEALS OF IOWA

No. 9-620 / 09-0948
Filed August 19, 2009

**IN THE INTEREST M.S.G.,
Minor Child,**

G.G., Father,
Appellant,

S.M.G., Mother,
Appellant.

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

A mother and father separately appeal from the order terminating their
parental rights to their daughter. **AFFIRMED.**

Marla McCoid, Bondurant, for appellant father.

Andrea Flanagan of Sporer & Flanagan, P.C., Des Moines, for appellant
mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, John P. Sarcone, County Attorney, and Andrea Vitzthum, Assistant
County Attorney, for appellee State.

Michael Bandstra, Des Moines, for intervenor.

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

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

VOGEL, P.J.

The mother, S.G., and father, G.G., separately appeal the termination of their parental rights to M.S.G., born in May 2007. Upon our de novo review, we affirm as to both terminations. See Iowa R. App. P. 6.907 (2009); *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

M.S.G. has been in the primary care of her paternal grandmother, B.G., since she was six months old, with little interruption in this placement since that time. A formal guardianship was established in December 2007, due to both parents' substantial drug addictions and associated criminal activities. Neither parent was capable of safely and adequately parenting M.S.G. On November 20, 2008, M.S.G. was adjudicated to be in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (2007). The Iowa Department of Human Services (DHS) offered appropriate reunification services to the mother and father. No additional services were requested. When a parent fails to demand services other than those provided, the issue of whether services provided were adequate has not been preserved for appellate review. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999).

On May 14, 2009 the State's petition for termination of parental rights came on for hearing. Both parents were incarcerated at the time, however both were present and represented by counsel to participate fully in the hearing. The district court terminated both parents' parental rights under Iowa Code sections 232.116(1)(d) (child CINA for abuse or neglect, circumstances continue despite receipt of services); (g) (child CINA, parents' rights to another child were terminated, parent does not respond to services, additional time would not

correct situation); and (l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time) (2009).

S.G. argues the State did not carry its burden of proof under any of the three code sections upon which termination was based. We need only find grounds to terminate under one of the sections cited by the district court to affirm. *S.R.*, 600 N.W.2d at 64. While there is clear and convincing evidence to support termination under all the code sections upon which the district court relied, we affirm under 232.116(1)(l).

To S.G.'s credit, she has recently complied with in-jail substance abuse treatment and has shown good progress. However, "[w]hen the issue is a parent's drug addiction, we must consider the treatment history of the parent to gauge the likelihood that the parent will be in a position to parent the child in the foreseeable future." *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). S.G.'s limited and short-term progress in sobriety did not lead the district court to believe, nor does it convince us, that S.G. can maintain sobriety when she is released from her incarceration, such that she can safely parent M.S.G. See *J.E.*, 723 N.W.2d at 802 (Cady, J., concurring specially) (stating children's safety and their need for a permanent home are the defining elements in a child's best interests). The district court also concluded, "[S.G.] has done nothing to take advantage of the proffered services to educate herself about the emotional and attachment needs for children under the age of three."

Moreover, at the time of the termination hearing, S.G. was incarcerated with pending criminal charges in Polk County of possession with intent to deliver methamphetamine and a failure to affix a drug tax stamp. Bond was set at

\$100,000. Bond in Guthrie County was set at \$2500 on other possible charges. We affirm the termination as to S.G.

G.G. asserts that termination is too severe, as M.S.G. is in relative placement with a guardianship in place. Under Iowa Code section 232.116(3)(a), the court need not terminate parental rights if the child is in the legal custody of a relative. But this is a permissive statute, yielding to the best interests of the child as the court's primary focus. *In the Interest of C.K.*, 558 N.W.2d 170, 174 (Iowa 1997). We agree with the district court's observation that guardianship is "an inadequate permanency, given [M.S.G.'s] age and the severe and chronic addictions to methamphetamine that her parents suffer from," and that M.S.G. should not be subjected "to the continuous disruption of yearly attacks on the guardianship for the remainder of [her] minority." We affirm the termination as to G.G.

Notwithstanding the clear and convincing evidence supporting termination, both parents assert termination of parental rights is not in M.S.G.'s best interests. In making that assertion, they fail to understand that the poor choices they have made led to their inability to adequately and safely parent their daughter. G.G. has had his parental rights terminated as to two other children; S.G. has three other children with whom she has little, if any, contact and who have been out of her physical care for several years. M.S.G. deserves better and has stability, protection, and affection in her grandmother's care. As a DHS worker observed, M.S.G. "appears to be very secure in her grandmother's home." We agree with the district court that M.S.G. needs and deserves permanency and stability now,

“not some time down the road.” It is in M.S.G.’s best interests that the termination of parental rights of both parents be affirmed.

AFFIRMED.