

**IN THE COURT OF APPEALS OF IOWA**

No. 0-228 / 10-0276  
Filed April 8, 2010

**IN THE INTEREST OF S.J.S. and J.S.,  
Minor Children,**

**M.L.S., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Dallas County, Virginia Cobb,  
District Associate Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

DuWayne Dalen, Perry, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, Wayne Reisetter, County Attorney, and Sean Wieser,  
Assistant County Attorney, for appellee State.

Kayla Stratton, Des Moines, for minor children.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

**MANSFIELD, J.**

Marci appeals from the juvenile court's order terminating parental rights to her daughter, S.S. (born 2002), and her son, J.S. (born 2006). For the reasons set forth herein, we affirm.

The Iowa Department of Human Services (DHS) initially was involved with this family in 2005, and S.S. was removed from Marci's care and placed with her maternal grandparents. Marci made significant advances, and in 2007 S.S. was returned to her care and services were discontinued. During that time frame Marci gave birth to J.S.

However, in July 2008, there were allegations that Marci was actively using methamphetamine, sleeping all the time between periods of use, and putting the children in bed constantly and locking them in their bedrooms—requiring S.S. to sneak food to her crying younger brother. There were also concerns that S.S. was missing school. (She missed sixty-three days of her kindergarten school year.) When police and DHS arrived at Marci's residence to investigate, Marci eventually admitted to using methamphetamine and marijuana. She consented to the removal of S.S. and J.S. and their placement with their maternal grandparents. S.S. and J.S. have been continuously in the care of their maternal grandparents since July 2008. Services to aid in reunification were offered to Marci.

Marci was arrested in July 2008 and subsequently released. In the fall of 2008 she violated the terms of her probation by failing drug tests and moving out of the county. On December 11, 2008, Marci was sent to prison. She remains incarcerated and has not seen S.S. or J.S. since November 2008.

S.S. and J.S. were adjudicated children in need of assistance (CINA) on October 29, 2008, pursuant to Iowa Code section 232.2(6)(c)(2) (2007). On October 5, 2009, the State petitioned for termination of parental rights to S.S. and J.S.

According to testimony presented at the termination hearing, the behavior of S.S. and J.S. has greatly improved in the care of their maternal grandparents. J.S. was "like a little animal," and had not been talking, but his language has "blossomed." S.S. no longer needs "constant attention." The maternal grandparents indicated to DHS that if parental rights were terminated, they would desire to adopt S.S. and J.S. The maternal grandparents were not in favor of postponing permanency or allowing their daughter Marci further opportunities at reunification. The attorney for the children also supported termination of parental rights.

Marci testified by telephone at the hearing that her earliest possible release date from prison would be May 2010. This date was confirmed by her prison counselor. Marci also testified to various services she has received in prison. If released in May 2010, Marci would anticipate entering a halfway house for approximately three months, during which time she understands the children would not be able to stay with her. Marci in fact testified that she wanted to let the children "remain with my parents while I complete schooling and stay in continued aftercare and therapy and work on reunification with my children and my parents."

On January 27, 2010, the juvenile court entered an order terminating parental rights to S.S. and J.S. pursuant to Iowa Code sections 232.116(1)(d)

and (h) (2009).<sup>1</sup> Marci appeals. For the reasons stated herein, we affirm the termination pursuant to section 232.116(1)(d). See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (holding where the juvenile court terminates on more than one ground, we need only find sufficient grounds to terminate under one of the statutory sections cited by the juvenile court).

Our standard of review is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the juvenile court's factual findings but are not bound by them. *Id.*

Marci's first contention is that termination under section 232.116(1)(d) was improper because the circumstances that led to the CINA adjudication no longer continue to exist. See Iowa Code § 232.116(1)(d)(2). We disagree. Marci remains incarcerated at the present time because she violated her felony probation by using marijuana. Furthermore, although Marci admits making "poor choices" in the past, some of her testimony at the termination hearing on specific issues still suggests a willingness to shift responsibility to others. For example:

Q. And then, Marci, after the children were removed in July 2008, could you explain the circumstances that led to your probation being revoked? A. Yes, sir. I did drop a dirty UA that day for marijuana. All right, I had been using marijuana medicinally. It had started back in February of that year I was using it for pain issues. I was still going around and negotiating with my pain specialist at that time, just the previous summer, getting ineffective medications, so, and it's so hard to get in to pain specialists that can find one. It can take months on end.

And:

Q. Did [S.S.] miss a substantial amount of school her kindergarten year? A. Yes, she did. Actually, it was a very poor

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<sup>1</sup> The parental rights of the father(s) were also terminated, but are not at issue in this appeal.

winter in terms of weather and my pain. She has also always been, if she were home, rather than at school, I would work with her in the home. We would have school in the home and do math and do colors and do reading and things like that.

Q. So if the report I have says that she missed in excess of 63 days her kindergarten year. Was that due to the weather?

A. Not all of them, no. There were several sick days, and then I also followed the school's policy of if they had a fever of any sort, you could not bring them in. You could bring them in with lice, but you could not bring them in with a fever.

We agree with the juvenile court that clear and convincing evidence establishes that the circumstances that led to the children being adjudicated CINA continue to exist.

Next, Marci argues that termination is not in the children's best interests. See Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (discussing the best interests test). We disagree. S.S. was returned to Marci for a year, but the results were very unsatisfactory. The children were neglected while Marci abused illegal substances; the children had serious behavioral and developmental issues; S.S. missed sixty-three school days; and Marci's ongoing inability to grapple with her drug abuse ultimately led to a substantial term of incarceration. The children are thriving in their current environment, and their caretakers wish to adopt them. Given their current ages, they need permanency. Termination is in their best interests. This outcome will best further their long-term nurturing and growth as well as their physical, mental, and emotional conditions and needs. See Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 39.

Finally, Marci argues that parental rights should not be terminated because a relative has custody of the children and/or termination would be detrimental due to the closeness of the parent-child relationship. See Iowa Code

§ 232.116(3)(a) & (c); *P.L.*, 778 N.W.2d at 39 (discussing the section 232.116(3) exceptions to termination). The State responds that error was not preserved as to these factors weighing against termination because Marci failed to raise them below and the juvenile court consequently did not discuss them in its termination order. In other words, the State does not read *In re P.L.* as altering error preservation rules. The State's position is that if section 232.116(3) was not raised below, we should not reach it here. We need not resolve whether that position is correct because even if the section 232.116(3)(a) and (c) exceptions to termination were before us, we would find that the record still supports termination of parental rights. Marci has not seen her children in over a year. They have spent much of their lives with their grandparents and view the grandparents' home as their home. Although S.S. and J.S. are in the custody of Marci's relatives, those relatives want to adopt the children at this time and give them a permanent home. See *P.L.*, 778 N.W.2d at 41 (applying section 232.116(3)(c)). Accordingly, the section 232.116(3)(a) and (c) factors do not warrant a decision not to terminate parental rights.

In summary, we agree with the measured testimony of the DHS witness that "with the circumstances as they stand today, and the need for these children to have a permanency, . . . disrupting them again and giving Marci yet another try at this is not in their best interest."

We affirm the judgment of the juvenile court.

**AFFIRMED.**