

**IN THE COURT OF APPEALS OF IOWA**

No. 0-758 / 10-1434  
Filed November 10, 2010

**IN THE INTEREST OF P.C., J.L., Jr.,  
P.L., and J.L.,  
Minor Children,**

**J.M.L., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

A mother appeals from the district court's order terminating her parental rights to three of her children and placing a fourth child in another planned permanent living arrangement. **AFFIRMED.**

Linda A. Hall of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen A. Hahn and Steven Halbach, Assistant County Attorneys, for appellee State.

Andrew Abbott of Abbott Law Office, P.C., Waterloo, for appellee father.

Melissa Anderson-Seeber of Juvenile Public Defender's Office, Waterloo, attorney and guardian ad litem for minor children.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

This family came to the attention of the Iowa Department of Human Services (DHS) in early January 2009 when James, who was roughly two weeks old, was repeatedly stabbed by his father, leaving a deep wound to his abdomen.<sup>1</sup> The child did not receive medical care until nearly thirty-six hours after he was stabbed even though his mother, Jennifer, found a bloody blanket in the house and was told by James's father that she could not hold James even to breastfeed him.<sup>2</sup> On January 15, 2009, the juvenile court entered an order temporarily removing from Jennifer's care her four children—James, age three weeks, Paige, age two years, Jamie, age four, and Precious, age eight. On January 16, 2009, the State filed a petition asking the court to find the children to be in need of assistance because Jennifer could not safely care for her children and because her home was unsanitary. On February 17, 2009, the juvenile court found all four children to be in need of assistance.

In May of 2009, Jennifer was diagnosed with reactive attachment disorder of infancy or early childhood,<sup>3</sup> attention deficit hyperactivity disorder, mild mental retardation, and personality disorder unspecified. Precious was diagnosed with attention deficit hyperactivity disorder and anxiety disorder unspecified. Jamie

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<sup>1</sup> James's mother had previously been involved with DHS, and there are two founded child protective assessment summaries from 2001 and 2002 naming her as responsible for denial of critical care for failure to provide proper supervision to another of her children.

<sup>2</sup> James's father was incarcerated at the time of trial. Only Jennifer's parental rights are at issue on appeal.

<sup>3</sup> Jennifer had been physically and sexually abused as a child, spent several years in foster care and in a residential treatment facility, and had various youth shelter placements.

had previously been diagnosed with attention deficit hyperactivity disorder. Paige had previously been diagnosed with adjustment disorder unspecified.

Jennifer was allowed supervised visits with all four children two times per week. Providers expressed concern that Jennifer did not have a strong and stable attachment with the children, struggled with basic parenting skills, and could not adequately supervise the children so as to be aware of and prevent safety issues.

As visits progressed, providers noted that Jennifer was improving in some areas. Jennifer's house was no longer unsanitary, and the cleanliness of her house has not since been an issue. She regularly came to visits prepared with age-appropriate toys and was receptive to feedback and advice from providers.

On August 3, 2009, the juvenile court issued a permanency/review order deferring permanency determination for six months in regards to James and continuing custody of the children with DHS. In October Jennifer filed an application for hearing on reasonable efforts. She asserted in her application that DHS prohibited her from visiting her children at school without direct supervision. She requested the juvenile court to make a finding whether DHS's decision to restrict the nature of her visitation with the children at school was consistent with the goal of reunification. She also asserted that DHS had not expanded her visits over the past several months and requested that the court make a finding as to whether this was consistent with reunification. The juvenile court denied Jennifer's application on reasonable efforts, finding Jennifer did not show that DHS failed to exercise reasonable efforts because the restrictions during school hours were minimal. However, the juvenile court stated that

Jennifer should be allowed to interact with her children at school without direct supervision. The court further stated that DHS should work with Jennifer to determine whether increased visits, including semi-supervised or unsupervised visits, were appropriate.

In November of 2009, Jennifer's visits increased from six to nine hours per week. In a report dated December 14, 2009, Sunny Potter, the DHS case manager for Jennifer's case, reported that Jennifer "demonstrated an improved ability to interact with the children" and "has shown some improvement in her parenting of her children." Potter also noted a "marked decrease in the number of safety concerns observed during each scheduled interaction." However, Potter noted that it took eleven months of intensive hands-on instruction and assistance to reach that point and that Jennifer had not shown any meaningful period of time without safety concerns. Potter also reported that Jennifer had not demonstrated that she could parent her four children by herself "without intensive support, guidance and instruction." Potter ultimately concluded, "Jennifer simply has not demonstrated she is capable of keeping her young children safe."

On January 22, 2010, the State filed a petition to terminate Jennifer's parental rights to her three youngest children—Jamie, Paige, and James. In the months that followed, safety issues continued to arise during Jennifer's visits with the children. In a March 15, 2010 report to the court, Potter noted that during recent visits, Jamie had grabbed a knife from the counter, James had crawled by a hot stove, James had almost tipped a chair over on himself, and Jennifer had been unable to properly address James's medical needs.

On April 29 and 30, 2010, the juvenile court held a hearing on the petition for termination of parental rights for the youngest three children and a hearing on permanency for Precious. Kizzy Brown, a care provider that worked extensively with this family, testified that Jennifer struggled to identify safety hazards, interacted very little with James, and was inconsistent in identifying the children's medical needs. When asked whether Jennifer could parent any one or more of her children at the present time, Brown testified, "If I had to pick a child that I believe would be able to be with [Jennifer], I would have to say Precious." Brown clarified that she did not believe Jennifer could parent Precious at the time of the hearing, but she potentially could with more time. Brown also testified that this would probably not be in Precious's best interests.

Potter testified that allowing Jennifer semi-supervised visits with the children would be "a very, very unsafe situation even for short periods of time." Potter concluded that none of Jennifer's children could safely be returned to her care at the present time and that termination was in the best interests of the three youngest children.

Melissa Denning, an education coordinator at Family and Children's Council who had worked with Jennifer on and off since 2000, observed twelve to fifteen of Jennifer's visits with the children. She testified that Jennifer "could probably parent one or more of her children." However, she acknowledged that there had been "major safety concerns" during some visits.

Nichelle Jordan, an employee with Tri-County Head Start who had worked with Jennifer since May 2007, testified that Jennifer was able to parent all four of her children. She testified that the children were bonded to their mother

and that, while Jennifer initially needed to be prompted to interact with James, she was now bonded with and able to parent James.

All providers agreed that the children were bonded with one another. At the time of trial, Precious was in a foster home, Paige and Jamie were in a foster home together, and James was in a separate foster home.

The juvenile court terminated Jennifer's parental rights to Jamie, Paige, and James pursuant to Iowa Code section 232.116(1)(d), (f), and (h) (2009). The court also ordered that custody of Precious be placed with DHS for placement in another planned permanent living arrangement in family foster care.

Jennifer appeals, arguing: (1) termination of her parental rights was not in the best interests of the children; (2) there was insufficient evidence to support a finding that the children, or at least Precious, could not be returned to Jennifer's care within a reasonable period of time; and (3) the State failed to make reasonable efforts toward reunification.

## **II. Standard of Review**

We review a termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650–51 (Iowa Ct. App. 2007). The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). Our primary concern is the best interests of the children. *Id.*

## **III. Best Interests**

Jennifer argues that termination of her parental rights to Jamie, Paige, and James was not in their best interests.

Rather than a court using its own unstructured best-interest test, the court is required to use the best-interest framework established in [Iowa Code] section 232.116(2) when it decides what is in the best interest of the child. The primary considerations are “the child’s safety,” “the best placement for furthering the long-term nurturing and growth of the child,” and “the physical, mental, and emotional condition and needs of the child.”

*In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). After considering the factors listed in Iowa Code section 232.116(2), we conclude that termination of Jennifer’s parental rights to Jamie, Paige, and James was in their best interests.

Although for nearly sixteen months DHS was actively involved in helping Jennifer improve her parenting skills, major safety concerns continued to arise during Jennifer’s visits with the children. Further, Jennifer consistently failed to recognize or properly attend to the children’s medical needs. James’s foster mother, who had a good relationship with Jennifer and was extremely cooperative in allowing Jennifer to visit James, testified, “I don’t know that it would be fair to Jennifer or any of the children to say that she’s able to keep them safe 24/7. . . .” She testified that Jennifer’s nine hours of visits per week seemed to really stretch Jennifer’s ability and that increasing her visits would have been a detriment to her and to the children. She further testified that she hoped to allow the children to maintain their bond as siblings despite their placement in different foster homes.

In addition, though several individuals testified that Jennifer was bonded with her children to some degree, a review of the record shows a disconnect between Jennifer and the children during visits. Brown testified that at visits the children had to repeat themselves consistently to get Jennifer’s attention. Further, Jennifer frequently failed to respond to the children when they talked to her, including when they reported feeling ill and when they reported success stories to

her. Several providers specifically noted that Jennifer failed to interact with James for extended periods of time. The record shows that the children struggled constantly to receive Jennifer's attention.

We conclude that termination of Jennifer's parental rights will provide Jamie, Paige, and James the best placement to further their long-term nurturing and growth and fulfill their physical, mental, and emotional needs. See Iowa Code § 232.116(2). After nearly sixteen months of DHS involvement, the children deserve consistency, safety, and permanency. See *In re J.E.*, 723 N.W.2d 793, 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).

#### **IV. Additional Time and Reasonable Efforts**

Jennifer argues there was insufficient evidence to support a finding that the children could not be returned to her within a reasonable period of time. Jennifer's appeal appears to include an appeal from the permanency order placing Precious in another planned permanent living arrangement. Jennifer also argues the State failed to make reasonable efforts toward reunification. Assuming without deciding that these issues were raised at trial, the juvenile court did not address either issue. When the juvenile court fails to address an issue properly submitted, a party must file a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) to preserve error. *In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa Ct. App. 1997). Because Jennifer did not file a post-trial motion bringing these issues to the court's attention, we conclude she has failed to preserve them for our review.

**AFFIRMED.**