

**IN THE COURT OF APPEALS OF IOWA**

No. 0-834 / 10-1548  
Filed December 8, 2010

**IN THE INTEREST OF A.U.-R.,  
Minor Child,**

**G.R., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,  
District Associate Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Brian D. Johnson of Jacobsen, Johnson & Viner, P.L.C., Cedar Rapids, for  
appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Harold Denton, County Attorney, and Kelly J. Kaufman,  
Assistant County Attorney, for appellee State.

Kara McFadden, Cedar Rapids, for minor child.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

**MANSFIELD, P.J.**

Grace appeals from a juvenile court order terminating her parental rights to her daughter, A.U.-R. (born 2005), based on Iowa Code section 232.116(1)(f) (2009). Grace argues the State failed to prove the statutory grounds for termination by clear and convincing evidence. Grace further maintains that termination was not in the child's best interests due to the closeness of the parent-child relationship. Upon our de novo review, we affirm.

**I. Background Facts and Proceedings**

A.U.-R. first came to the attention of the Iowa Department of Human Services (DHS) due to a founded child abuse assessment in July 2007. At that time, Grace reported a lengthy history of incidents of domestic abuse perpetrated by A.U.-R.'s father. There were also concerns for Grace's mental health and drug use. On July 10, 2007, A.U.-R. was placed into foster care. Grace had hospitalized herself for a mental health evaluation. Grace was diagnosed with depression and anxiety and was recommended medication and counseling.

On August 10, 2007, the parties stipulated that A.U.-R. be adjudicated a child in need of assistance under Iowa Code sections 232.2(6)(b), (c)(1), (c)(2) and (n). Grace began receiving several services, which included supervised visitation, substance abuse assessment, drug testing, individual counseling, domestic violence counseling, and mental health treatment and medication management. A.U.-R.'s father was also offered services, but failed to regularly participate in any meaningful way.

Grace initially struggled with substance abuse. Grace was arrested for possession of marijuana in August 2007 and operating while intoxicated in

November 2007. Grace also tested positive for cocaine in September 2007 and marijuana in January 2008. However, Grace eventually began substance abuse treatment at the Area Substance Abuse Council of Iowa and graduated in March 2008. Grace subsequently provided clean drug screens. There were also concerns that Grace was not consistently attending her mental health counseling and was not taking her medications as prescribed. Despite these concerns, Grace was able to obtain employment, maintain housing, and progress in visitation to semi-supervised.

In January 2009, a trial was held for permanency review and on the State's petition for the termination of parental rights. On March 31, 2009, the juvenile court terminated the parental rights of A.U.-R.'s father under Iowa Code sections 232.116(1)(e) and (h). The juvenile court also found the State had proved by clear and convincing evidence that the child could not be returned to Grace's custody at the present time due to continued mental health concerns. Nonetheless, the court determined that it was in A.U.-R.'s best interests to give Grace additional time to work towards reunification due to her progress and the strong bond between mother and child.

In February 2009, Grace tested positive for marijuana. However, Grace did continue to progress with visitation, and by late April, was receiving unsupervised visits. During this same time, Grace began a new relationship with Chris. From the outset, DHS voiced concerns that Grace was focusing on her relationship with Chris more than on A.U.-R., and that Chris had a history of domestic violence.

Due to Grace's continued progress, a trial home placement began on June 15, 2009. However, on July 15, 2009, police were called to Chris's apartment for an incident of domestic violence between Grace and Chris. According to the police report, during an argument, Grace took Chris's laptop and broke it. The argument then proceeded outside of the apartment. As Grace walked backwards, still arguing with Chris, Grace tripped over a small child's bicycle. Chris then choked Grace while she was on the ground. As a result of the incident, Chris was arrested and charged with domestic abuse assault.

Later, Grace changed her story and began to minimize the incident. Grace told DHS that Chris did not choke her, but only held her down by the shoulders. Grace later claimed nothing had happened and the police had forced her to make a statement against Chris. The charge against Chris was eventually dismissed at Grace's request.

On July 31, 2009, a verbal safety plan was entered into between DHS and Grace concerning contact with Chris. Until Chris completed a batterer's education program, he was not to be around or have interaction with A.U.-R. Grace broke the safety plan that night. On August 5, 2009, a written safety plan was signed by both Grace and Chris. As a part of this plan, Chris was to have no interaction with A.U.-R. without supervision by an approved caretaker.

On September 25, 2009, Grace, Chris, A.U.-R., and Chris's daughter were seen by themselves at a restaurant without prior approval or supervision in violation of the safety plan. The trial home placement was ended three days later, and A.U.-R. was returned to family foster care where she has remained.

In January 2010, Chris had a founded child abuse report for physical abuse of his daughter. At this time, according to their account, Grace and Chris decided to end their relationship and focus more on their children. However, they remained friends. Grace continued to babysit Chris's daughter and often relied upon Chris to provide her with rides.

On March 21, 2010, a second child abuse investigation was initiated on Chris's daughter. The daughter had a 0.5 centimeter burn to her right thigh. Upon examination at the hospital, the daughter stated that Grace had burned her leg with a cigarette. A child abuse assessment was eventually confirmed.

A trial regarding the termination of Grace's parental rights took place on March 29, April 5, and May 5, 2010. At the time of trial, Grace was living with her father in a one-bedroom apartment; her father had his own alcohol abuse issues. After the hearing record had closed, but before the juvenile court had issued its ruling, other matters surfaced.<sup>1</sup> On May 16, 2010, police responded to a report of an assault in progress. According to one version of events given to the police, Grace and Chris were both drinking at a bar when they got into an argument prompting Chris to leave Grace at the bar. Grace was able to get a ride to her home where Chris was waiting and another argument ensued. During this second argument, Chris pushed Grace onto the ground. Chris then entered a car and attempted to drive away. As he began to drive away, Grace jumped on the trunk of the car and hung on as Chris drove the car down the street. A

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<sup>1</sup> On July 12, 2010, the court granted the State's motion to reopen the record and received evidence of the matters discussed herein.

neighbor witnessed Chris hitting Grace several times and then leaving. Grace had visible injuries on her forearm and face.

During this same time period, Grace also admitted to using marijuana and to taking off her test patch. It also appeared Grace was not taking her mental health medications and had acted inappropriately in front of the foster family.

On September 10, 2010, the juvenile court entered an order terminating Grace's parental rights under Iowa Code section 232.116(1)(f). Grace appeals.

## **II. Standard of Review**

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the factual determinations of the juvenile court, but are not bound by them. *Id.*

## **III. Analysis**

In order to terminate parental rights under section 232.116(1)(f), the court must find all of the following have occurred:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parent for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Grace challenges both the third and the fourth elements.

With respect to the third element, Grace notes that there had been a trial home placement for over three months between July and September 2009. While this statement is true as far as it goes, the third element can be met in

either of two ways. See *In re D.M.J.*, 780 N.W.2d 243, 245-46 (Iowa Ct. App. 2010) (finding the comma before “or” denotes a clear legislative intent to have the trial home placement language only apply to the language following the comma). The record shows the first alternative was clearly established, because A.U.-R. has been removed from Grace’s care for over twelve of the last eighteen months. Accordingly, the third element has been met.

Grace also challenges the fourth element. However, upon a review of the record, it is clear A.U.-R. cannot be returned to Grace’s care. Despite services for over three years, Grace continues to struggle with substance abuse, her own mental health, and the inability to break out of the cycle of domestic violence. Even after the trial, Grace relapsed with marijuana and alcohol, was the apparent victim of another domestic incident, and acted inappropriately in front of the foster parents. She also still requires constant prompting to ensure she takes her mental health medications. We must reasonably limit the time for parents to be in a position to assume care of their children because “patience with parents can soon translate into intolerable hardship for the children.” *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997) (quoting *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987)). Once the statutory time limitation lapses, termination proceedings must be viewed with a sense of urgency. *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). Although Grace was able to make progress for periods of time, she has been unable to sustain her changes. The record reveals clear and convincing evidence that the child could not be returned to her care.

Grace also challenges whether termination was in the child’s best interests. In determining a child’s best interests, “the court shall give primary

consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.” *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (quoting Iowa Code § 232.116(2)).

Domestic violence, substance abuse, and mental health concerns prevent Grace from providing A.U.-R. with a safe home and are a clear threat to the physical, mental, and emotional needs of the child. These concerns have still not been adequately addressed. It is simply not in the best interests of a five year old who has been in foster care for most of the last three years to wait longer for her mother to alter her behavior. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). A.U.-R. has progressed in foster care, including improving a speech impediment. Although she is not currently in a pre-adoptive placement, she is adoptable and badly in need of permanency. It is in A.U.-R.'s best interests to terminate Grace's parental rights.

Grace further maintains that there is a very strong bond between Grace and A.U.-R. that should prevent termination. See Iowa Code § 232.116(3)(c); *P.L.*, 778 N.W.2d at 41. We agree there is a strong bond between Grace and A.U.-R., so much so that the juvenile court decided termination of Grace's parental rights was inappropriate in March 2009 and allowed further time for reunification. However, Grace did not use the time well. Over the next year and a half, Grace was unable to make the necessary changes to provide A.U.-R. with safety and stability. Therefore, the same juvenile court judge determined



termination was appropriate in September 2010, and we agree with her ruling. Although there is a parent-child bond, A.U.-R.'s need for permanency now outweighs any harm that may result for the termination of Grace's parental rights.

Accordingly, we affirm the order of the juvenile court terminating Grace's parental rights to A.U.-R.

**AFFIRMED.**