

**IN THE COURT OF APPEALS OF IOWA**

No. 0-927 / 10-1857  
Filed January 20, 2011

**IN THE INTEREST OF P.V.-G. and D.G.,  
Minor Children,**

**J.R.V., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Webster County, James A. McGlynn, Associate Juvenile Judge.

A mother appeals the district court's order terminating her parental rights.

**AFFIRMED.**

Sarah L. Smith of Bennett, Crimmins & Smith, Fort Dodge, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Ricki Osborn, County Attorney, and Laura Barnaby, Assistant County Attorney, for appellee State.

Christopher O'Brien, Fort Dodge, for appellee father.

Marcy Lundberg, Fort Dodge, attorney and guardian ad litem for minor children.

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

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

This family was brought to the attention of the Iowa Department of Human Services (DHS) in May 2009 when Jessica was involved in a domestic dispute in the presence of her children. Following the incident, Jessica and her two children, Phoebe, who was three at the time of trial, and Delilah, who was two at the time of trial, tested positive for amphetamine, methamphetamine, cocaine, and benzoylecgonine. As a result, Jessica voluntarily placed the two children with their maternal grandmother. The grandmother was the guardian of Jessica's oldest child and the children's half-sister, Larissa, who also lived with the grandmother.<sup>1</sup>

On August 18, 2009, by stipulation of the parties, the juvenile court adjudicated the two children to be children in need of assistance (CINA). The parties also stipulated to placing custody of the children with DHS for placement in family foster care or with an appropriate relative. A home study was performed of the grandmother's home, but the study did not recommend her for placement of the children because of the condition of her home, her inability to control Jessica's contact with the children, and her relationship with a man who tested positive for cocaine and methamphetamine.

The children were placed in a foster home briefly before being transferred to another foster home where they have been since September 18, 2009. The

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<sup>1</sup> Jessica's rights regarding Larissa are not at issue. Jessica's parental rights to Phoebe and Delilah are the only rights at issue on appeal.

children are thriving in their foster home and are bonded with their foster parents, who are willing and able to adopt them.

In August and October 2009, Jessica was arrested three times—twice for drug or alcohol-related offenses. During this time, Jessica was extremely uncooperative with DHS caseworkers and denied any alcohol use or use of illegal substances. However, she consistently tested positive for amphetamines and methamphetamine. She also failed to return drug patches applied at the direction of DHS on at least seven occasions from July 2009 to January 2010.

Around February 2010, Jessica began to make progress. She attended substance abuse treatment at Community Family Resources (CFR) from February 3, 2010, through her completion of the program on March 12, 2010. Jessica admitted to using illegal substances in the past. Following the program, she moved into the YWCA. She began cooperating with DHS caseworkers and other providers.

On April 9, 2010, the juvenile court held a permanency hearing. In a permanency order filed April 9, 2010, the court noted Jessica's recent progress and stated, "If the mother continues to do well, it will eventually be possible for her to have these children placed with her on an extended visit." The court therefore gave Jessica an additional six months to gain reunification.

In April 2010, Jessica consented to three drug tests, all of which were negative. However, on May 4, 2010, Jessica failed to submit a patch for testing, and on May 14, 2010, Jessica tested positive for amphetamines and methamphetamine. Jessica consented to a drug test for the YWCA on June 21, 2010, which was positive for amphetamines and methamphetamine. Jessica

was asked to leave the YWCA. On June 25, 2010, DHS contacted Jessica to report for drug testing, but she did not do so. On July 19, 2010, the State filed an amended petition to terminate Jessica's parental rights.

On August 18, 2010, Jessica completed an updated substance abuse evaluation at CFR and consented to a drug screen, which was positive for amphetamine and methamphetamine.<sup>2</sup> She denied using illegal substances since completion of the program at CFR in March 2010. She also failed to follow through with treatment recommendations. On September 17, 2010, Jessica consented to two drug screens. A hair stat test revealed a positive screening for amphetamines and methamphetamine. A urinalysis test was positive for marijuana but negative for amphetamines.<sup>3</sup>

Throughout the course of these proceedings, Jessica was consistently present at twice-weekly visits with her children. Larissa was present at approximately seven of Jessica's visits with the children. The record establishes that the children are bonded with Larissa and view her as a sister.

After a hearing on November 1, 2010, the juvenile court terminated Jessica's parental rights to Phoebe and Delilah pursuant to Iowa Code section 232.116(1)(e), (h), and (l) (2009). The court further denied Jessica's requests for additional time and for placement of the children in the grandmother's home, in light of the home study. Jessica now appeals, arguing there was not clear and

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<sup>2</sup> Jessica asserted at trial that she tested positive because she had been unable to get into a treatment program because she was not using illegal substances, so she purchased "dirty" urine so that she could be admitted into treatment to comply with DHS requirements.

<sup>3</sup> Jessica disputes the accuracy of these results given the discrepancy between the two tests, taken on the same day.

convincing evidence to terminate her parental rights. She also argues termination is not in her children's best interests because of their strong bond with her.

## **II. Statutory Grounds**

On our de novo review, we affirm the district court's termination of Jessica's parental rights pursuant to section 232.116(1)(h). See Iowa R. App. P. 6.907; *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2002) ("We only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm its ruling."). Section 232.116(1)(h) provides the court may terminate a parent's rights when all of the following have occurred: (1) the child is three years of age or younger; (2) the child has been adjudicated CINA; (3) the child has been removed from physical custody of the parent for the last six consecutive months; and (4) there is clear and convincing evidence the child cannot be returned to the custody of the parent at the present time. The first three elements are not disputed.

We find the children cannot be returned to Jessica's custody at the present time. The record establishes that Jessica has a substance abuse problem, which she has repeatedly denied in spite of positive drug screenings. "[W]hen a parent is incapable of changing to allow the child to return home, termination is necessary." *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995). Jessica's own witness testified at the termination hearing that she has not seen Jessica maintain "real long periods" of sobriety. "Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain

sobriety, there is little hope of success in parenting.” *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). We agree with the district court’s conclusion that “these children would be at great risk of further exposure to controlled substances if returned to the mother.”

### **III. Best Interests of the Children**

We further find termination of Jessica’s parental rights is in the children’s best interests as determined under Iowa Code section 232.116(2). The children had been out of Jessica’s home for nearly eighteen months at the time of trial. See Iowa Code § 232.116(2)(b)(1). The foster parents provide a stable and safe environment for the children. *Id.* The children are bonded with and integrated into the home of their foster parents, who wish to adopt them. See Iowa Code § 232.116(2)(b). Jessica asserts that termination of her rights will sever the children’s relationship with Larissa, which will be detrimental to the children. While we recognize that the children are bonded with Larissa, we agree with the district court’s finding that “it is better for the children to obtain permanency through adoption than to languish in foster care simply to maintain occasional contact with the half-sister.” See *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (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). Using the framework provided in section 232.116(2), we conclude a termination of Jessica’s parental rights best provides for the children’s safety, long-term growth, and physical, mental, and emotional needs.

A juvenile court need not terminate if the court finds “termination would be detrimental to the child at the time due to the closeness of the parent-child

relationship.” Iowa Code § 232.116(3)(c). The factors in section 232.116(3)(c) are permissive, and it is in the court’s discretion, based on the unique circumstances of the case and the best interests of the child, to apply such factors. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa Ct. App. 1996). We acknowledge the record establishes Jessica is bonded with her children. However, we do not believe such a finding constitutes clear and convincing evidence that the termination would be detrimental to the children. The children are bonded with their foster parents, who provide a safe and stable home for them. We find no abuse of discretion in the circumstances before us.

**AFFIRMED.**