

IN THE COURT OF APPEALS OF IOWA

No. 1-1011 / 11-1873
Filed January 19, 2012

**IN THE INTEREST OF D.J.,
Minor Child,**

**A.K.J., Mother,
Appellant.**

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

A mother appeals the juvenile court order terminating her parental rights.

AFFIRMED.

Christopher Kragnes Sr. of Kragnes & Associates, P.C., Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Stephanie Brown,
Assistant County Attorney, for appellee.

Brent Pattison of Drake Legal Clinic, Des Moines, attorney and guardian
ad litem for minor child.

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

MULLINS, J.

A mother appeals from a juvenile court order terminating her parental rights to her son, D.J. (born January 2009), under Iowa Code sections 232.116(1)(d), (g), (h), and (l) (2011). We affirm.

The mother has a lengthy substance abuse and criminal history dating back to 2001. Her criminal convictions include child endangerment, four separate thefts, possession of a controlled substance, harassment, harassment of a public officer, interference with official acts, probation violations, escape as both a felon and as a misdemeanor, and voluntary absence. Her parental rights to two other children have already been terminated, and both of these children currently reside with their maternal grandmother.

In October 2010, the Iowa Department of Human Services (DHS) became aware that the mother was using methamphetamine while caring for D.J. The mother tested positive for methamphetamine and a child protective assessment was determined to be founded for failure to provide proper supervision. The mother consented to the child's removal, and D.J. was eventually placed with his maternal grandmother. On December 8, 2010, D.J. was adjudicated a child in need of assistance under Iowa Code sections 232.2(6)(b), (c)(2), and (n).

Shortly after the child's removal, the mother was incarcerated for theft in the second degree, a class "D" felony. See Iowa Code § 714.2(2). The mother remains incarcerated to this date. Her scheduled release date is August 6, 2013, but the mother expects to appear before the parole board before then.

While incarcerated, the mother took parenting classes and participated in substance abuse treatment. The mother sent a few letters to D.J., but chose not to have direct phone contact with him because she would begin arguing with her mother at the beginning of each call; in other words, as a result of her inability to avoid arguing with her mother, she stopped having phone contact with her son. The mother also did not have any visits with D.J. because she failed to get D.J.'s name on her visitation list at her correctional facility in a timely manner. The mother has not seen D.J. since late October 2010.

On October 5, 2011, the State petitioned for the termination of the mother's parental rights to D.J. The petition came to a contested hearing on October 27, 2011. On November 4, 2011, the juvenile court entered an order terminating the mother's parental rights.

The mother appeals. She concedes that the State proved the statutory grounds by clear and convincing evidence, but argues the State failed to prove termination was in the child's best interests and that termination was not appropriate since the child was in the custody of a relative. We review her arguments de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

In determining a child's best interests, we "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." *Id.* at 39 (quoting Iowa Code § 232.116(2)).

The mother is incapable of meeting D.J.'s needs or providing him with a safe and nurturing home due to her incarceration. Iowa Code § 232.116(2)(a).

In addition, given her substantial history of substance abuse and relapses, the mother has not shown the capability to meet D.J.'s needs now or in the foreseeable future. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). D.J. has not seen his mother in almost a year, and has become integrated with his maternal grandmother and his two half-siblings. Iowa Code § 232.116(2)(b). In applying the statutory factors, we find termination to be in the child's best interests.

In addition, the juvenile court did not err in terminating the mother's parental rights despite the child being in the care and custody of a relative. See *id.* § 232.116(3)(a). In addressing this issue, the juvenile court found:

It is [the maternal grandmother] who has provided a safe and stable, drug-free and predictable environment for [D.J.] for the past year. She stands ready, willing, and able to adopt him and provide the opportunity for him to grow up with two siblings and maintain family connections. He has thrived in this relative placement. The relationship between [the maternal grandmother] and [the mother] is very strained. A less drastic remedy of guardianship is not appropriate, given the intense dislike [the mother] currently has for her own mother as well as [D.J.'s] young age. [The maternal grandmother] is going to be able to meet all of [D.J.'s] needs more effectively if [the mother] does not have the opportunity to disrupt that placement. Termination of parental rights and adoption are the best options for assuring that his long-term nurturing and growth needs will be met. There are no compelling reasons to maintain the parent/child relationship even though the permanency plan is for [the maternal grandmother] to adopt [D.J.]

We agree with the juvenile court's findings and adopt them as our own. Placement of legal custody of the child with a relative does not prevent termination in this case. Accordingly, we affirm the ruling of the juvenile court terminating the parental rights of the mother to D.J.

AFFIRMED.