

IN THE COURT OF APPEALS OF IOWA

No. 1-128 / 11-0034
Filed February 23, 2011

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

**J.A.D., Mother,
Appellant.**

Appeal from the Iowa District Court for Marion County, Terry Wilson,
District Associate Judge.

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

AFFIRMED.

Jane A. Orlanes of Orlanes Law Office, P.L.C., Des Moines, for appellant
mother.

Meegan Keller of Keller Law Office, P.C., Altoona, for appellee father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Ed Bull, County Attorney, and Melissa Clarke, Assistant
County Attorney, for appellee State.

Terri A. Menninga, Pella, attorney and guardian ad litem for minor child.

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

MANSFIELD, J.

A mother appeals from the juvenile court's order terminating her parental rights pursuant to Iowa Code sections 232.116(1)(h) and (l) (2009). She challenges the existence of the statutory grounds for termination and asserts the termination of her parental rights was not in the best interests of the child. For the reasons set forth herein, we affirm.

I. Background Facts and Proceedings.

Jayne is the mother of K.D., who was born in March 2008. Jayne has a long history of substance abuse, mainly alcohol but also other substances. She has had numerous criminal convictions related to her alcohol abuse. In addition to K.D., Jayne had three other children that she no longer cares for. She was previously involved with the Iowa Department of Human Services (DHS) with respect to one of them.

K.D. came to the attention of DHS in August 2009. Jayne's boyfriend was intoxicated and ran his car into a ditch, with K.D. in the vehicle. Shortly thereafter, while caring for K.D., Jayne was so intoxicated that she could not even stand up. Jayne was charged with child endangerment for this incident, and K.D. was removed from her care.

When K.D. arrived at the foster family's home, she was dirty, her hair was matted, and her clothes were moldy. K.D. was underweight and developmentally delayed—she could not talk or walk and still drank from a bottle. She had behavioral issues, including the hoarding of food. K.D. was diagnosed with failure to thrive and demonstrated signs on the fetal alcohol spectrum. K.D. had to be closely monitored to make sure she was gaining weight. Additionally,

K.D.'s doctor reported that K.D. had undergone a severe trauma within the prior six months, and that she may have been left alone for long periods of time, causing her to be behind on muscle tone and development.

K.D. began occupational, physical, and speech therapy. It was also discovered that K.D. was born with only one functioning kidney. Subsequently, K.D. was adjudicated to be in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) and (n).

Meanwhile, Jayne, who had been convicted of child endangerment and placed on probation, was admitted to the House of Mercy for inpatient treatment. On March 5, 2010, K.D. was returned to Jayne's care at the House of Mercy. Three months later, while on a home pass with K.D. in her care, Jayne relapsed. Jayne admitted to having used alcohol and tested positive for methamphetamine. Jayne also admitted having left K.D. in the care of her boyfriend, who was an unsuitable caretaker because of his previous incident of drunk driving with K.D. in the vehicle. On June 8, 2010, K.D. was again removed from Jayne's care and returned to the foster family's home.

In October 2010, Jayne was successfully discharged from the House of Mercy. The discharge summary expressed some concerns because Jayne was planning on returning to the same environment in which she had been before entering treatment. Jayne proceeded with outpatient treatment, but soon relapsed. On November 2, 2010, a DHS worker brought K.D. to Jayne's home for a scheduled visit, but Jayne was not there. The DHS worker later learned that Jayne's boyfriend had been arrested the night before for assault and Jayne had tested positive for alcohol, a violation of her terms of probation. On

November 9, 2010, Jayne's probation officer placed her on a SCRAM bracelet monitoring system, a device that detects alcohol use through the skin.

A termination of parental rights hearing was held on December 22, 2010. The evidence demonstrated that K.D. remains developmentally delayed and "fragile" due to her medical conditions. K.D.'s weight gain has to be monitored, and she is still hoarding food at times. K.D. has been hospitalized twice—in October 2009 for a staph infection and in September 2010 to have her tonsils removed. She was recently diagnosed with acid reflux disease and asthma, and her doctor planned on testing her for attachment disorder and cystic fibrosis. She was receiving occupational and speech therapy.

A DHS caseworker testified that in order for K.D. to be returned to Jayne's care, Jayne would need to be sober for an extended period of time, provide a safe and stable home, and demonstrate she could care for K.D.'s special needs. She described Jayne as attentive and loving toward K.D. during visitation, but added that Jayne had not shown she could care for K.D. in an unstructured setting. The caseworker did not believe Jayne could maintain her sobriety unless she was under constant supervision. Furthermore, Jayne had not demonstrated she could care for K.D.'s special needs. Even in the structured setting of the Mercy House, K.D. did not gain weight while in Jayne's care. Ultimately, the caseworker believed that K.D. needed permanency and that K.D. could not be returned to Jayne's care either at present or within the next three to six months.

Jayne's substance abuse counselor testified to having treated Jayne since 2007. He said that Jayne had remained engaged in treatment. He described Jayne as a "binge drinker."

Jayne's probation officer testified that the SCRAM bracelet monitoring system was a temporary fix for a permanent problem. It would not prevent Jayne from drinking but would deter her from doing so.

The foster mother testified regarding K.D.'s development and needs. She also indicated that the family would be willing to adopt "very happily" K.D. if she needed a home.

Jayne testified that her most recent relapse occurred when there had been "some chaos in the house with my fiancé and his daughter." She claimed to have taken "two gulps" out of a beer can, which resulted in her having a .046 blood alcohol level. Later, she acknowledged having had about sixteen ounces of beer. She testified that she has been working on "eliminating stress."

On December 28, 2010, the juvenile court entered an order terminating Jayne's parental rights pursuant to Iowa Code section 232.116(1)(h) and (l).

Jayne appeals. She asserts there was no clear and convincing evidence establishing the grounds for termination and termination of parental rights was not in the best interests of K.D.

II. Standard of Review.

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

III. Analysis.

Jayne challenges both of the statutory grounds for termination found by the juvenile court. When the court terminates parental rights on more than one ground, we need uphold only one of the grounds to affirm. *In re S.R.*, 600

N.W.2d 63, 64 (Iowa Ct. App. 1999). Upon our review, we find clear and convincing evidence supports termination under section 232.116(1)(h). The sole disputed issue under this subsection is whether K.D. can presently be returned to Jayne's care. See Iowa Code § 232.116(1)(h)(4).

Jayne essentially argues that she is sober now and the ankle bracelet will ensure she does not drink alcohol in the future. Yet the record shows that Jayne's alcohol abuse has posed a serious threat to K.D.'s well-being in the past and that Jayne has struggled unsuccessfully to conquer it for a considerable period of time. Jayne has been in treatment since at least 2007. Since K.D. was removed from her care, Jayne has relapsed twice, most recently in November 2010. Although Jayne is currently being monitored for alcohol use, the ankle bracelet will not stop her from drinking, nor has she demonstrated she will refrain from drinking once the ankle bracelet is removed. Although Jayne may be able to abstain from alcohol at times, she has not done so without strict monitoring. As the juvenile court found, Jayne "has been unable to maintain sobriety for an extended period of time outside of a supervised living environment." Jayne blames her relapses on "stress," but stress is a fact of life, especially for those raising small children.

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). 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); see also *In re A.C.*, 415 N.W.2d 609, 614 (Iowa 1987) ("It is unnecessary

to take from the children's future any more than is demanded by statute.”). The record provides clear and convincing evidence that K.D. cannot be returned to Jayne's care.

Jayne also argues that termination was not in K.D.'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)).

Jayne is attentive and loving towards K.S. during visits, and DHS workers described their bond as positive. Nevertheless, Jayne's addiction has prevented her from providing K.D. with a safe and stable home and attending to K.D.'s needs. Since August 2009, K.D. has been waiting for her mother to be able to parent her: At the time of the termination hearing, K.D. had been out of her mother's care thirteen of the last sixteen months. Given Jayne's past performance, there is no indication K.D. can be returned to her care in the near future. See *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (explaining that after completing several inpatient and outpatient programs, the parent reverted to his old ways). “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).

K.D. also has numerous health issues that must be attended to. See *J.E.*, 723 N.W.2d at 799 (explaining the special needs of a child need to be evaluated). K.D. has bonded with her pre-adoptive foster family, where she has

progressed and her medical needs are being addressed. It is in K.D.'s best interests to terminate Jayne's parental rights. Therefore, we affirm.

AFFIRMED.