

**IN THE COURT OF APPEALS OF IOWA**

No. 1-340 / 11-0408  
Filed May 25, 2011

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

**J.R.D., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Linn County, Susan Flaherty,  
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Cynthia S. Finley, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney  
General, Jerry Vander Sanden, County Attorney, and Rebecca Belcher,  
Assistant County Attorney, for appellee State.

Troy Powell of the Powell Law Firm, Cedar Rapids, for father.

Cory Goldensoph, Cedar Rapids, for minor child.

Considered by Vogel, P.J., Vaitheswaran, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**MAHAN, S.J.****I. Background Facts & Proceedings.**

Janelle and Chad are the parents of H.D., who was born in 2005.<sup>1</sup> The State filed a child in need of assistance (CINA) petition in February 2008 due to several incidents of domestic abuse in the home Janelle shared with her paramour. Janelle has a long history of substance abuse. She also has mental health problems.

The juvenile court entered a suspended adjudicatory order in April 2008. The child remained in Janelle's care, and she participated in services. H.D. was removed on November 7, 2008, after Janelle had a drug test that was positive for several different drugs. The child was adjudicated a CINA under Iowa Code sections 232.2(6)(c)(2) (2007) (child likely to suffer harm due to parent's failure to supervise) and (n) (parent's drug abuse results in child not receiving adequate care). Janelle entered a substance abuse program that allowed her to keep H.D. In December 2008, the juvenile court authorized a trial placement with the mother, conditioned upon her continued participation in the program.

The child was removed again in November 2009 when Janelle relapsed by abusing prescription medication, and he was placed in foster care. Janelle was also charged with third-degree burglary and driving without a license. She completed another residential substance abuse treatment program. After this, however, she had a drug test that was positive for marijuana in May 2010.

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<sup>1</sup> The father did not challenge the petition for termination of parental rights and is not part of this appeal.

Furthermore, Janelle subsequently admitted to her probation officer that she used illegal drugs in October and November 2010.

On December 13, 2010, the State filed a petition seeking termination of Janelle's parental rights to H.D. After a hearing, the juvenile court terminated her parental rights under sections 232.116(1)(f) (2009) (child four or older, CINA, removed at least twelve months, and cannot be returned home) and (l) (child CINA, parent has substance abuse problem, and child cannot be returned within a reasonable time). The court found the child could not be returned to Janelle's care at that time, or in the reasonably near future, noting "Janelle has not shown the ability or commitment to fully abstain from the use of drugs." The court determined termination was in the child's best interests because he was "struggling to maintain positive behavior and this struggle is attributed to the lack of security and permanency in his life." Janelle appeals the termination of her parental rights.

## **II. Standard of Review.**

The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Clear and convincing evidence is needed to establish the grounds for termination. *In re T.P.*, 757 N.W.2d 267, 269 (Iowa Ct. App. 2008). Our primary concern in termination cases is the best interests of the child. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

## **III. Sufficiency of the Evidence.**

Janelle contends the State did not prove by clear and convincing evidence that the child could not be returned to her care and cites section 232.116(1)(f). At first glance, it would appear that this appeal only challenges the termination

under this section. However, Janelle cites the language found under section 232.116(1)(l). Therefore, we will consider her appeal as challenging the termination under both sections. Following a careful review, we conclude the State has proved by clear and convincing evidence all of the elements stated under both sections 232.116(1)(f) and (l). We determine the termination may be affirmed under both sections.

#### **IV. Six Additional Months.**

Janelle contends the juvenile court should have given her six more months to address her problems. She testified she was planning to begin a dual diagnosis program and needed more time to reunite with the child. This case has been going on for quite some time. It would not be in the child's best interests to give Janelle more time. As the juvenile court noted, the child had some behavioral difficulties, and the court found these were "attributed to the lack of security and permanency in his life." The child needs permanency, safety, and security now.

#### **V. Best Interests.**

Finally, Janelle asserts termination of her parental rights is not in the child's best interests, based on the closeness of the parent-child bond, and citing section 232.116(3)(c). The juvenile court found, "none of the exceptions to termination as set out in section 232.116(3) apply to these proceedings." Our review of this issue is *de novo*. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We agree with the juvenile court's conclusion that termination was in the child's best interests. As noted above, the child needs permanency. Janelle is still struggling

to address her own problems and is not in a position to meet her child's many needs at this time or in the near future.

We affirm the decision of the juvenile court terminating Janelle's parental rights.

**AFFIRMED.**