

**IN THE COURT OF APPEALS OF IOWA**

No. 1-687 / 11-1122  
Filed October 5, 2011

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

**E.W., Mother**  
Appellant.

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

A mother appeals the termination of her parental rights to her child.

**AFFIRMED.**

Caitlin L. Slessor of Nazette, Marner, Nathanson & Shea, L.L.P., Cedar  
Rapids, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Jerry Vander Sanden, County Attorney, and Rebecca Belcher,  
Assistant County Attorney, for appellee.

Robin Licht, Cedar Rapids, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

**TABOR, J.**

A mother who has struggled with addiction asks us to reverse the termination of her parental rights to her eight-year-old daughter, J.D. She contends the record lacks clear and convincing evidence that her substance abuse prognosis would result in harm to J.D. if the girl were returned home. She also argues that termination was not in J.D.'s best interests given the strong bond between mother and daughter.

The record shows the mother, when clean and sober, is an excellent parent. But the record also reveals a worrisome pattern of drug and alcohol abuse that has hindered the mother's efforts to regain custody of J.D. Because the mother consistently minimized her difficulties with addiction, the case workers had little confidence in her ability to maintain long-term sobriety. The State offered strong evidence that the mother's failure to address her substance abuse problem stands in the way of J.D.'s safe return to her care. Severance of parental ties and likely adoption by her maternal aunt is in the child's long-term best interests. Accordingly, we affirm the juvenile court.<sup>1</sup>

***I. Background Facts and Proceedings***

J.D. was born in March 2003. When she was five years old, the police executed a search warrant at the home of her mother, Ebony. The police found evidence of drug packaging, marijuana use, and unauthorized prescription medications. Police reports indicated Ebony left illegal drugs and paraphernalia within reach of the child. Ebony admitted using crack cocaine and marijuana, but

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<sup>1</sup> The juvenile court also terminated the parental rights of J.D.'s father. He did not contest the termination in juvenile court and does not appeal.

denied having a substance abuse problem. As a result of this incident, the Department of Human Services (DHS) completed a founded child abuse assessment for the mother's denial of critical care. The DHS placed J.D. with her grandmother in August 2008. The juvenile court adjudicated J.D. as a child in need of assistance (CINA) on December 9, 2008, and transferred her care to her maternal aunt.

The mother's substance abuse evaluation completed in August 2008 recommended intensive outpatient treatment, participation in Alcoholics Anonymous/Narcotics Anonymous and "total abstinence." The mother tested positive for marijuana on August 28, 2008; January 7, 2009; and April 3, 2009. She also tested positive for cocaine on November 19, 2008.

By the summer of 2009, the DHS contemplated allowing Ebony a trial home placement with J.D. But the mother's drug screens were again positive for THC, the active ingredient in marijuana, on June 29, 2009; July 15, 2009; September 2, 2009; and September 18, 2009. After several clean drug screens later that fall, the DHS approved a trial home placement beginning in January 2010. Ebony's success was short-lived. She tested positive for marijuana again on March 17, 2010.

That spring, the mother's addiction turned to alcohol. In April 2010, the police twice arrested Ebony for public intoxication. She tested positive for alcohol consumption on July 20, 2010; September 24, 2010; and October 8, 2010. At a juvenile court hearing on October 25, 2010, Ebony smelled of alcohol, admitted to drinking excessively the night before, and provided a preliminary

breath test showing an alcohol concentration of .094. Ebony testified that she “had some drinks” because she was excited about the prospect of having J.D. for a trial home placement and admitted that in hindsight doing so showed poor judgment. The DHS scrubbed its plan for a trial home placement, returning Ebony’s visits with J.D. to semi-supervised. The mother also had positive screens for alcohol on November 22, 2010, and January 6, 2011.

The State filed a petition seeking to terminate Ebony’s parental rights on December 13, 2010. In January 2011, the DHS asked that the termination trial set for March 2011 be suspended so that Ebony could arrange for substance abuse treatment and have an additional chance to regain custody of J.D. In February 2011, police again arrested Ebony for public intoxication. At a hearing in March 2011, Ebony acknowledged needing help with her alcohol abuse. She entered a residential treatment facility on March 22, 2011, but left nine days later against the advice of the substance abuse staff. A case worker believed that Ebony was able to manipulate a mental health nurse practitioner into recommending she be discharged from the in-patient program.

The juvenile court heard evidence regarding the termination petition on May 5 and 6, 2011. On July 14, 2011, the court entered an order terminating parental rights. Ebony appeals.

## ***II. Scope and Standard of Review***

We review the record in termination-of-parental-rights cases de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (“Although the court has to use its best judgment in applying the factors contained in the statute, this does not mean we

review its decision for an abuse of discretion.”). While our de novo review allows us to substitute our own fact finding for that of the juvenile court, we do consider the juvenile court’s findings, especially in assessing witness credibility. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered “clear and convincing” when there are no “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

### **III. Analysis**

#### **A. Statutory Grounds for Termination**

Ebony asserts the State failed to meet its burden to prove that her rights could be terminated under Iowa Code sections 232.116(1)(f)<sup>2</sup> and (j)<sup>3</sup> (2009).

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<sup>2</sup> [T]he court may order termination . . . [if] the court finds that 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 parents 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.

Iowa Code § 232.116(1)(f).

<sup>3</sup> [T]he court may order termination . . . [if] the court finds that all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child’s parents for placement pursuant to section 232.102.
- (2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.
- (3) There is clear and convincing evidence that the parent’s prognosis indicates that the child will not be able to be returned to the custody of the

She challenges the last element of each subsection, essentially arguing that her substance abuse problem does not prevent J.D. from returning home either at the present time or within a reasonable period of time. Ebony maintains that she does not present a danger to her child. She points out that she has been sober for two months.

Given the nearly three-year span of this CINA case, Ebony's two months of sobriety do not strike us as a compelling basis to reverse the juvenile court's termination order. For the vast majority of time that J.D. has been removed from her mother's care, Ebony has failed to take personal responsibility for her drug use and alcohol consumption and has failed to recognize the risk it posed to her daughter. Even in this appeal, she casts blame on others for her addictions:

The mother's ongoing substance abuse (first marijuana use, and then alcohol use) was not given proper attention by her case workers. First, she was told she could still drink alcohol. Later, the rules changed on her and she was told she could not drink alcohol. The mother was understandably confused about what was expected of her.

We reject the mother's claim that she was "understandably confused" about the expectations for her. As early as August 2008, the mother's substance abuse evaluation recommended total abstinence. At a minimum, during the summer of 2010, case workers emphasized that Ebony needed to refrain from using alcohol, in part, because it was identified as a trigger for the use of other substances. But even after that point, Ebony tested positive for alcohol consumption on several occasions—most notably deciding to celebrate J.D.'s

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parent within a reasonable period of time considering the child's age and need for a permanent home.  
Iowa Code § 232.116(1)(f).

impending trial home placement by becoming very intoxicated the night before a hearing scheduled for the afternoon of October 25, 2010. We are also troubled by Ebony's decision to leave the residential treatment program she started in March 2011. Ebony testified that she could stay "clean by [her]self." But the juvenile court believed that Ebony lacked "insight and judgment into how her alcohol and drug use has impacted not only herself but also [J.D.] and her family." We find that the record supports the juvenile court's conclusion.

Given Ebony's poor judgment during the pendency of the CINA case and belated commitment to sobriety on the eve of termination, we conclude—as did the juvenile court—that J.D. cannot be safely returned to the custody of her mother at the present time or in the foreseeable future.

***B. Best Interests of the Child***

In her next assignment of error, Ebony argues the juvenile court erred in finding that termination was in J.D.'s best interests. The best-interest test is limited to the considerations contained in section 232.116(2). *P.L.*, 778 N.W.2d at 39. That section provides:

In considering whether to terminate the rights of a parent under this section, 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.

Iowa Code § 232.116(2).

The mother's petition on appeal emphasizes that J.D. has a strong attachment to Ebony and would like to return to her care. Indeed, the record reflects that J.D. enjoys spending time with her mother, is "very bonded" with her

and “really wants to come home.” But at age eight, J.D. also has said “she wants her mom to quit drinking.” The case worker expressed concern that J.D. had assumed too much of a care-taking role toward her mother, prompting the juvenile court to consider J.D. to be “somewhat parentified.” A child’s long-term nurturing and growth is not furthered when the child becomes responsible for nurturing the parent. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) (“The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.”).

J.D. is safe and comfortable in the home of her aunt. She has lived there for about half of her life and is well-integrated into that family. While it is not the same as going home, permanent placement with her aunt will allow continued contact with Ebony. The evidence supports our determination that J.D.’s physical, mental, and emotional needs are best served by terminating Ebony’s parental rights and clearing the way for J.D. to be adopted by her aunt.

The mother does not make an additional argument concerning the court’s discretion to forego termination based on factors listed in section 232.116(3). Accordingly, we affirm the termination order.

**AFFIRMED.**