

IN THE COURT OF APPEALS OF IOWA

No. 2-247 / 12-0270
Filed April 25, 2012

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

**R.S., Mother,
Appellant.**

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

A mother appeals from the order terminating her parental rights to her son.

AFFIRMED.

Douglas Q. Davis II of the Office of the State Public Defender, Cedar
Rapids, for appellant mother.

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

Julie Trachta, Cedar Rapids, for minor child.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

DANILSON, J.

Rachel appeals the termination of her parental rights to her son, J.S.¹ We conclude clear and convincing evidence supports the statutory ground for termination; termination is in the child's best interests; and no factors serve to preclude termination. To her credit, the mother has made efforts to manage J.S.'s medical needs, but those efforts have fallen short and placed J.S.'s health at significant risk. We therefore affirm.

I. Background Facts and Proceedings.

Rachel is the mother of three children: twin girls, age eight, and J.S., born in July 2004. Seven child abuse assessments have been conducted concerning Rachel, which have been founded: October 2010—the assessment was for denial of critical care, failure to provide adequate health care; January 2010—failure to provide proper supervision; December 2009—failure to provide proper supervision; March 2008—physical abuse; November 2005—denial of critical care, failure to provide proper supervision; September 2005—denial of critical care, failure to provide proper supervision; and August 2004—presence of illegal drugs.

J.S. has a seizure disorder, which requires strict adherence to a ketogenic diet and daily anti-seizure medication, as well as “rescue” medication (administered when a seizure begins to reduce the length and severity of the seizure). As summarized by the district court:

If left untreated, [J.S.] would continue to have frequent seizures, with ongoing risk of permanent harm to his brain function and also

¹ J.S.'s father's rights were also terminated. He did not appear at the termination proceedings and does not appeal.

an ongoing potential for physical injury during the seizure. The seizures, if uncontrolled, affect [J.S.'s] ability to safely function in his environment and could result in permanent impairments.

J.S. was removed from his mother's care by court order on January 7, 2010. Rachel stipulated he was a child in need of assistance (CINA) on January 13. J.S. was first placed in the care of Rachel's mother, but was later moved to foster care. Services have been offered to Rachel throughout the course of these proceedings and she has cooperated with those services. Twice since January 2010 Rachel progressed to semi-supervised visits, and then unsupervised overnight visits, but visits returned to being fully supervised each time because J.S.'s seizures "increased drastically." When visits were fully supervised, the number of J.S.'s seizures decreased noticeably.

At the time of the October 2011 termination hearing, J.S.'s sisters were living at home with Rachel and J.S. was on his fifth foster home placement. J.S. had "become increasingly defiant and aggressive" during visits with Rachel, according to Jessica Patterson, who supervised one of three visits each week. Patterson, as well as family support worker Ashley Langerquist and Iowa Department of Human Services social worker Steve Henderson, expressed concerns with Rachel's overly "patient" parenting style and lack of follow-through with J.S.; the conflict surrounding eating that occurred during visits with J.S.; and Rachel's lack of insight regarding these matters. Henderson testified J.S. does much better in a structured environment. He stated Rachel had been provided numerous services, as well as additional time to reunite with J.S. All care providers testified that J.S. needs a stable, safe home, and all acknowledged

Rachel loves J.S. and has attempted to follow through with services. Yet none could recommend returning J.S. to Rachel's care.

Rachel testified she was aware that when J.S. and she were living with her mother, her mother did not like J.S.'s special diet and would provide foods J.S. was not to have. Rachel was dismissive of her mother having ignored his special diet as "he was having seizure activity for no reason." Rachel also testified she currently had no emergency medication for J.S. Rachel grudgingly accepted that J.S.'s special diet played some role in decreasing his seizures.²

As for her own mental health issues, Rachel testified she was prescribed Clonazepam for anxiety and Celexa for depression; her prescription for Celexa was filled, but the Clonazepam was not. She reported she did not have another appointment set up for her medications as she was "changing doctors." When asked why she was changing doctors, Rachel responded: "I didn't call in on two occasions for [former psychiatrist] in six months and—I don't know—violated a policy or something. So he said here's a list of doctors, find yourself a new doctor."

The juvenile court found:

Although Rachel has progressed to the point of having supervision of her visitation with [J.S.] reduced, she was not able to maintain that progress due to issues regarding her supervision of her children and her inability to meet [J.S.]'s medical needs. Rachel has had difficulty maintaining safe, stable housing. She is currently behind on her rent and may not be able to maintain her current housing. She continues to struggle with keeping her home clean and organized. She is not consistently attending to her own mental health needs. Rachel has not progressed to the point

² Rachel testified, "The diet, for lack of a better word, sucks. Nobody wants to be on the diet, but, I mean, he's—he's way down—he's better on seizures than he has been since years ago, so, I mean, something about it is working."

where she could adequately parent [J.S.], provide for his medical care, assure that he is safely supervised or that his emotional, developmental and physical needs are met.

The court found Rachel had been given “more than ample time” to address her issues and demonstrate she could take care of J.S., but had not done so.

The court also found J.S. was in need of permanency; was an adoptable child; and more than one family had expressed an interest in adopting him. The court terminated Rachel’s parental rights pursuant to Iowa Code section 232.116(1)(f) (2011) (child over four years of age, adjudicated CINA, removed from parent’s custody for at least twelve of last eighteen months, and cannot presently be returned to parent).

On appeal, Rachel contends there is not clear and convincing evidence J.S. cannot be returned to her care. She argues termination is not in J.S.’s best interests and the closeness of the parent-child bond precludes termination. Rachel also contends the juvenile court erred in relying upon the State’s witnesses as to J.S.’s medical needs because they were not medical experts.

II. Scope and Standard of Review.

Our review is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the juvenile court’s findings of fact even though we are not bound by them. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

III. Discussion.

A. *Grounds for termination exist.* We will uphold an order terminating parental rights where there is clear and convincing evidence the grounds for termination under section 232.116 have been proved. *D.W.*, 791 N.W.2d at 706.

Evidence is clear and convincing where there are no serious doubts as to the correctness or conclusions of law drawn from the evidence. *Id.*

The court may terminate parental rights pursuant to Iowa Code section 232.116(1)(f) where a child over four years of age, previously adjudicated a CINA, has been removed from parent's custody for at least twelve of last eighteen months, and cannot presently be returned to parent. Rachel contests only the final factor—that J.S. cannot presently be returned to her care.

Rachel testified she believed she could take care of J.S. However, she acknowledged leaving her twins unsupervised on at least three occasions, despite DHS involvement for her lack of supervision. The child's doctor, Dr. Joshi, had been working with J.S. and Rachel for many years. Dr. Joshi met with social worker Henderson in July 2011 and stated she does not believe Rachel is able to meet J.S.'s needs long term. Prior attempts at unsupervised visits led to dramatic increases in J.S.'s seizures. "The future can be gleaned from evidence of the parent['s] past performance and motivations." *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). Upon our de novo review, we have serious doubts that J.S. could be safely returned to Rachel's care.

B. Expert testimony. Rachel contends the court erred in terminating her parental rights without expert testimony that she was unable to meet the needs of J.S. The State correctly observes this issue was not raised in the juvenile court and, therefore, is not properly preserved for review. See *In re C.M.*, 526 N.W.2d 562, 566 (Iowa Ct. App. 1994) ("As a general rule, an issue not presented in the juvenile court may not be raised for the first time on appeal.").

C. Termination is in child's best interests. In considering whether to terminate, "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); *P.L.*, 778 N.W.2d at 39.

J.S.'s seizures, if uncontrolled, affect his ability to safely function in his environment and could result in permanent impairments. Rachel has not been able to provide the structure required to adequately control J.S.'s condition. Rachel acknowledged that during the periods J.S. was with her overnight the situation was stressful and his seizures noticeably increased. We agree with the district court that J.S.'s need for permanency, security, safety, as well as physical and intellectual health would be best served by termination of parental rights.

D. No factors preclude termination. Rachel also contends the court need not terminate due to the closeness of the parent-child relationship. See Iowa Code §232.116(3)(c). In this regard, we adopt the juvenile court's findings:

[J.S.] has a bond with his mother and sisters, although that bond is not a typical parent/child or sibling bond. [J.S.] is often resistant to attending visits. He does not consistently engage in interactions with either he mother or sisters during visits. His behavior is more difficult during visits. Professionals working with [J.S.] believe that the visitation is very stressful for [J.S.]

Rachel testified that one daughter expresses strong negative feelings about J.S. We do not doubt Rachel loves her son. However, we conclude the parent-child bond does not preclude termination here.

Because grounds for termination exist, termination is in the child's best interests, and no factors weigh against termination, we affirm the termination of the mother's parental rights.

AFFIRMED.