

**IN THE COURT OF APPEALS OF IOWA**

No. 2-407 / 12-0381  
Filed May 23, 2012

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

**N.P., 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.**

Natalie Cronk, Iowa City, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, Jerry Vander Sanden, County Attorney, and William Croghan,  
Assistant County Attorney, for appellee State.

Julie Trachta of Linn County Advocate, Inc., Cedar Rapids, for minor child.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

**DANILSON, J.**

A mother appeals the termination of her parental rights to her son, C.J., born November 2010. The mother has untreated mental health issues and a long history of substance abuse, and C.J. has twice been exposed to and tested positive for illegal substances while in his mother's care. Because grounds for termination exist and termination is in the child's best interest, we affirm.

**I. Background Facts and Proceedings.**

The mother has previously had her parental rights to other children terminated as a result of her unresolved mental health and substance abuse issues. The mother has been diagnosed with depression and anxiety disorders. She has a long history of substance abuse including alcohol, crack, and cannabis. She states her drug of choice is alcohol. In a January 2010 termination of parental rights order, the court stated the mother's "longest period of sobriety is six months."

Because of her prior involvement with the department of human services (DHS), DHS visited with the mother in the hospital upon the birth of C.J. The child did not test positive for illegal substances at birth. Mother and child were released from the hospital with a safety plan in place that required the mother to follow through with protective services recommended by DHS, including Family Safety, Risk and Permanency Services (FSRP), and substance abuse evaluation

and treatment. The mother's paramour, Curtis—who was then believed to be C.J.'s biological father<sup>1</sup>—repeatedly tested positive for marijuana.

Upon the mother's stipulation, C.J. was adjudicated a child in need of assistance (CINA) on February 25, 2011. A March 8, 2011 dispositional order continued C.J. in his mother's custody with continued supervision and services.

Curtis's March 14 urinalysis tested positive for cocaine. On April 15, 2011, a hair sample from C.J. tested positive for cocaine and THC, the active ingredient of marijuana. A child abuse assessment followed and found the mother denied the child critical care: failure to provide proper supervision. C.J. was removed from his mother's custody on April 26, 2011, and placed in foster family care. Curtis was asked to leave the mother's home.

The mother then worked with DHS to develop a list of people "who have been approved to be in her home and/or to have contact with [C.J.]" Curtis was among those identified as not to be in her home or to have contact with C.J. A trial home placement was granted in May 2011 with specific conditions, including that the mother not allow Curtis to be in the home and that the mother not consume alcohol or use any illegal substances.

Unfortunately, after C.J. was placed in the mother's home on a trial basis, the mother tested positive for alcohol on May 12 and provided dilute urine samples for testing on May 26 and June 7. On July 3, an FSRP provider dropped in to visit the mother's apartment and met Curtis leaving. He appeared to be under the influence of some substance, as did the mother. On July 5, the

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<sup>1</sup> After the filing of the termination of parental rights petition, paternity testing determined Curtis was not C.J.'s biological father. Curtis was dismissed as a party on January 4, 2012. At the time of the termination hearing, C.J.'s father was not known.

mother was informed that C.J. would be removed. The mother absconded with the child.

On August 11, 2011, the mother returned C.J. to DHS. C.J. was tested for illegal substances at this time and again tested positive for the presence of cocaine. A child abuse investigation resulted in a finding of illegal drugs in a child's body with the mother listed as the responsible person. The mother denied knowing how C.J. came to test positive for illegal substances. C.J. was again placed in foster care. Following C.J.'s return to foster care, DHS learned that Curtis had an active case of tuberculosis and had been living with the mother and child. This discovery led to all family, care givers, and services providers being required to undergo testing and undergo treatment, if required.

A November 2011 report indicated the mother was not consistently attending visitation; was not attending her substance abuse treatment; was not participating in any recommended mental health treatment; and only sporadically complied with drug testing. The mother was living in an apartment with Curtis, who acknowledged he continued to use illegal substances. The State filed a petition to terminate the mother's parental rights.

A hearing was held on January 27, 2012, after which the court terminated the mother's parental rights pursuant to Iowa Code section 232.116(1)(d), (g), (h), and (l) (2011).<sup>2</sup> The mother now appeals, contending there is not clear and

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<sup>2</sup> In relevant part, the section provides that "[e]xcept as provided in subsection 3," the court "may order the termination" of parental rights if:

h. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

convincing evidence of any of the statutory grounds found by the court, and that termination is not in the child's best interests.

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

Our review of proceedings to terminate parental rights is de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). 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). This is especially so "when considering the credibility of witnesses whom the trial court heard and observed firsthand." *In re D.P.*, 431 N.W.2d 777, 780 (Iowa 1988).

## **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.* "When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm." *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

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(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Iowa Code § 232.116(1)(h).

Subsection 3 states the court "need not terminate" if the court finds one of the enumerated factors, none of which the mother asserts.

Our primary concern is always the best interests of the child. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001).

The court may terminate parental rights pursuant to Iowa Code section 232.116(1)(h) where a child under three years of age, previously adjudicated a CINA, has been removed from a parent's custody for at least six of the last twelve months, and cannot presently be returned to the parent. The mother concedes evidence supports all but one factor. She disagrees with the court's finding that the child cannot be returned to her care presently. The mother argues she has not used illegal substances for over a year. While she admits to drinking alcohol, she argues there is no evidence her alcohol consumption affects her care of her child.

The district court found the mother's "testimony regarding her sobriety and her ability to provide her child with a safe, stable home was not credible." We agree. At trial, the mother acknowledged that one issue in this juvenile proceeding (and previous cases) was who her child was "exposed to." She acknowledged she needs help with anxiety, for which she was prescribed medication, but stated she could not afford. She testified she knew she had a problem with alcohol—that she was an alcoholic. When asked if she thought treatment was important, she responded:

I don't necessarily think that treatment is something that—I have been through a lot of treatments. It has never—I have always drank. When I was taking my medicine regularly for my anxiety and depression, it helped a lot to cope with things and I wasn't drinking on a regular basis.

She then acknowledged that she had not been on her medication for "quite a while." She explained "I can go days without drinking if I want to. But I'm not

going to say that I have been totally sober. It is not possible for me to go without drinking. After days it—it becomes difficult and I drink.”

We acknowledge that “absent the alcohol and the poor choices of her peer group,” and untreated mental health issues, the mother loves and is capable of caring for her child. However, the mother is not attending to her mental health needs, and minimizes her alcoholism and its affect on her ability to care for her child.

Most significantly, C.J. has been exposed to and twice tested positive for illegal substances while in the mother’s care. This belies the mother’s claim that the child has suffered no harm while in her care, even if her alcohol consumption was not a cause of the exposure, or the exposure was not from the mother’s use of illegal substances. And because the past is an indicator of future performance, see *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006), we have no serious doubt that this child would risk inadequate supervision if returned to the mother’s care.

We adopt the trial court’s findings that C.J. “deserves permanency and a safe, secure place to grow and develop. His mother is not able to provide this for him, either now or in the foreseeable future. He should not be required to wait any longer for her to address these issues.”

Because C.J.’s safety and need for a permanent home are our primary concerns, see Iowa Code § 232.116(2), we find termination of the mother’s parental rights is in C.J.’s best interests and no factors militate against termination. We therefore affirm.

**AFFIRMED.**