

**IN THE COURT OF APPEALS OF IOWA**

No. 2-415 / 12-0656  
Filed May 23, 2012

**IN THE INTEREST OF J.P. and B.S.,  
Minor Children,**

**S.P., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Patricia A. Rolfstad, Davenport, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Alan Ostergren, County Attorney, and Kevin McKeever, Assistant County Attorney, for appellee State.

Jennifer M.T. Olsen of Olsen Law Office, Davenport, for appellee father.

Timothy K. Wink of Schweitzer & Wink Law Firm, Columbus Junction, attorney and guardian ad litem for minor children.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

**VOGEL, P.J.**

A mother appeals the termination of her parental rights to two of her four children.<sup>1</sup> Because there was clear and convincing evidence that the children could not be returned to the mother at the present time and termination was in the best interests of the children, we affirm.

**I. Background Facts and Proceedings**

This family came to the attention of the Iowa Department of Human Services (DHS) in May 2010, based on allegations of denial of critical care.<sup>2</sup> On June 18, 2010, due to supervision and safety concerns, J.P., B.S., and a third sibling were removed from Sonya's care and voluntarily placed in family foster care with Sonya's sister. The children were adjudicated in need of assistance on August 9, 2010. On September 27, 2010, the children were placed with their maternal grandfather, as their aunt could no longer care for them.

Initial case progress reports noted that Sonya was "minimally cooperative," "open about her disinterest in parenting topics," and "[did] a majority of her parenting from the couch." Sonya also struggled with mental health issues, which were unaddressed until October 2010, when Sonya finally completed a psychological evaluation. During the pendency of these proceedings, Sonya's visitation with the children varied from supervised, to partially supervised, and back to supervised, depending on the circumstances.

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<sup>1</sup> A third child, D.P., was included in the county attorney's petition to terminate Sonya's parental rights as to J.P.; the district court only terminated as to J.P. and B.S. A fourth child was born in January 2012; a CASA report submitted in this case noted that a child in need of assistance petition would be filed as to the fourth child.

<sup>2</sup> The family previously came to the attention of DHS in November 2009, after B.S. was physically abused by Sonya's former paramour, DeWayne. Services were initiated to ensure the safety of B.S. and her siblings.

By May 2011, however, Sonya was making progress. In a report to the court dated May 5, 2011, DHS stated that Sonya had been able to maintain stable housing, improved in her ability to keep a clean home, attained part-time employment, completed her mental health evaluation, followed through with taking her medication, and had been consistent with visitation with the children. The report did note, however, that Sonya was not always consistent with attending her mental health therapy sessions. Based on this information, DHS recommended that the children be returned to Sonya's custody by July 1, 2011, "unless there are any safety concerns that would prevent that return." In its May 13, 2011 permanency order, the district court "accept[ed] the Department's recommendation that the children can be transitioned to their mother's care on or before July 1, 2011."

In June 2011, Sonya's then-paramour, Tran, moved out of the home and Sonya's participation in the case plan and her involvement with the children quickly deteriorated. Sonya also reported that she was pregnant with her fourth child. On June 27, 2011, DHS filed a motion to modify, stating it no longer felt the children could safely be returned to Sonya's custody by July 1, 2011. An uncontested modification hearing was held and on July 18, 2011, the district court granted DHS's motion for modification, stating the permanency goal remained to return the children to the mother, but that returning the children to Sonya's custody by a particular date was no longer required. In the months that followed, Sonya was less able to care for the children, refused to participate in parenting sessions, and cancelled many visits; her stability also became an

issue. DHS reports described Sonya's demeanor, words, and tone in parenting the children as intimidating and emotionally hurtful.

In its November 3, 2011 review order, the district court noted,

At times the mother has made appropriate progress, however, it has never been sustained. Over the last several months the mother's progress toward alleviating the adjudicatory harm has significantly declined. She has refused to participate in parenting sessions, cancelled most of her visits in September and five of her visits in October.

The children need and deserve stability and permanency, therefore, it is appropriate to change the permanency goal. The court granted an additional six months to work toward reunification previously and the mother has not put herself in a position to receive custody of the children.

In December 2011, Sonya's visitation with the children was decreased from two hours to one hour, twice per week, which improved the quality of the visits. In January 2012, Sonya gave birth to a fourth child, fathered by her paramour, Tran. Following the fourth child's birth, Tran moved back into Sonya's home, as did Sonya's mother. Despite the assistance provided by Tran and Sonya's mother, Sonya's relationships with both were described as unstable, and therefore not a long-term solution for providing a stable environment for the children.

On March 20, 2012, Sonya's parental rights were terminated as to J.P. and B.S. under Iowa Code section 232.116(1)(f) (child four or older, adjudicated CINA, removed from physical custody of parent at least twelve of last eighteen months or last twelve consecutive months, child cannot be returned to custody of parent) (2011). Sonya appeals.<sup>3</sup>

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<sup>3</sup> Hearings regarding the termination of parental rights for the fathers of J.P. and B.S. were both rescheduled and were not held in conjunction with the mother's hearing.

## II. 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). Our primary concern is the best interests of the child. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

## III. Analysis

Sonya claims the district court erred in terminating her parental rights because the State did not prove the children cannot be returned to her custody at the present time, or in the near future. She also contends termination was not in the children's best interests.

Only the fourth element of Iowa Code section 232.116(1)(f) is in dispute: "(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)(4). The fourth element is met when "the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance, Iowa Code section 232.2(6), exist." See *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995) (discussing the fourth element in what is now Iowa Code section 232.116(1)(f)(4) (child four or older) and 232.116(1)(h) (child three or younger)). Sonya asserts she has made good progress in stabilizing her home environment, employment, and mental health treatment and therapy since the birth of her fourth child. As proof of her progress, Sonya points to the lack of DHS involvement with the baby who remains in her care.

Despite having the fourth child in her care, the State proved that J.P. and B.S. cannot be returned to Sonya's care at the present time. At a December

2011 family team meeting, it was noted that J.P. was crying a lot during visits, in an attempt to gain Sonya's attention, and that he was very sad following visits. At this meeting, providers decided to reduce visitation to one hour, twice per week "due to the emotional toll visits were having on everyone." In January 2012, Sonya told a DHS worker that visits were going much better since they had been decreased to one hour; she also stated her father was a good placement for the children, as she could still have a relationship with them. At a family team meeting on February 23, 2012, the maternal grandfather also reported the children were doing well with the one hour visits; Sonya agreed.

While the quality of the visits improved following a decrease in the duration of the visits, Sonya was unable to improve other spheres of her life that also impacted her interaction with the children. A DHS report to the court, dated February 23, 2012, noted,

[Sonya] has recently been kicked out of therapy for continual no show/no call issues. Sonya continues to struggle with her mental health issues, anger management, and stress management. Little to no progress has been made with this goal/action step since the case began. Given Sonya's current mental health status and the children's ages and behaviors, she could not provide them with a safe, stable home. . . .

Sonya has not been consistent with visitation with her children since June 2011 and there has been a significant decline in the relationship between her and the children. The visitation has not been able to increase and Sonya is only offered fully supervised visits with her children for the past 8 months. The provider even had to end some of the supervised visits because Sonya's behavior has been inappropriate and directly impacted the safety and wellbeing of the children. At times things have been so out of control that the provider's supervisor attended the home visits. The provider went over many of these concerns with Sonya and had Sonya sign a behavior contract. The children love their mother; however it is clear that they are not enjoying the visits as much as they were in the past and they do not feel safe in her care. Sonya continues to struggle with putting her children's needs and feelings

ahead of her own. This has not changed since the case began over 2 years ago.

In its termination order, the district court stated, "Returning the children to the custody of their mother would result in harm including a failure to provide appropriate supervision." See Iowa Code § 232.2(6)(c)(2) (including within the meaning of "child in need of assistance" a child who is likely to suffer harm based on a parent's failure to exercise a reasonable degree of care in supervising the child). We agree with the district court that returning the children to Sonya's care at the present time is not in the best interests of the children. While Sonya made some progress, this progress was short-lived and Sonya regressed when she experienced relationship problems and discovered she was pregnant. During this period Sonya focused on herself instead of her children, cancelling visits and refusing to participate in parenting lessons. Further, despite being granted an additional six months to work toward reunification, Sonya's interaction with the children was often inappropriate, which angered and caused trauma to the children. There were also concerns with Sonya's supervision of the children and her "parenting from the couch."

In addition to Sonya's parenting shortcomings, Sonya's ability to address and treat her mental health issues remained a cause for concern. Although Sonya did not take her medications while pregnant, Mindy Eckert, a social worker, testified that even before her pregnancy Sonya would often meet short-term mental health goals, but "then she would fall off based on what's going on in her personal life." As of the termination hearing, Sonya had not been attending her therapy appointments, and her progress towards better parenting skills was

described as sporadic. Finally, it was only with a decrease in the length of visitation that the quality of visits improved. With visits between Sonya and the children only improving with *decreased* visitation, it is clear that returning custody of the children to Sonya is not a workable solution. We affirm the district court as the elements of Iowa Code section 232.116(1)(f) were proved by clear and convincing evidence.

In seeking out the best interests of the child,

[W]e look to the child's long-range as well as immediate interest. This requires considering what the future holds for the child if returned to the parents. When making this decision, we look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future.

*J.E.*, 723 N.W.2d at 798. The children have expressed that they feel safe and loved in their current placement with their grandfather. Moreover, because we can use Sonya's past performance to gauge the quality of care she is capable of providing in the future, we conclude that the best interests of J.P. and B.S. demand that they not be returned to the harmful environment from which they were removed. We therefore affirm the district court.

**AFFIRMED.**