

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1229 / 13-1795  
Filed January 9, 2014

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

**B.S., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Fayette County, Alan D. Allbee,  
Associate Juvenile Judge.

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

**AFFIRMED.**

John W. Hofmeyer III, Oelwein, attorney for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, W. Wayne Saur, County Attorney, and Nathan J. Lein,  
Assistant County Attorney, for appellee State.

Melissa A. Seeber of the Waterloo Juvenile Public Defender's Office,  
Waterloo, attorney and guardian ad litem for minor child.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

**VAITHESWARAN, J.**

A mother appeals the termination of her parental rights to her child, born in 2009. She contends: (1) “within a reasonable period of time” under Iowa Code section 232.116(1)(f)(3) (2013) should be read to mean a minimum period of one year, (2) the district court should have afforded her a year for reunification, and (3) termination was not in the child’s best interests. We will address all three issues together.

The district court terminated the mother’s parental rights pursuant to Iowa Code section 232.116(1)(f).<sup>1</sup> That provision requires the State to prove the following elements:

(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 substance-related disorder 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 parent within a reasonable period of time considering the child’s age and need for a permanent home.

Our de novo review of the record reveals the following facts. *See In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (setting forth the standard of review). The mother began using methamphetamine at the age of twenty-eight and continued to use the drug for the better part of the ensuing fifteen years.

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<sup>1</sup> The State also sought to terminate the mother’s parental rights pursuant to Iowa Code section 232.116(1)(h), but, at the beginning of the termination hearing, the State agreed not to proceed with that provision. On appeal, the State contends we “may affirm the decision on that ground even though the basis for doing so was not one upon which the juvenile court relied.” We disagree. That provision was explicitly withdrawn, and the only ground on which the State relied was section 232.116(1)(f).

In 2011, the department of human services determined that the mother exposed her young child to the drug. The State obtained orders removing the child from the mother's home and adjudicating the child a child in need of assistance. The mother participated in reunification services, and the child was returned to her care after approximately five months.

The mother's substance abuse did not end with that proceeding. After the child was returned, the mother discontinued support services and eventually relapsed. In February 2013, the child was again removed from her care. The State filed another child-in-need-of-assistance action, and the child was adjudicated in need of assistance for a second time. The child was placed with one of her adult sisters, where she remained through the termination hearing.

Meanwhile, the mother disappeared to avoid an outstanding arrest warrant. She was not located and arrested until May 2013, after which she spent approximately three weeks in jail.

Despite this inauspicious beginning, the mother moved forward with reunification services. She participated in supervised visits with the child, tested negative for methamphetamine in her system, and attended substance abuse counseling sessions. At the termination hearing in September 2013, she testified that she had been substance-free for approximately five months.

It is this period of sobriety that was behind the mother's request to have the district court read section 232.116(1)(l)(3) as affording her a one-year reunification period. The court rejected that request, noting that "the statute itself does not so provide." The court stated the "subparagraph should be construed to require the court to consider not only the child's age but the length and severity

of the parent's substance abuse problem, the prognosis for long-term sobriety, and the likely harm to come to the child if returned home." We agree with this analysis.

By its terms, section 232.116(1)(1)(3) requires reunification within a "reasonable period of time," not within "one year." Reasonableness is premised on "the child's age and need for a permanent home." Iowa Code § 232.116(1)(1)(3). The "need for a permanent home" encompasses the factors cited by the district court. In short, section 232.116(1)(1)(3) means what it says: the State must prove that the child cannot be returned to the parent "within a reasonable period of time."

The district court concluded the State proved this element. After noting that the mother was able to remain sober in the short-term, the court stated the real problem was "her long-term sobriety and emotional stability." The court opined, "Even if the child's mother could remain drug-free for several more months and meet the requirements of the Iowa Department of Human Services for sobriety to move to unsupervised contact and potential reunification, she is most likely to relapse within a short time afterward as has occurred repeatedly in the past." We agree with this assessment.

One of the mother's adult daughters testified to the chaos generated by the mother's drug use. She stated she was presently twenty-five years old and the usage became noticeable when she was about nine or ten years old. She said, "I've been basically living this repeated life over and over again where my mom uses, gets better, uses, gets better. I mean it's just constant."

This record reflects the same cycle. In the several months preceding the termination hearing, the mother made efforts to change her lifestyle, just as she had in the prior child-in-need-of-assistance proceeding. Professionals who worked with her acknowledged her progress. Nonetheless, one expressed concern about a possible relapse. She cited the mother's return to drug use after her previous participation in four outpatient treatment programs as well as her current lack of interest in a residential treatment placement. Another professional similarly stated she had "some concerns with [the mother's] past drug history" and "how that is going to affect or could affect [the child] in the long-run."

It is true that the mother's substance abuse counselor reached a different conclusion. Based on ten one-hour sessions with her, she opined that if the mother continued with the services that were in place and allowed an increase in professional visits to the home, "there's not so much of a likelihood that she will relapse." She cited the mother's willingness to pay for the sessions with her own funds and her sobriety in the face of current stressors.

The counselor's testimony would hold significant sway were it not for the prior removal. Given the earlier out-of-home placement, the extensive services that were then provided to facilitate reunification, and the mother's eventual suspension of support services after the child was returned, we agree with the district court that the mother's prospects for long-term sobriety was dim.

We conclude the State proved the mother's "prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home." *Id.*

Our conclusion concerning this statutory termination element coalesces with our analysis of what is in the child's best interests. See *P.L.*, 778 N.W.2d at 40. There is no question the bond between mother and child was strong; the service provider who supervised visits confirmed this fact, as did others. There also is no question the mother was capable of good parenting when she was sober. Unfortunately, the mother was not consistently sober for many years. Even if the mother was "more determined this time than she's ever been," as her own mother stated, this child had already begun to experience the painful cycle described by her adult sibling and the risk she would continue to experience it was simply too great to afford the mother more time for reunification. We conclude termination was in the child's best interests.

We affirm the termination of the mother's parental rights to this child.

**AFFIRMED.**