

**IN THE COURT OF APPEALS OF IOWA**

No. 3-160 / 13-0027  
Filed February 27, 2013

**IN THE INTEREST OF O.K.,  
Minor Child,**

**A.K., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Marshall County, Stephen A. Owen, District Associate Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Bethany J. Currie of Peglow, O'Hare & See, P.L.C., Marshalltown, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Jennifer Miller, County Attorney, and Joshua A. Vander Ploeg, Assistant County Attorney, for appellee State.

Mary Cowdrey of the Public Defender Office, Marshalltown, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ

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**DOYLE, J.**

The mother appeals the termination of her parental rights. She contends the State failed to prove the grounds for termination by clear and convincing evidence. She also contends termination was not in the child's best interests. We affirm.

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

A.K., a young mother, gave birth to O.K. in October 2010.<sup>1</sup> The child came to the attention of the Iowa Department of Human Services (DHS) a year later, after it was alleged the mother had, on multiple occasions, left the child home alone unattended while the mother went to class. A DHS social worker visited the mother's home to check the child's welfare, and the worker discovered the home was filthy and full of safety hazards to the child. Additionally, the mother admitted she had left the child unattended a few times. The mother also admitted she had some mental health issues but had not sought treatment for fear of the child being removed from her care.

The child was permitted to conditionally remain in the mother's care, provided, among other things, she clean the home and remove the safety hazards. Although the mother made some attempts at cleaning thereafter, the house ultimately remained in an unsafe condition. The child was removed from the mother's care approximately two weeks later and placed in the care of the child's maternal grandparents. The child has remained there since.

Shortly after the child's removal, the mother was evicted from her home. In early 2012, the mother was hospitalized in a psychiatric unit due to threats of

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<sup>1</sup> The father has not appealed from the termination of his parental rights.

harming herself and others. Thereafter, the mother began individual counseling; she was diagnosed with major depression and prescribed medications. It was learned the mother had been sleeping many hours when the child was still in her care, and she had left the child in her crib for hours at a time while the mother slept.

A safety plan was created, and the mother was offered services. The mother was to obtain employment and stable housing, and she was to continue addressing her mental health issues. She was offered parenting skills instruction so she could learn appropriate foods for the child, how to bathe the child, and other general care information. However, during the pendency of the CINA case, the mother moved frequently and at times was homeless. In March of 2012, it was reported the mother was working sporadically with the service provider, and she was not working with her therapist as recommended. She was not taking her prescribed medication.

In August 2012, the DHS recommended termination of the mother's parental rights because the mother had made little to no progress in the case. The mother was not consistently attending therapy to address her mental health issues. The mother continued to make bad choices, including giving money to her new boyfriend, who used her money to buy drugs, instead of paying her rent. The mother was again evicted, and she moved into a shelter. She reapplied to participate in a youth services program, a program she had previously been kicked out of, where she could be placed with a host family while she got her life together, and she was waiting to hear from the program. The mother was not able to maintain employment, and she was again pregnant.

The mother was also sporadic in her attendance to visits with the child. When she did attend the visits, the service provider continued to have concerns regarding the mother's ability to safely parent the child. The mother had to be directed and prompted to change diapers, to remove items from the child's grasp that created potential safety hazards, to feed the child, and to wash her and the child's hands. There were a few visits where the mother did not change the child's diaper, and a couple of visits even ended early due to the mother refusing to change the child. The mother still had to be prompted to clean up, and often the service provider had to assist the mother in completing the cleaning task. The State thereafter filed its petition to terminate the mother's parental rights.

After the DHS recommended termination of her parental rights, the mother began participating in services. She began seeing a therapist in early August 2012, and she was consistent in her appointments thereafter. Her therapist reported in December 2012 the mother had been compliant with treatment and followed her recommendations. Additionally, her therapist reported the mother had made significant progress in therapy in the last couple months.

In approximately November 2012, the mother moved into a host home via a youth services program, and the program reported the mother had been making positive changes since moving in, including attending mental health counseling on a regular basis, taking her medication daily, learning and implementing positive coping skills to deal with her mental health issues, eating healthy, exercising, asserting herself, and practicing relaxation techniques. She had also obtained part-time employment.

A hearing was held on the State's termination of parental rights petition in December 2012. Generally, all agreed the mother had started to make changes towards being a better mother around the time the State filed its termination petition. Nevertheless, the case worker and service provider testified the child could not be returned to the mother's care at that time due to continuing concerns of the mother's parenting ability. The workers were also concerned the mother waited until the filing of the termination petition to seek serious mental health treatment. They noted that the mother believed she had mental health issues at the start of the case in 2011, and, despite that, her hospitalization in January 2012, her subsequent diagnosis of major depression, and her knowledge she needed prescription medication to treat her illness, she did not seriously begin to address her mental health issues until August 2012. The service provider testified the child was in need of permanency, and she stated the child was doing very well in the care of her maternal grandparents, who wished to adopt her.

The mother testified she was now committed to improving as a parent and getting her child back, and she requested additional time for reunification. The mother admitted her host home through the youth program was only a temporary housing solution. She also testified she was giving her second child up for adoption so she could work towards reunification with O.K., explaining she understood caring for two children was beyond her capability at that point. She testified she loved O.K. and she believed they were bonded.

Following a hearing, the juvenile court entered its order terminating the mother's parental rights pursuant to Iowa Code section 232.116(1)(h) (2011).

The mother now appeals, contending the State failed to prove the grounds for termination by clear and convincing evidence and that termination was not in the child's best interests. We review her claims de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011).

## ***II. Grounds for Termination.***

The juvenile court entered its order terminating the mother's parental rights pursuant to Iowa Code section 232.116(1)(h). Under that section, parental rights may be terminated if the court finds by clear and convincing evidence that the child is three years of age or younger, has been adjudicated a CINA, has been removed from the physical custody of his parents for at least six months of the last twelve months, and there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents at the present time. Iowa Code § 232.116(1)(h). The mother concedes the first three elements were proved; it is the last element the mother challenges here. Upon our de novo review, we find the State has met its burden.

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code section 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

We agree with the parties' comments that this is a difficult case, because the mother has an illness that she did not ask for, an illness she will likely have to work with for the rest of her life. Nevertheless, at the time of the termination hearing, the child had been out of the mother's care for over a year. The mother was offered services from the commencement of the case, but only took action after it was recommended her parental rights be terminated. While we commend all of the mother's recent efforts, her participation is simply too little, too late. "A parent cannot wait until the eve of termination, after the statutory time periods for reunification have passed, to begin to express an interest in parenting." *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). As stated above, we are obligated to heed the statutory time periods for reunification.

Here, concerns still remained at the time of the termination hearing concerning the mother's ability to safely parent the child, her housing situation, and her employment situation. We therefore agree with the juvenile court that the State proved by clear and convincing evidence the child could not be returned to the mother's care at the time of the termination hearing. Accordingly, we affirm the juvenile court's conclusion the State proved the termination of the mother's parental rights was appropriate under Iowa Code section 232.116(1)(h).

### ***III. Best Interests.***

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of Iowa Code section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 37, 40 (Iowa 2010). We consider "the child's safety," "the best placement for furthering the long-term nurturing and

growth of the child,” and “the physical, mental, and emotional condition and needs of the child.” *Id.*

At the time of the hearing, DHS had been involved with the child for over half of her life, and she has been placed out of the mother’s home for over six months. Children are not equipped with pause buttons. “The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). “At some point, the rights and needs of the children rise above the rights and needs of the parents.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997); *P.L.*, 778 N.W.2d at 39-40. A child should not be forced to endlessly suffer the parentless limbo of foster care. See *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993).

We agree the child deserves the stability and nurturing that under the circumstances, only termination and adoption can provide. Given the mother’s late attempt to address her numerous issues and the child’s need for permanency, we agree with the juvenile court that termination of the mother’s parental rights was in the child’s best interests as set forth under the factors in section 232.116(2).

#### ***IV. Conclusion.***

Because we agree with the juvenile court the State proved the ground alleged for termination and termination of the mother’s parental rights was in the child’s best interests, we affirm the juvenile court’s order terminating the mother’s parental rights.

**AFFIRMED.**