

IN THE COURT OF APPEALS OF IOWA

No. 6-393 / 06-0379

Filed May 24, 2006

IN THE INTEREST OF V.D.F.,
Minor Child,

L.D.F., Mother,
Appellant,

J.J.T., Father,
Appellant.

Appeal from the Iowa District Court for Mills County, Gary K. Anderson,
District Associate Judge.

A mother appeals the district court's order terminating her parental rights.

AFFIRMED.

William F. McGinn, Council Bluffs, for appellant-mother.

De Shawne Bird-Sell, Glenwood, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Marci Prier, County Attorney, for appellee-State.

Richard C. Swenson, Guardian ad litem, for appellee-minor child.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VOGEL, P.J.

Lesley appeals the district court's order that terminated her parental rights to her daughter, Virginia. Because we find the statutory grounds for termination satisfied by clear and convincing evidence and termination in Virginia's best interests, we affirm.

I. Background Facts and Proceedings.

Virginia, born in March 2001 with methamphetamine in her system, has never been in Lesley's custody. Lesley has a significant history of substance abuse and criminal activity, including several incarcerations in state and federal facilities. Virginia has been adjudicated a child in need of assistance on two occasions, the most recent in May 2003. From October 2001 until April 2003, Virginia was in the care of her father, Jim.¹ However, Virginia was removed from Jim's custody upon his arrest for suspected manufacturing of methamphetamine in the home and on the property. Virginia was initially placed in family foster care awaiting the completion of home studies on two relative placements. She was placed with Shelley, a cousin to Jim, in Emerson, Iowa, from April 2003 through September 2003. She was then placed with Lesley's relatives, Trent and Dorie, in Nebraska upon approval of their home study in September 2003. Trent and Dorie, however, became overwhelmed with Virginia's needs and DHS's expectations and requested removal in late December 2003. Shelley and her husband reassumed care of Virginia at that time, where she remained through the termination hearing.

¹ Jim's appeal of the termination of his rights to Virginia was previously dismissed as untimely, and we address only Lesley's claims in this opinion.

Lesley has received numerous services during the pendency of this case and does not allege any inadequacy in what assistance has been offered to her. She was minimally cooperative with services after Virginia's first removal, failing to maintain regular contact with DHS or maintain a regular residence. While Virginia was in Jim's custody, DHS provided supervised visitation to Lesley that she failed to consistently follow, partially due to Lesley serving time in the Sarpy County, Nebraska jail during this time. Following Jim's arrest and Virginia's removal from his care, Leslie admitted that she had visited with Virginia at Jim's residence. Lesley further acknowledged she knew that Jim was using drugs and manufacturing methamphetamine at the residence but failed to take action to notify the authorities or protect Virginia from that dangerous environment. Subsequent to that removal, it appeared that Lesley had a renewed willingness to work with DHS and become more acquainted with her daughter. She showed improvement in her parenting skills, and DHS increased her time with Virginia to unsupervised day visits. At that time, Lesley was on federal probation and living with her boyfriend, Scott, in Tabor, Iowa. Her contact with DHS and Virginia ended in early January 2004 as she and Scott were arrested on drug related charges and probation violations. Lesley did not contact DHS for nearly a month, to request visitation with Virginia at the halfway house where she was living. Weekly visits were made available until June 2004, when Lesley was incarcerated in federal prison in Illinois until mid-December 2005. Between her release and the termination hearing on January 31, 2006, Lesley had two supervised visits with Virginia in Shelley's home. Lesley resided at a halfway house in Council Bluffs at the time of the termination hearing. In February 2006,

the district court terminated Lesley's rights under Iowa Code sections 232.116(1)(b) (abandonment), (e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child), and (f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home) (2005). Lesley appeals.

II. Scope of Review.

We review termination of parental rights cases de novo. *In re R.E.F.K.*, 698 N.W.2d 147, 149 (Iowa 2005).

III. Issues on Appeal.

We need only find clear and convincing evidence in support of one ground to affirm the termination of parental rights. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). As did the district court, we conclude the statutory requirements for termination under section 232.116(1)(b) and (e) are supported on the record by clear and convincing evidence and affirm. Error has not been preserved by Lesley to challenge the termination under sections 232.116(1)(b), and (e). See Iowa R. App. P. 6.151.

We nonetheless proceed to address Lesley's only argument asserted on appeal, that she should be allowed additional time for reunification and therefore termination was not in Virginia's best interests. Lesley argues this in the context of section 232.116(1)(f).

While Lesley showed a most recent renewed interest in caring for her daughter, this does not adequately cure her cyclical pattern of prioritizing her substance abuse and criminal activity over Virginia's care and interests. A parent does not have an unlimited amount of time to achieve reunification with his or her

child. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). As we have previously noted, “[c]hildren simply cannot wait for responsible parenting.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). In making a permanency determination, the child’s need for security, stability, and permanence in her young life must come first. *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). Lesley has had numerous opportunities to make Virginia a priority in her life, yet has failed to do so on a consistent basis until the eve of termination. It is clear that Virginia cannot be returned to Lesley’s care while she lives in a halfway house. Further, Lesley has failed to meaningfully work toward reunification, due to her indifference, continued criminal activity, drug use, and subsequent incarcerations. We affirm the district court as to section 232.116(1)(f).

Nonetheless, Lesley asserts that “no prejudice” would result if she were allowed more time to attempt “re”-unification. First of all, Lesley has never had custody of Virginia. Moreover, prejudice is not a consideration under the grounds necessary for termination, while the best interest of the child is a required component. See *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998) (stating our overriding concern is the best interests of the child). Virginia is reported to be well integrated into Shelley’s family. In spite of her numerous placements, Virginia appears to be resilient and thriving in this setting. We agree with the district court that Virginia’s best interests are served by termination, and affirm the termination of Lesley’s parental rights.

AFFIRMED.