

**IN THE COURT OF APPEALS OF IOWA**

No. 6-396 / 06-0458  
Filed August 9, 2006

**IN THE INTEREST OF  
L.P., Minor Child,**

**K.S., Mother,**  
Appellant,

**L.P., Father,**  
Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block,  
Associate Juvenile Judge.

A mother and father appeal from the order terminating her parental rights to  
her daughter. **REVERSED AND REMANDED AS TO MOTHER, AFFIRMED AS  
TO FATHER.**

Michael Bandy of Bandy Law Office, Waterloo, for appellant mother.

James R. Wilson, Dysart, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Thomas J. Ferguson, County Attorney, and Steven Halbach,  
Assistant County Attorney, for appellee State.

Andrew Abbott, Waterloo, guardian ad litem for minor child.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

**HECHT, J.**

A mother appeals from the order terminating her parental rights to her daughter. Finding termination is not in the child's best interests, we reverse and remand.

**Background Facts and Proceedings.**

Kelly and Lonell<sup>1</sup> are the parents of LaKell, who was born in 2003. LaKell was removed from his mother's care in January of 2005 due to his exposure to drugs. Lonell was incarcerated at the time of LaKell's removal, and he remained incarcerated at the time of the termination hearing. LaKell was thereafter adjudicated as a child in need of assistance (CINA) on February 23, 2005 pursuant to Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(o) (2005).

On July 29, 2005, the State filed a petition seeking to terminate Kelly's and Lonell's parental rights to LaKell. When that petition came on for hearing on October 20, 2005, the parties agreed to continue the proceedings for ninety days while Kelly continued her therapy and skill development services. However, after the expiration of ninety days a termination hearing was held, and the court terminated both Kelly's and Lonell's parental rights pursuant to section 232.116(1)(h) (child three or younger, CINA, removed for six months, cannot be returned to parents' custody). Kelly and Lonell both appeal from this order.<sup>2</sup>

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<sup>1</sup> Although paternity testing established the Lonell was not LaKell's biological father, he is listed as the father on LaKell's birth certificate.

<sup>2</sup> While Lonell appeals, he does not maintain termination of his parental rights was improper. He only argues that the court erred in concluding placement of LaKell with Kelly was improper.

**Scope and Standards of Review.**

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern in termination proceedings is the best interest of the child. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

**Analysis.**

Kelly's sole argument on appeal is that termination of her parental rights is not in LaKell's best interests. Upon our careful de novo review of the record, we agree and conclude termination is not appropriate under the circumstances of this case involving an immature, yet loving and otherwise capable mother.

We begin with a review of the evidence offered by the State and cited by the juvenile court in support of its decision to terminate Kelly's parental rights. The court found significant that Kelly lost her job after making a poor choice to visit the Cedar Falls-Waterloo area without a dependable way to return home. Kelly made the trip to Cedar Falls-Waterloo with a friend and had no funds even to make phone calls to her employer, Department of Human Services (DHS), or her father when the friend's car broke down and could not provide transportation for the return trip. This unfortunate decision caused Kelly to miss three visits with LaKell while she was out of town. She missed two more visits while waiting for DHS to decide what consequences should be imposed. We concede Kelly's decision to not attempt to make collect calls to request help for several days does not reflect favorably on her overall maturity. However, we do note after she was retrieved from Waterloo by her dad, Kelly found and maintained two jobs until the termination hearing.

DHS also appeared to be strongly influenced by Kelly's economic status and reliance upon family members. Kelly was financially dependent on her father and his paramour for shelter at the time of the termination hearing. Kelly's rental home, for which she paid modest rent of \$100 per month, was owned by her father's paramour. Kelly's transportation was also provided by family members. DHS and the court believed that the rental property where she lived might not be available in the long-term as the property was listed for sale. On this count, we are simply disinclined to find that the possibility Kelly might lose her rental home in the future is the type of instability that would justify termination of parental rights. Moreover, we do not find poverty a compelling, or even acceptable, reason to terminate a young mother's parental rights. It is hardly unusual that a person of Kelly's age would suffer from economic instability.

Additionally, the juvenile court's termination decision noted that Kelly had unpaid fines of just under \$2000 at the time of the hearing. The fines, so long as they are unpaid, will prevent her from obtaining a driver's license even at the end of the current suspension of the privilege. Again, the lack of a driver's license and having unpaid fines do not, in our view, constitute clear and convincing evidence that LaKell can't be returned to Kelly's custody under 232.116(1)(h)(4).

The district court was further troubled by the fact Kelly continued to maintain telephone contact during the pendency of this case with a female acquaintance that lives in another city and has a history of drug use. However, upon our review of the record, we find there is no clear and convincing evidence that Kelly has had in-person contact with this individual during recent months, or that if LaKell is returned to Kelly's custody, he will be exposed to this person. If

custody is returned to Kelly, exposure of LaKell to the acquaintance in question or any other drug-users may be prohibited by the court as a condition of the return.

Finally, although there was testimony about an incident during a supervised visit at a park when LaKell wandered toward the street, LaKell was not harmed. This was not described by any witness as illustrative of Kelly's recurrent inattentiveness to LaKell, and we view it as an isolated occurrence.

While both service providers who testified in this case advocated termination, we believe their testimony reveals how close a case this truly is. In fact, upon our review, we find a significant portion of their testimony supports Kelly's position; that is, that termination is not in LaKell's best interests. Jamie Kirkpatrick, a family therapy counselor who worked extensively with Kelly and LaKell, testified quite positively about Kelly's parenting skills:

Kelly, I really have no concerns with her parenting in the home. She knows how to prepare meals. She provides a safe and secure environment during visits. There have been times where Kelly lacks motivation. She appears tired, and that's really been the only main concerns. Otherwise, she's been doing a great job.

Kirkpatrick further testified to the strong bond and "great deal of love" between Kelly and LaKell. On the question of whether LaKell could be returned to Kelly's custody, Kirkpatrick conceded that she was "really torn." Although she questioned Kelly's motivation and initiative throughout much of this case, social worker Nicole Arnold acknowledged that recently Kelly began making progress. Arnold observed that Kelly is more frequently in contact with her, participating in services with the other in-home provider, and taking more steps aimed at reunification.

We find on de novo review that the service providers' testimony does not support termination in this case. Although we acknowledge that Kelly has not

shown the maturity we would prefer and perhaps expect of a twenty-year old single parent, we find clear and convincing evidence of a strong bond between Kelly and her son. Our decision that the return of LaKell's custody to Kelly is feasible in the near-term is strongly influenced by Kelly's notable parenting skills. Finally, we find very compelling the evidence that urinalysis tests evidence Kelly has not engaged in drug use during the pendency of this case, and there is no evidence of ongoing drug abuse.

As we have noted, LaKell's best interest is the paramount consideration in determining whether to terminate his parents' parental rights. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). The Supreme Court has declared the right of a parent to companionship, care, custody, and management of children to be far more precious than property rights and more significant and priceless than liberties which derive merely from shifting economic arrangements. *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 1212, 31 L. Ed. 2d 551, 558 (1972). Iowa courts have recognized a parental interest in "preserving the integrity of the family unit." *In re T.A.L.*, 505 N.W.2d 480, 482-83 (Iowa 1993). Applying these considerations to this case, we do not believe termination is warranted in a case such as here, where a primary service provider expresses no concerns about the mother's parenting skills and describes her experience with the mother as "great." Without more evidence that placing LaKell in Kelly's custody would place the child at risk of harm, we cannot conclude that termination is in LaKell's best interests. We therefore reverse and remand.

**REVERSED AND REMANDED AS TO MOTHER, AFFIRMED AS TO FATHER.**