

**IN THE COURT OF APPEALS OF IOWA**

No. 6-729 / 06-1192  
Filed October 11, 2006

**IN THE INTEREST OF W.Y., Minor Child,**

**J.M.Y., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Constance Cohen,  
Associate Juvenile Judge.

A mother appeals from a juvenile court order terminating her parental  
rights to one child. **AFFIRMED.**

Bryan J. Tingle of Kragnes, Tingle & Koenig, P.C., Des Moines, for  
appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, John Sarcone, County Attorney, and Andrea S. Vitzsthum,  
Assistant County Attorney, for appellee.

Andrea Flanagan of Sporer & Ilic, P.C., Des Moines, for appellee-  
intervenor.

Shane Michael, Des Moines, for father.

Kayla Stratton, Des Moines, guardian ad litem for minor child.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

**MILLER, J.**

Jolene is the mother, Bryan the biological father, and Lawrence the legal father, of William, who was born in March 2005 and was just over one year of age at the time of a termination of parental rights hearing. Jolene appeals from a July 2006 juvenile court order terminating her parental rights to William. The order also terminated Bryan's and Lawrence's parental rights to William, and they have not appealed. We affirm.

William first came to the attention of the Iowa Department of Human Services (DHS) in late September 2005. At that time Jolene was incarcerated at the Iowa Correctional Facility for Women at Mitchellville. The DHS opened a child protective assessment based on allegations that Jolene's husband, Lawrence, who is listed on William's birth certificate as William's father and had custody of William, was using illegal drugs and exposing William to neglect. Lawrence tested positive for methamphetamine and marijuana.

William, as well as two other older children of Jolene and Lawrence, were removed from Lawrence. Since early October 2005 William has remained in the custody of the DHS and in foster family placement. In December 2005 William (as well as his two half-siblings) was adjudicated a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2005). In January 2006 the State filed a petition seeking termination of parental rights to William. Following an April and May 2006 hearing the juvenile court terminated Jolene's parental rights to William pursuant to Iowa Code sections 232.116(1)(d), (g), and (h). Jolene appeals.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of

fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

*In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Jolene claims the State did not prove the statutory grounds for termination relied on by the juvenile court. When the trial court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the statutory provisions in order to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). We choose to focus on section 232.116(1)(f).

To prove the grounds for termination pursuant to section 232.116(1)(f) the State must prove by clear and convincing evidence: (1) the child has been adjudicated a CINA and custody has been transferred from the child's parents for placement, (2) the parent has a severe, chronic substance abuse problem and presents a danger to self or others as evidenced by prior acts, and (3) the parent's prognosis indicates 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. Iowa Code § 232.116(1)(f). Jolene claims: "There was no evidence that William could not be returned to the custody of Jolene within a reasonable time." This implicates the third essential element of section 232.116(1)(f). For the reasons that follow, we disagree with Jolene's claim.

Jolene has a lengthy history of chronic substance abuse. In 2000 she participated in and completed an outpatient substance abuse treatment program. In 2002 Jolene participated in and completed a second outpatient substance

abuse treatment program. In 2003 she participated in and completed an inpatient substance abuse treatment program. In March 2004 her parental rights to her two oldest children were terminated. This termination occurred despite services being offered to and made available to Jolene for the prior three and one-half years. Jolene had largely failed to comply with case plan requirements and participate in and successfully complete the offered services.

William was born drug-affected in March 2005. Jolene has long associated with users of illegal drugs. William's father, Bryan, has an extensive history of criminal activity, including drug offenses. Jolene's husband, Lawrence, has a lengthy history of drug offenses and was using methamphetamine and marijuana when William was removed from his custody in October 2005.

Jolene was imprisoned at Mitchellville in December 2004 for conspiracy to manufacture methamphetamine. She remained incarcerated there until the first day of the termination hearing in April 2006, when she was released under intensive parole supervision and subject to numerous, time-consuming requirements. Although Jolene had begun a substance abuse treatment program in February 2006 while imprisoned, she secured her parole in April 2006 without completing the program.

Jolene is a severe, chronic substance abuser and presents a danger to herself and others through her drug use and conspiracy to manufacture illegal drugs. Despite several treatment programs she has continued to relapse, indicating an inability to successfully respond to treatment. William was about fourteen months of age at the conclusion of the termination hearing and needs permanency. We find, as the juvenile court did, that Jolene's history and

prognosis indicates William will not be able to be returned to Jolene<sup>1</sup> within a reasonable period of time given his age and need for a permanent home. We thus find that the State proved by clear and convincing evidence the section 232.116(1)(A) grounds for termination of Jolene's parental rights to William.

Jolene also claims the juvenile court erred in finding termination of her parental rights to be in William's best interest. Even if statutory grounds for termination are met, the decision to terminate must still be in the best interest of a child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

Jolene was imprisoned at William's birth and remained imprisoned until the termination hearing. She has never had physical custody of William. Although William was brought to visit her in prison until some time in October 2005, she has not thereafter seen him. William would not know Jolene as his mother, and is not bonded to her. Since October 2005 he has been in foster family care together with his half-siblings. Although William was developmentally delayed when placed with his foster family, he now meets developmental targets. He is bonded to his foster parents, his half-siblings, and other children in the home. William's foster parents wish to and intend to adopt him and his half-siblings. William needs permanency, and needs it now.

We conclude termination of Jolene's parental rights is necessary to give William the stability, security, and permanency he needs and deserves. We thus agree with the juvenile court that termination of Jolene's parental rights is in William's best interest.

**AFFIRMED.**

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<sup>1</sup> William has in fact never been in Jolene's physical custody since shortly after birth.