

IN THE COURT OF APPEALS OF IOWA

No. 7-018 / 06-2057
Filed February 14, 2007

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

**L.M.F., Mother,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko,
Associate Juvenile Judge.

Mother appeals from the termination of her parental rights to K.H.

AFFIRMED.

Douglas Roehrich, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Patrick Jennings, County Attorney, and Marti Sleister,
Assistant County Attorney, for appellee State.

Michelle Dreibelbis of the Juvenile Law Center, Sioux City, for minor child.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Lena appeals the termination of her parental rights to K.H. She argues (1) the State failed to show clear and convincing evidence that her rights should be terminated and (2) termination is not in her child's best interests. We affirm.

I. Background Facts and Proceedings

Lena is the mother of K.H., born in April 2006. The child's putative father, Roger, is also the putative father of Lena's first child, T.H., born in December 2004. Shortly after T.H. was born, the State initiated Child in Need of Assistance (CINA) proceedings due to concerns over the care he would receive from his parents—Lena suffered from bipolar mood disorder and attention deficit hyperactivity disorder, Roger suffered from schizophrenia, both refused to take their medications, and both had a lengthy history of drug abuse. T.H. was removed from the custody of his parents before he was ever released from the hospital and adjudicated CINA on February 18, 2005. Numerous services were offered to Lena and Roger. Neither cooperated with services, and both consented to the termination of their parents rights to T.H.

Lena's and Roger's history of drug and alcohol abuse, domestic violence, untreated mental health issues, and inappropriate housing prompted the State to file a CINA petition shortly after K.H. was born. K.H. was adjudicated CINA on June 2, 2006, pursuant to Iowa Code sections 232.2(6)(c)(2) (child is likely to suffer harm due to parent's failure to exercise care in supervising child) and (n) (parent's mental capacity or condition or drug or alcohol abuse results in child not receiving adequate care) (2005). The district court left K.H. under Lena's and Roger's care because both were cooperating with services, taking their

medications, and participating in therapy. Shortly thereafter, a service provider visited the home and witnessed Roger acting strangely. Roger was off his medication, under the influence of alcohol, and hallucinating. The service provider immediately took K.H. and Lena to a domestic abuse shelter. Lena then secured housing at Bridges West, a transitional housing facility.

On July 22, 2006, Lena returned to Bridges West in a very intoxicated condition. An ambulance took her to the hospital when she “passed out cold” and could not be awakened. At that point, law enforcement officers removed K.H. from her custody.

A combined removal and dispositional hearing was held on August 1, 2006, and K.H. was placed in family foster care. On August 21, 2006, the State filed a petition for termination of parental rights.

In late October Lena was committed to inpatient substance abuse treatment at St. Luke’s Hospital via a chapter 125 proceeding.¹ In the application for commitment, Lena’s sister stated that “Lena has abused drugs while pregnant with her two previous children and is now using while pregnant again.” The examining physician opined that Lena “lacks insight into her behavior and consequences for an unborn child.”

Lena did not request visitation with K.H. until she called the Iowa Department of Human Services caseworker on November 1, the day before her

¹ Chapter 125 of the Iowa Code addresses the issue of chemical substance abuse. Under our statutory scheme, any interested person may commence commitment proceedings by filing an application for the involuntary commitment or treatment of an alleged chronic substance abuser. Iowa Code § 125.75.

termination hearing. Lena also requested a continuance because of her recent commitment. The termination hearing was not continued to a later date.

At the termination hearing, Roger testified that Lena was pregnant with her third child. Despite the pregnancy, Roger testified that he had smoked methamphetamine with Lena on three separate occasions within the last two months.

The district court terminated Lena's parental rights with respect to K.H. pursuant to Iowa Code sections 232.116(1)(d), (g), (i), and (j).²

On appeal, Lena argues the court lacked clear and convincing evidence to find that (1) the circumstances that led to adjudication continue to exist, (2) K.H. cannot be returned to her within a reasonable period of time considering the child's age and need for a permanent home, and (3) termination was in K.H.'s best interests.

II. Standard of Review

We review the termination of parental rights de novo. *In re D.G.*, 704 N.W.2d 454, 457 (Iowa Ct. App. 2005). The grounds for termination must be proven by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). "Clear and convincing evidence means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). We give weight to the district court's fact findings, especially its credibility determinations, but are not bound by them. Iowa R. App. P. 6.14(6)(g). Our first and primary concern is the best interests of the child. *J.E.*, 723 N.W.2d at 798. We look to the child's short-

² The parental rights of Roger were also terminated but are not at issue here.

and long-term interests. *In re J.J.S., Jr.*, 628 N.W.2d 25, 28 (Iowa Ct. App. 2001).

III. Merits

On appeal, Lena challenges only two underlying elements to the grounds for termination.³ Lena claims there was not clear and convincing evidence to prove the circumstances that led to adjudication continued to exist at the time of the hearing and there was not clear and convincing evidence to prove K.H. could not be returned to her care within a reasonable period of time.

We reject both arguments. K.H. was adjudicated a child in need of assistance because she was not receiving adequate care or supervision due to her parents' substance abuse problems and mental health conditions. See Iowa Code §§ 232.2(6)(c), (n). Testimony from Roger indicates Lena is still abusing drugs. She was also recently committed under chapter 125 for substance abuse treatment. Clearly, Lena has not overcome her substance abuse problem. We find nothing in the record to indicate she will be released from inpatient treatment in a timely manner or that she will be able to resume care for K.H. within a reasonable period of time after such release.

Lena also contends it is not in K.H.'s best interests to have her parental rights terminated while she is addressing her substance abuse issues. We disagree. Lena's past parental conduct may be considered in our evaluation of

³ These two legal bases are only necessary elements for termination under sections 232.116(1)(d) and (l). These legal bases are not necessary for termination under sections 232.116(1)(g) and (i), so Lena has waived any claim of error concerning the statutory grounds for termination under sections 232.116(1)(g) and (i). See Iowa R. App. P. 6.14(1)(c). Regardless, the following analysis confirms there was clear and convincing evidence to support termination under sections 232.116(1)(d) and (l) as well.

her current fitness to be a parent. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). After K.H. was removed, Lena continued abusing drugs, refused to participate in services, and made no attempt to visit her daughter for at least two months. Lena's choices indicate a refusal to act in K.H.'s best interests.

"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). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). It is clearly not in K.H.'s best interests to make her wait any longer for Lena to become a responsible parent. K.H. has finally obtained stability in a pre-adoptive home. We find it is in K.H.'s best interests to terminate Lena's parental rights so K.H. can have permanency and grow in a stable and secure environment.

The juvenile court's ruling is affirmed.

AFFIRMED.