

IN THE COURT OF APPEALS OF IOWA

No. 7-299 / 07-0397
Filed May 9, 2007

**IN THE INTEREST OF A.E.,
Minor Child,**

**D.A.E., Father,
Appellant,**

**N.L.C., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise M. Jacobs,
District Associate Judge.

A father and mother appeal from the order terminating their parental
rights. **AFFIRMED ON BOTH APPEALS.**

Felicia Rocha of the Roehrick Law Firm, P.C., Des Moines, for appellant
father.

John Heinicke of Kragnes & Associates, P.C., Des Moines, for appellant
mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Christina Gonzales,
Assistant County Attorney, for appellee State.

Kimberly Ayotte of the Youth Law Center, Des Moines, for minor child.

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

ZIMMER, J.

Nquita and Deon appeal separately from the juvenile court order terminating their parental rights to their daughter. We affirm on both appeals.

I. Background Facts and Proceedings

Nquita is the mother and Deon is the father of Anivea, born in January 2005.¹ Anivea was removed from her parents' care on February 4, 2005, after the police raided their home and discovered large quantities of cocaine and marijuana, a digital scale, and a loaded automatic weapon. Both parents were arrested on felony drug charges, and the juvenile court placed their infant daughter in the custody of a maternal cousin, Sheveece. The court adjudicated Anivea as child in need of assistance (CINA) on April 7, 2005. Both parents were incarcerated when the adjudication hearing was held.

Nquita was released from jail and began cooperating with services provided by the Iowa Department of Human Services (Department). In June 2006 the mother pled guilty to a felony drug charge. As a condition of her plea, she agreed to participate in the local Youthful Offender Program.

Initially, Nquita complied with all of the Department's case plan requirements. On August 2, 2005, a modification order returned Anivea to her mother's custody under Department supervision. Nquita continued to make progress. Following a CINA review hearing held in December 2005, the court continued Anivea's placement with her mother. The court scheduled the CINA case to close on March 21, 2006.

¹ Nquita and Deon have never been married.

Unfortunately, things began to change shortly after the review hearing. By the end of 2005, Nquita stopped following through with the requirements of her Youthful Offender Program. Nquita missed classes and appointments, and a warrant was issued for her arrest. On January 4, 2006, the juvenile court issued a pickup order after learning the whereabouts of Nquita and Anivea were unknown.

Nquita, Deon, and Anivea were located in Birmingham, Alabama, on March 2, 2006. Both parents were arrested again, and Anivea was returned to Sheveece's care.

The State filed a petition to terminate Nquita's and Deon's parental rights on December 11, 2006. When the termination hearing was held on February 7, 2007, both parents were incarcerated. In a February 22, 2007 order, the juvenile court terminated Nquita's and Deon's parental rights pursuant to Iowa Code sections 232.116(1)(b) (2005) (abandonment), 232.116(1)(d) (child CINA for physical or sexual abuse or neglect, and circumstances continue despite receipt of services), 232.116(1)(e) (child CINA, child removed for six months, and parent has not maintained significant and meaningful contact with the child), and 232.116(1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home). Both parents appeal.

II. Scope and Standards of Review

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). We are

primarily concerned with the child's best interests in termination proceedings. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

III. Mother's Appeal—Statutory Grounds

Nquita contends the statutory grounds for termination are not supported by clear and convincing evidence. Upon our review of the record, we find no merit in the mother's argument.

When the juvenile court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate under one of the sections cited by the court in order to affirm the court's ruling. *In re S.R.*, 600 N.W. 2d 63, 64 (Iowa Ct. App. 1999). In this case, we choose to focus our attention on section 232.116(1)(h) as the basis for termination.

The mother concedes the State has met its burden of proof with regard to the first three subsections of section 232.116(1)(h), but she contends the State failed to prove by clear and convincing evidence Anivea cannot be returned to her custody. We disagree. Nquita's probation was revoked following her arrest in Alabama. She is currently serving a prison sentence for possession of a controlled substance with the intent to deliver. Her tentative discharge date is October 9, 2010. At the termination hearing, Nquita testified there is a possibility she will be paroled in September 2007; however, there is no guarantee she will be released at that time. Moreover, even if Nquita is paroled in September 2007, her daughter could not be immediately returned to her care. We conclude clear and convincing evidence supports the termination of Nquita's parental rights under section 232.116(1)(h).

IV. Father's Appeal—Statutory Grounds

Deon also contends the statutory grounds for termination have not been met. Upon our review of the record, we find no merit in the father's argument. Once again we will focus on section 232.116(1)(h) as the basis for termination.

Deon has been incarcerated or on the run² since February 2005, and he has not participated in any services. In January 2007 Deon pled guilty to possession of a controlled substance with the intent to distribute and possession of a firearm in relation to his drug offense. He will be sentenced after a presentence investigation review is completed. Although Deon has acknowledged he could be sentenced to as much as ten years in prison, he hopes to receive a sentence of credit for time served with a supervised release and six months at a halfway house. Even under Deon's most optimistic estimate, he would not complete six months at the halfway house until September or October 2007. We conclude clear and convincing evidence supports the juvenile court's decision to terminate Deon's parental rights under section 232.116(1)(h).

V. Best Interests Arguments

Nquita maintains termination is not in Anivea's best interests because the child is in the custody of a relative.³ She also suggests termination is not appropriate because of the bond she shares with her child.⁴ Deon maintains the

² Deon fled from Fort Des Moines in July 2005 when he "signed out" for work and failed to return as required.

³ Iowa Code section 232.116(3)(a) states: "The court need not terminate the relationship between the parent and child if the court finds . . . [a] relative has legal custody of the child."

⁴ Section 232.116(3)(c) states:

The court need not terminate the relationship between the parent and child if the court finds . . . [t]here is clear and convincing evidence that the

Department and the juvenile court erred by not considering placing Anivea in Sheveece's care under a guardianship until he and Nquita are released from prison. He suggests this would be a more "culturally appropriate" option. We conclude the juvenile court did not err in terminating Deon's parental rights rather than establishing a guardianship for Anivea.

Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). When we consider the child's best interests, we look to the child's long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). Generally, once the grounds for termination of parental rights have been met, termination is in the best interests of the child even if the child is in relative placement. See *In re D.E.D.*, 476 N.W.2d 737, 738 (Iowa Ct. App. 1991). The exceptions to termination set forth in section 232.116(3) have been interpreted by the courts as permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

Nquita and Deon have been incarcerated for most of Anivea's life. Anivea has been removed from Nquita's custody two times. The mother admits she placed Anivea in danger by fleeing from the state with the child when she knew a warrant had been issued for her arrest. Deon has been incarcerated or on the run for Anivea's entire life, and he failed to participate in services available to him after Anivea was initially removed from his care. At the time of the termination hearing, both parents were in prison. Their release dates are uncertain.

termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.

Anivea deserves stability and permanency, which her parents cannot provide. *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). Anivea has been in her current foster placement for most of her short life, and her foster mother is willing to adopt the child. This child should not be made to wait any longer for Nquita and Deon to become responsible parents. *J.L.W.*, 570 N.W.2d at 781. We conclude termination of Nquita's and Deon's parental rights is in the child's best interests.

VI. Conclusion

We affirm the juvenile court's decision to terminate Nquita's and Deon's parental rights.

AFFIRMED ON BOTH APPEALS.