

IN THE COURT OF APPEALS OF IOWA

No. 7-343 / 07-0591
Filed May 23, 2007

**IN THE INTEREST OF J.T.,
Minor Child,**

**H.A.E., Mother,
Appellant.**

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

A mother appeals from the order terminating her parental rights to her son.

AFFIRMED.

Jared Harmon, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Corey McClure,
Assistant County Attorney, for appellee.

Charles Fuson, Des Moines, for the minor child.

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

BAKER, J.

Holly is the mother of J.T., born in June 1994, and K.T., born in April 1992. The children came to the attention of the Iowa Department of Human Services (DHS) in January 2006 when police were called to the home and found items indicative of substance abuse. The children were removed and placed in the custody of DHS for foster care. Their maternal grandmother, Lois, was contacted by DHS but declined custody. J.T. was placed at a youth shelter. On February 15, 2006, he was transferred to a foster home, where he currently resides.¹

Holly failed to appear for the February 2, 2006 removal hearing, although Lois was present. The juvenile court ordered visitation with Lois at DHS's discretion. J.T. was adjudicated to be a child in need of assistance (CINA) on April 12, 2006. Holly did not attend that hearing, but did attend a May 24, 2006 disposition hearing and an August 17, 2006 review hearing.

Holly has an extensive history of substance abuse and instability. She was evaluated for drug treatment but failed to follow through with the treatment recommendations. She has failed to comply with drug testing requirements. She is homeless and unemployed. While she attended visitations with J.T., her interaction with him was inappropriate, and he was distressed after the visits.

J.T. has been diagnosed with attention deficit hyperactivity disorder (ADHD), adjustment disorder with disturbance of conduct, and posttraumatic stress disorder. Prior to his removal, he had significant attendance and tardiness problems at school, was approximately two years behind academically, and was

¹ K.T., who was initially placed in foster care, is currently living with Lois and is not the subject of this appeal.

often sent to school dirty, tired, and unfed. Since he was placed in his current foster home, his grades and attendance have improved significantly, he attends church and boy scouts, and he plays in the band.² His therapist believes he has adjusted so well due to “a strong desire to accept the benefits of a structured lifestyle.” According to his guardian ad litem, J.T. wants to stay with his foster mother and be adopted by her.

J.T. has had visitation with Lois since his removal. During an overnight visit in the summer of 2006, Lois returned J.T. to his foster mother earlier than planned. She later failed to participate in offered supervised visits due to driving restrictions and her unwillingness to travel in bad weather. At the March 12, 2007 termination hearing, Lois testified that she had always wanted J.T. to live with her, but had initially declined to take the children only because she did not have enough beds for them. She admitted that J.T. is a difficult child for her.

J.T.’s therapist recommended Holly’s parental rights be terminated and J.T. be adopted by his foster mother, who has expressed a willingness to adopt him. The juvenile court found that the foster mother is willing to support an on-going relationship between J.T. and K.T., but “Lois did not appear to the court to be receptive to that if the child remained in [the foster mother’s] care.” The court terminated Holly’s parental rights pursuant to section 232.116(1)(f) of the 2005 Iowa Code.³ Holly appeals.

² The record indicates that J.T. had been having some difficulty following the school rules during lunch and recess. His foster mother has volunteered at the school during these times, and J.T. has responded positively to her presence.

³ The court found J.T.’s father, James, had never had any significant and meaningful contact with J.T. and terminated his parental rights pursuant to sections 232.116(1)(e) and (f). James has not appealed the termination of his parental rights.

We review termination orders de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Although we give weight to the juvenile court's factual findings, especially when considering the credibility of the witnesses, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001); *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). Our primary concern is the best interests of the child. *In re C.B.*, 611 N.W.2d at 492. In determining the child's best interests, we consider what the future holds for him if returned to the parent. *M.M.*, 483 N.W.2d at 814. "Evidence of the parent's past performance is relevant on this issue because it may show the quality of future care the parent is capable of providing." *Id.*

The juvenile court concluded, and Holly does not contest, the statutory grounds for termination have been met. Even when the statutory grounds are met, however, the termination must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). Holly contends the juvenile court erred in determining that termination was in J.T.'s best interests because "[s]iblings should not be separated without good and compelling reasons."

The State argues the juvenile court's termination order does not address the separation of J.T. from K.T., and therefore the issue has not been preserved for appeal. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) ("Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal."). While the order did not address the siblings' separation extensively, the court's findings of fact address DHS's consideration of placement with Lois, where K.T. resides, and the foster mother's willingness to support J.T.'s relationship with K.T. and Lois.

We need not determine the preservation issue because even if the sibling issue had been preserved, we would hold that the termination was still in J.T.'s best interests. Holly contends that J.T. could be placed with Lois, which would allow him to continue to live with his sister. We agree there is a preference for keeping siblings together. *In re A.M.S.*, 419 N.W.2d, 723, 734 (Iowa 1988). "However, this preference is not absolute. Our ultimate concern is the best interests of the child." *In re J.E.*, 723 N.W.2d 793, 800 (Iowa 2006).

The juvenile court thoroughly addressed whether J.T. should be placed with Lois and determined termination was in his best interests. The juvenile court further thoroughly addressed J.T.'s current situation with his foster mother. J.T. is thriving in his foster home. His foster mother is willing to adopt him. She is willing to support a continued relationship between J.T. and K.T. The preference for keeping siblings together cannot overcome the clear and convincing evidence that it is in J.T.'s best interests to be free for adoption by his foster mother. We find that the preference for keeping siblings together was clearly rebutted in this case. J.T. deserves a permanent and stable home with consistent care. *See In re J.W.D.*, 256 N.W.2d 214, 217 (Iowa 1990) ("Every child deserves a safe, healthy and stimulating environment in which to grow and mature."). Moreover, even if J.T. could be placed with Lois, this would not prohibit termination of Holly's parental rights. *See In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997) (noting a proper decision to terminate parental rights "is not to be countermanded by the ability and willingness of a family relative to take the child").

Upon our careful de novo review, we find termination of Holly's parental rights is in J.T.'s best interests. We therefore affirm.

AFFIRMED.