

IN THE COURT OF APPEALS OF IOWA

No. 7-382 / 07-0394

Filed June 13, 2007

**IN THE INTEREST OF A.N.B.,
Minor Child,**

**J.L.D., Mother,
Appellant.**

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis,
District Associate Judge.

A mother appeals the termination of her parental rights to her daughter.

AFFIRMED.

Charles Hallberg of Hallberg, Jacobsen, Johnson & Viner, P.L.C., Cedar
Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Janet Lyness, County Attorney, and Kristin Parks, Assistant
County Attorney, for appellee State.

H. Richard Webster, Iowa City, for appellee father.

Patrick Ingram of Mears Law Office, Iowa City, for the minor child.

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

VAITHESWARAN, J.

Jennifer appeals the termination of her parental rights to Alisa, born in 2005. She contends (1) “[t]he State failed to present any evidence that . . . Alisa would be ‘a child in need of assistance’ under 232.2(6) if returned to her mother’s care at the time of trial;” (2) “the Court improperly relied on two facts to rule in favor of termination of [her] parental rights;” and (3) “[t]he Juvenile Court did not show by clear and convincing evidence under 232.116(1)(h) that ‘the child cannot be returned to the custody of the child’s (mother).’” The first issue dovetails with the third. Therefore, we will consider them together. Our review of all issues is de novo. Iowa R. App. P. 6.4.

I. and III. Alisa was removed from Jennifer’s care after the Department of Human Services received a complaint about domestic violence, illegal drug use, and filthy conditions in the home. Jennifer stipulated that Alisa was a child in need of assistance under Iowa Code sections 232.2(6)(b) (2005) (unmarried child whose parent “has physically abused or neglected the child, or is imminently likely to abuse or neglect the child”), (c)(2) (unmarried child who has suffered or is imminently likely to suffer harmful effect due to failure of the child’s parent “to exercise a reasonable degree of care in supervising the child”), and (n) (unmarried child whose parent’s “drug or alcohol abuse results in the child not receiving adequate care”).

Following Alisa’s removal, the Department afforded Jennifer supervised visitation for two to four hours a week. The Department also arranged for Jennifer’s participation in a drug treatment program.

Within three months of Alisa's removal, Jennifer relapsed. A month later, she relapsed again. At this point, the Department reduced Jennifer's visitation time. The State subsequently petitioned to terminate her parental rights to Alisa.

At the termination hearing, a Department caseworker testified that Jennifer began to make progress after the visits were reduced but the progress diminished over time. She noted that Jennifer continued to associate with a recovering drug addict, took "months and months" to find suitable housing, and did not maintain employment. A service provider who supervised visits expressed similar concerns about Jennifer's "associates." While she acknowledged that Jennifer was "in a period of relative stability right now," she testified that she "would never feel safe about leaving Alisa unsupervised" in the "unsafe environment" created by Jennifer's friends. Additionally, she noted that, although supervised visits went well, Jennifer had not advanced to semi-supervised, let alone unsupervised visits with her daughter.

We acknowledge Jennifer's testimony that she remained sober for five months prior to the termination hearing. We also note that she obtained a subsidized housing voucher in the week before the termination hearing and was to begin working at a local restaurant. Notwithstanding these accomplishments, the fact remained that Jennifer had not tested her ability to remain sober in an unsupervised setting while caring for a child and managing housing and employment concerns. Specifically, she was living in a halfway house and the housing voucher was for transitional housing at a drug treatment center. Additionally, the employment she secured had yet to begin. For these reasons, we conclude the State proved Alisa could not be returned to Jennifer's care.

II. Jennifer contends the district court should not have considered (1) the fact that she was pregnant with the child of an addict and (2) the fact that she relinquished custody of an older child.

We question whether Jennifer preserved error by properly objecting to the testimony on which the court's findings were based. Assuming she did, we conclude this information was relevant to the issue of whether Alisa could be returned to Jennifer's custody.

With respect to the first factor, the district court stated the father of Jennifer's unborn child was "also a recovering addict who relapses frequently." The court noted that Jennifer "continues to associate with individuals who have addiction issues, and she remains on the periphery of the drug world." These findings bore on the ultimate determination of whether Alisa could be returned to Jennifer's custody.

With respect to the second factor, the district court pointed out that Jennifer had a long history of illegal drug use and was the subject of child abuse assessments. The court noted that her drug use precipitated the voluntary termination of her rights to an older child. These circumstances are relevant to the court's determination of whether Alisa could be returned to Jennifer's care.

We affirm the termination of Jennifer's parental rights to Alisa.

AFFIRMED.