

**IN THE COURT OF APPEALS OF IOWA**

No. 7-511 / 07-0903

Filed July 12, 2007

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

**P.M.L., Father,  
Appellant,**

**S.B.S., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Wapello County, William S. Owens,  
Associate Juvenile Judge.

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

Sarah Wenke, Ottumwa, for appellant father.

Mary Baird Krafka of Krafka Law Office, Ottumwa, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Mark Tremmel, County Attorney, and Seth Harrington,  
Assistant County Attorney, for appellee State.

Samuel Erhardt, Ottumwa, for intervenor.

Ryan Mitchell, Ottumwa, for minor child.

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

**ZIMMER, J.**

A father and mother appeal separately from the juvenile court order terminating their parental rights. We affirm on both appeals.

***I. Background Facts and Proceedings***

Paul is the father and Sarah is the mother of Keely, born in June 2006. Keely was removed from her parents' care on August 16, 2006, due to concerns regarding her care, exposure to domestic violence, and her parents' mental health problems. Keely has resided with her maternal grandmother since the removal.

The court adjudicated Keely as a child in need of assistance (CINA) on August 22, 2006. Following adjudication, the parents did not take full advantage of the services they were offered or follow through with mental health treatment recommendations. Sarah has a long history of mental health problems for which she has been hospitalized on multiple occasions.<sup>1</sup> She did not take her prescribed mental health medications throughout the majority of the juvenile court proceedings because she was pregnant. However, she has a history of noncompliance with her medications. Paul was arrested in January 2007 and charged with a class "C" felony assault for allegedly forcibly penetrating the anus of another male with a liquor bottle. All of the parents' visits with their child have remained supervised since they began receiving services.

The State filed a petition to terminate Paul's and Sarah's parental rights on March 5, 2007. In an order dated May 8, 2007, the juvenile court terminated

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<sup>1</sup> She has been diagnosed with borderline personality disorder, posttraumatic stress disorder, and attention deficit, hyperactivity disorder. She was hospitalized in 1996, 1998, 1999, 2002, and 2006 for mental health treatment.

Paul's and Sarah's parental rights pursuant to Iowa Code section 232.116(1)(h) (2007). Paul and Sarah appealed.

## **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 children's best interests in termination proceedings. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

## **III. Discussion**

Paul claims the statutory ground for termination is not supported by clear and convincing evidence, and the district court "should not have relied on pending criminal charges in its decision to terminate" his parental rights. Sarah claims termination is not in Keely's best interests.<sup>2</sup> Upon our de novo review, we find no merit in these claims.

### **A. Statutory Ground**

Termination under section 232.116(1)(h) requires proof that Keely is three or younger, has been adjudicated CINA, removed from her parents' care for six of the last twelve months, and cannot be returned to her parents' care as provided in section 232.102. The first three elements were clearly proved and

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<sup>2</sup> Although Sarah does not claim the State failed to prove the statutory ground for termination, we find clear and convincing evidence supports the termination of Sarah's parental rights under section 232.116(1)(h). At the time of the termination hearing, Sarah had unresolved mental health issues, no income aside from state assistance, continued deficiencies in parenting skills, and required substantial assistance from others in order to live independently.

are not in dispute. Thus, we need only address whether Keely can presently be returned to Paul's custody.

Paul argues he "was attentive to [Keely] during visits, and he had regularly attended his visits" in addition to "taking part in recommended services" by the time of the termination hearing. He also argues "there were no further incidents of domestic abuse between the parents." Despite Paul's recent attempts to address the concerns that led to Keely's removal, a social worker from the Department of Human Services (Department) testified termination of Paul's parental rights was appropriate because "he hasn't shown me that he can independently support himself, let alone a child." We agree.

Paul was unable to maintain stable housing during the juvenile court proceedings. He allowed a home he inherited from his grandmother to be condemned and then began living with friends. He moved in with his sister, her two children, and her roommate at a house she rented in Creston, Iowa, after he was arrested in January 2007 for felony assault. His criminal history includes convictions for harassment, violation of a no-contact order, and driving while barred. He also has a history of domestic violence.

Once Paul moved to Creston, he began consistently participating in a weekly one-hour supervised visit with Keely where he fed and interacted with her. Providers indicated his visits with Keely were positive; however, the visits did not progress beyond supervised due to his incarceration in January 2007 and subsequent residence in Creston. Paul obtained employment for the first time since the inception of this case approximately one week before the termination hearing. He did not begin participating in counseling to address his mental

health and anger management issues until shortly before the termination hearing.<sup>3</sup> Paul's last minute efforts to comply with the Department's recommendations are insufficient. "Children simply cannot wait for responsible parenting." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990).

Paul argues the district court "should not have relied on pending criminal charges in its decision to terminate his parental rights." We believe consideration of Paul's unresolved criminal charge is appropriate in determining his availability to parent Keely. See, e.g., *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa Ct. App. 2005) (finding a mother's potential imprisonment for pending felony drug charges and "her resulting inability to care for the children" is a risk that prevents the court from "finding the children would not be at risk if returned to her care"). We must consider what the future likely holds for Keely if she is returned to Paul's care. *Id.* If convicted of the assault charge, Paul could be imprisoned for ten years, which would result in his inability to care for Keely. See Iowa Code § 902.9. We therefore cannot find that the child would not be at risk of further adjudicatory harm if returned to Paul's care. See Iowa Code § 232.102(5).

The record clearly demonstrates Keely cannot be returned to Paul's care now or in the foreseeable future. In light of the foregoing, we find clear and convincing evidence supports the termination of Paul's parental rights under section 232.116(1)(h).<sup>4</sup>

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<sup>3</sup> Paul testified he participated in counseling in Ottumwa at the beginning of the juvenile court proceedings. However, he did not begin seeing a therapist in Creston until a few days before the termination hearing in May 2007, even though it appears he moved to Creston in January 2007. He did not provide any documentation of his participation in therapy to the Department or to the court at the termination hearing.

<sup>4</sup> We would reach the same conclusion even if no weight were given to Paul's pending criminal charge.

**B. Best Interests**

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).

Sarah argues termination of her parental rights is not in Keely's best interests because she "has corrected the circumstances which gave rise to the adjudication and had achieved the means to provide for her child" by the time of the hearing. The record does not support that conclusion.

Despite Sarah's significant mental health problems, she was not participating in mental health treatment at the time of the hearing. She was also not taking her prescribed mental health medications because she was pregnant. However, she indicated she would continue to refuse to take the medications after her pregnancy, testifying, "I don't need my medication." Sarah demonstrates unstable and aggressive behavior when she fails to take her medication.

Although Sarah obtained a one-bedroom apartment approximately one month before the termination hearing, she needs numerous support services in order to live independently. It appears she is a ward under a guardianship. She has no income aside from state assistance. She is not able to manage her

limited finances on her own. All of Sarah's visits with Keely have remained supervised since she began receiving services. Her weekly visits were decreased because she was not attending on a regular basis. Providers indicated that Sarah exhibited a continued lack of necessary parenting skills during her visits.

Keely has been in an out-of-home placement since August 2006. The parents have not followed through with mental health treatment recommendations, and they have not exhibited the ability to parent their child successfully. There is no credible evidence in the record that suggests additional time would allow Keely to be returned to her parental home. Keely deserves stability and permanency, which neither of her parents can provide. *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). This child should not be made to wait any longer for Paul and Sarah to become responsible parents. *J.L.W.*, 570 N.W.2d at 781. We conclude termination of Paul's and Sarah's parental rights is in the child's best interests.

#### ***IV. Conclusion***

We affirm the juvenile court's decision to terminate Paul's and Sarah's parental rights.

**AFFIRMED ON BOTH APPEALS.**