

**IN THE COURT OF APPEALS OF IOWA**

No. 7-520 / 07-0969  
Filed August 8, 2007

**IN THE INTEREST OF N.M.,  
Minor Child,**

**J.M., Father,**  
Appellant,

**S.L., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

Parents appeal from the order terminating their parental rights.

**AFFIRMED.**

Edward Bull of Bull Law Office, P.C., Des Moines, for appellant father.

Patrick O'Bryan, Des Moines, for appellant mother.

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

Jerry Foxhoven and Shana Lawson of the Drake Legal Clinic, Des Moines, for minor child.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**ZIMMER, J.**

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

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

Samantha is the mother, and Jeff is the father of Noah, born in April 2005.<sup>1</sup> Both parents have a history of using alcohol in a manner that interferes with their ability to take care of their son. Noah came to the attention of the Iowa Department of Human Services (Department) on August 1, 2005, when he was removed from his parents' care because they were intoxicated and were failing to adequately supervise their young son. Noah was adjudicated a child in need of assistance (CINA) on November 16, 2005. Noah was returned to his parents' care; however, he was removed from his parents' care again on April 1, 2006, because his parents were intoxicated and were failing to adequately supervise him again.

Following adjudication, the parents did not take advantage of the services they were offered. Samantha failed to participate in recommended outpatient treatment. She told a Department social worker that she "was not going to attend aftercare if it was recommended and that treatment was stupid." Jeff obtained a substance abuse evaluation, which recommended outpatient treatment. He did not participate in treatment and had to complete a new evaluation because the first evaluation was out of date. Before Jeff could participate in outpatient services, he was arrested in April 2006 for drug possession and was extradited to

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<sup>1</sup> Samantha's parental rights to two of her children were terminated in an order entered on September 26, 2003.

Oklahoma. Jeff never provided the Department with an official update on the status of his criminal charges and failed to provide documentation proving he was participating in Alcoholics Anonymous. He eventually returned to Iowa and did complete outpatient treatment.

The State filed a petition to terminate Samantha's and Jeff's parental rights on March 14, 2007. The juvenile court held a termination hearing on May 8, 2007. Neither parent attended the hearing. The Department recommended termination of Samantha's and Jeff's parental rights. The Department reported there were ongoing concerns of domestic violence between the parents. The record reveals that neither parent attended a surgery Noah had to insert tubes in his ears due to excessive ear infections. The parents also failed to attend any doctor appointments for Noah. The Department provided the parents with supervised visits; however, since March 16, 2007, they had only attended one visit.

The guardian ad litem's report to the court noted Jeff and Samantha were both arrested for harassment on February 10, 2007. Both parents were visibly intoxicated at that time. Jeff resolved the charges against him by pleading guilty, but Samantha failed to appear in court to answer the charges against her. As a result, a warrant was issued for her arrest. Jeff was arrested again for assault on March 7, 2007. The guardian ad litem's report also noted an in-home worker observed alcohol in a closet during a recent home visit, and Jeff and Samantha were visibly intoxicated at an assessment appointment. When Jeff and Samantha had Noah for a visit, they got his ears wet despite instructions to keep his ears dry because of the tubes that had been implanted. The guardian ad

litem recommended that the court terminate Jeff's and Samantha's parental rights.

In an order filed May 23, 2007, the juvenile court terminated Samantha's and Jeff's parental rights pursuant to Iowa Code sections 232.116(1)(d) (2005) (child CINA for physical or sexual abuse or neglect, and circumstances continue despite receipt of services), 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), and 232.116(1)(g) (child CINA, parents' rights to another child were terminated, parents do not respond to services). Both parents have 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 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***

Samantha 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 this 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) (child is three or younger, child CINA,

removed from home for six of last twelve months, and child cannot be returned home) as the basis for termination.

Samantha has been offered numerous services, including a substance abuse assessment and treatment, supervised visitation, and a psychosocial evaluation. She has only sporadically accessed services, and it is clear her commitment to and participation in treatment has been minimal. There have been numerous reports that Samantha abused alcohol in the months prior to the termination hearing, and in an assessment interview on February 23, 2007, Samantha appeared to be intoxicated. Noah is not a priority in his mother's life. Returning Noah to his mother's home would subject him to neglect, improper supervision, and improper care. The record clearly demonstrates Noah could not be returned to his mother's care now or in the foreseeable future. We conclude clear and convincing evidence supports the termination of Samantha's parental rights under section 232.116(1)(h).

#### ***IV. Father's Appeal—Statutory Grounds***

Jeff also 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 father's argument. Again, we choose to focus our attention on section 232.116(1)(h) as the basis for termination.

Jeff has a lengthy criminal record going back to 1993. He was arrested for assault in March 2007. He also had interactions with law enforcement in January and February 2007, and on both occasions, he was intoxicated. Although Jeff completed two substance abuse evaluations, he was arrested for drug possession and extradited to Oklahoma while this case was pending. It is clear

that he has not overcome his problem with alcohol, and he continues to use alcohol in a way that interferes with his ability to parent Noah. The juvenile court found Jeff had done nothing to change the conditions that led to the CINA adjudication. We conclude clear and convincing evidence supports the termination of Jeff's parental rights under section 232.116(1)(h).

#### **V. Best Interests Arguments**

Jeff maintains termination is not in Noah's 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).

Noah's parents have only sporadically participated in services since the child was adjudicated CINA. It is apparent that serious concerns still exist regarding Samantha's and Jeff's stability, sobriety, and ability to provide adequate care for their child. There is no credible evidence in the record that suggests additional time would allow Noah to be returned to his parental home. Noah has thrived in his foster parents' care, and the foster parents have expressed a desire to adopt Noah. This child deserves stability and permanency, which his parents cannot provide. *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). Noah should not be made to wait any longer for Samantha and Jeff to become responsible parents. *J.L.W.*, 570 N.W.2d at 781. When parents are incapable of changing to allow their child to return home, termination is necessary. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995). We

conclude termination of Samantha and Jeff's parental rights is in the child's best interests.

***VI. Conclusion***

We affirm the juvenile court's decision to terminate Samantha's and Jeff's parental rights.

**AFFIRMED.**