

IN THE COURT OF APPEALS OF IOWA

No. 7-566 / 07-1170
Filed September 6, 2007

**IN THE INTEREST OF J.O.J. and J.O.S.,
Minor Children,**

J.O., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Barbara Liesveld,
District Associate Judge.

J.O. appeals from the order terminating her parental rights. **AFFIRMED.**

Michael Lindeman, Cedar Rapids, for appellant mother.

Melissa Petersen, Cedar Rapids, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Rebecca Belcher,
Assistant County Attorney, for appellee State.

Karla Wolff, Cedar Rapids, guardian ad litem.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

A mother appeals the termination of her parental rights to her two children. The mother, Jeanna, claims the guardian ad litem failed to prove termination grounds by clear and convincing evidence and that termination of parental rights is not within the children's best interests. We affirm.

I. Facts and Prior Proceedings

J.O.J. and J.O.S. were removed from their mother's care in July 2005 when Jeanna was arrested for burglary. Stolen items were found in Jeanna's apartment, and there was a concern for the children's safety. The children were adjudicated children in need of assistance (CINA) on August 12, 2005. They were initially placed in foster care, then moved to the residence of Don and Patty. Don is J.O.S.'s father. Don was in a four-year relationship with Jeanna where he acted as a father figure to J.O.J. He is the only father J.O.J. has ever known. In August 2006 the case permanency plan recommendation was modified from reunification with Jeanna to long-term placement of both children with Don. In October 2006 the court ordered a petition for termination of parental rights to be filed by the State or guardian ad litem. The guardian ad litem subsequently filed the petition.

J.O.J., age eight, has had many behavioral issues in the past, including violent aggressive outbursts, suicide attempts, and defiance in the home. She attends therapy regularly and has been hospitalized in a child psychiatric unit. There have been significant improvements in her behavior, however, since August 2006 when she began taking medication. Although J.O.J. is bonded with her mother, she has expressed anger toward Jeanna due to missing scheduled

visits and maintaining a relationship with a boyfriend whom the Iowa Department of Human Services (DHS) recommended disassociation with. J.O.J.'s father, Larry, has not maintained contact with DHS, despite attempts to locate him. He has not participated in offered services or completed any case permanency plan expectations.

J.O.S., age five, is not bonded with Jeanna. At visits he resists interaction with her and feels that J.O.J. is the favored child. J.O.S. has no behavioral issues and is thriving in his father's care.

Jeanna has a history of making poor life choices and putting her children at risk. She has not been able to maintain a consistent safe home for the children. Although she has maintained her current home since November 2006, she moved five times in the prior year. Jeanna was discharged from her living arrangements at the Catherine McCauley Center in October 2006 for failure to follow the rules. She maintains employment, but changes jobs often. She has had at least three different jobs in the past two years. Jeanna maintains that she has not seen Sherwin, a man DHS has advised her not to be involved with for fear of harm to the children. However, providers and J.O.J. have seen his name on Jeanna's mailbox and observed male clothing and other items in her apartment. Jeanna has been known to be untruthful, and her actions are often suspicious. She once told the children she had twin babies. The children were disappointed to learn it was a lie. Jeanna completed a substance abuse evaluation but failed to complete the recommended substance abuse treatment. She also inconsistently participates in the drug testing services offered to her by DHS.

Jeanna is currently allowed three-hour supervised visits with J.O.J. and J.O.S. every other week. At the visits, Jeanna is unable to effectively manage the children's behaviors. They do not respond to Jeanna's attempts to redirect them. Visits were prohibited from taking place in public after a disruptive visit at a restaurant.

Don and Patty provide transportation to the visits. There is an agreement that Jeanna is to pay them fifteen dollars in transportation costs for every other visit. Jeanna often misses the visits she is required to pay the costs for. In addition, the children are aware of and have been emotionally damaged by the animosity between Jeanna and Don and Patty.

After a full hearing, the court terminated Jeanna's parental rights pursuant to Iowa Code section 232.116(1)(f) (2007). Custody and guardianship of the children were placed with DHS. The children remain living with Don and Patty.

II. Standard of Review

We review termination proceedings *de novo*. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* The guardian ad litem must prove the grounds for termination by clear and convincing evidence. *Id.* Our primary concern is the best interests of the children. *Id.*

III. Merits

Jeanna claims the guardian ad litem failed to prove the grounds for termination of her parental rights by clear and convincing evidence and that termination is not within the children's best interests. Jeanna's parental rights were terminated under Iowa Code section 232.116(1)(f), which provides that

parental rights can be terminated if the guardian ad litem proves by clear and convincing evidence that the children are four years of age or older; that the children have been adjudicated CINA; the children have been removed from the physical custody of their parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days; and there is clear and convincing evidence that at the present time the children cannot be returned to the custody of the parents as provided in section 232.102. The first three elements were clearly proved and are not in dispute.

There is clear and convincing evidence the children cannot be returned to Jeanna's care at this time. Over the past two years Jeanna has been unable to comply with her case plan. She has missed scheduled visits with the children, failed to form a parental bond with J.O.S., and most notably, failed to provide a safe and stable home environment. She has moved numerous times and maintained a man in her life who creates a dangerous and unfriendly environment for the children. It is noteworthy that DHS has not allowed any unsupervised visits over the past two years. In addition, Jeanna has failed to follow through with therapy and substance abuse treatment. She has been granted ample opportunity to become a responsible parent and has failed in that task. Although an underlying issue in any termination action is whether the parent is beyond help, a parent does not have an unlimited amount of time to correct his or her deficiencies. See *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990). Our inquiry is whether there is clear and convincing evidence that the children cannot be returned home *at this time*. Iowa Code § 232.116(1)(f).

Although it appears Jeanna has made some improvements over the last year, more improvement is needed to allow the children to return to live with her.

Jeanna also claims termination of her parental rights is not in the children's best interests. We disagree. We conclude the best interests of the children are served by the termination of Jeanna's parental rights.

AFFIRMED.