

**IN THE COURT OF APPEALS OF IOWA**

No. 7-678 / 07-1358  
Filed September 19, 2007

**IN THE INTEREST OF D.G.B.,  
Minor Child,**

**J.I.O., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

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

**AFFIRMED.**

William Lansing, Dubuque, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Emilie Roth-Richardson of the Roth Law Office, Dubuque, for minor child.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

**VOGEL, J.**

A mother appeals the juvenile court's decision to terminate her parental rights to her minor child. She claims the state failed to prove by clear and convincing evidence that the minor child could not be returned to her care and that the juvenile court abused its discretion in not granting her motion for continuance. We affirm.

Jeana is the mother of Devan, who was born in 2004. On May 12, 2006, Devan was removed from the custody of his mother<sup>1</sup> for denial of critical care. Subsequently, Devan was adjudicated to be a child in need of assistance pursuant to Iowa Code sections 232.2(6)(n) and (o) (2005) and custody of Devan remained with the Department of Human services for relative placement with his grandmother. Although Jeana participated in services, her visitations with Devan were inconsistent and she did not make sufficient progress so that Devan could be returned to her care in the foreseeable future. Consequently, the State filed a petition seeking to terminate Jeana's parental rights. Following a hearing, in July of 2007, the juvenile court granted the State's request and terminated Jeana's parental rights pursuant to section 232.116(1)(h).

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (citing *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993)). The grounds for termination must be proven by clear

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<sup>1</sup> The juvenile court also terminated Devan's father's parental rights. His rights are not at issue in this appeal.

and convincing evidence. *Id.* Our primary concern is the best interests of the child. *Id.* (citing *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998)).

Jeana first contends the State failed to prove by clear and convincing evidence that Devan could not be returned to her care. Devan's involvement with DHS was due to his mother's denial of critical care for failure to provide proper supervision and for Devan's positive hair stat test for cocaine. He was removed from Jeana's care in May of 2006, and Jeana was then offered many services to assist her in being able to provide a safe home for Devan. These services included family-centered services, mental health counseling, substance abuse treatment, and supervised visitation. Jeana has made progress by passing all of her drug tests since June of 2006 and by maintaining employment since November of 2006. However, Jeana has not met other critical DHS requirements, leaving many concerns as to her ability to safely care for Devan. The most recent reports in the record, as well as the testimony received, reflect that Jeana has been unable to move beyond fully-supervised visitation because of her inadequate parenting skills. While Jeana did show some sporadic improvement in her parenting skills, she was not able to sustain those gains.

Service providers also expressed concern over Jeana's ongoing mental health issues. She has been diagnosed with bipolar and antisocial personality disorders, and she suffers from the lingering effects of her own abusive childhood. Mental health recommendations included individualized counseling that Jeana has not followed through with, resulting in a poor prognosis for significant change. Furthermore, the juvenile court determined that once mental

health treatment began, it would still require significant time before Jeana would be able to appropriately parent.

We agree with the juvenile court that Devan could not be returned to Jeana's care without risk of abuse or neglect, either now or in the foreseeable future. Therefore, we find the State proved the grounds for termination of Jeana's parental rights by clear and convincing evidence.

Jeana next contends that the juvenile court should have granted her motion for a continuance. The original date set for a permanency hearing was December of 2006. However, the juvenile court gave Jeana two extensions so that she could work towards reunification, but she made little progress during the additional time granted. Furthermore, Jeana did not attend visitation with Devan from May 9th until June 29th, 2007. The termination hearing was held on July 12, 2007. Service providers testified that Devan could not be returned to Jeana's care at that time or anytime in the foreseeable future. Furthermore, the DHS worker testified that granting the request for another continuance was not in Devan's best interests because he was "in a crucial stage in regards to his bonding and development" and "it is confusing for him to go back and forth." Overall, Devan needs stability and has that stability with his paternal grandmother. Devan should not be forced to wait for Jeana to become a responsible parent. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). We find the juvenile court did not abuse its discretion in denying Jeana's motion for a continuance.

Finally, Devan has been in the care of his paternal grandmother for over a year, where he is very stable, happy, and bonded. Upon our review of the record, we find that Devan cannot be safely returned to Jeana's care currently or in the foreseeable future. Therefore, it is in Devan's best interests that Jeana's parental rights are terminated. *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially) (stating children's safety and their need for a permanent home are the defining elements in a child's best interests). We affirm the decision of the juvenile court terminating Jeana's parental rights to Devan.

**AFFIRMED.**