

IN THE COURT OF APPEALS OF IOWA

No. 7-925 / 07-1773
Filed December 12, 2007

**IN THE INTEREST OF A.J.M.S.,
Minor Child,**

M.N., Mother,
Appellant.

Appeal from the Iowa District Court for Fayette County, Alan D. Allbee,
Associate Juvenile Judge.

A mother appeals from the district court's order terminating her parental
rights to her daughter. **AFFIRMED.**

Kevin Schoeberl, Cresco, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, W. Wayne Saur, County Attorney, and Nathan Lein, Assistant
County Attorney, for appellee State.

John Sullivan, Oelwein, for appellee father.

Andrew Thalacker, Juvenile Public Defender, Waterloo, for minor child.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

VOGEL, P.J.

Miranda¹ appeals from the October 2007 order terminating her parental rights to A.S. pursuant to Iowa Code section 232.116(1)(h) (2007). She asserts the decision to terminate was premature as she had been compliant with the case plan responsibilities at the time of trial. We affirm.

We review the termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). The district court had considerable evidence to support termination of Miranda's parental rights. In November 2006, A.S. was removed from Miranda's care at birth, adjudicated a child in need of assistance, and placed in a foster home. Miranda was offered a variety of services to achieve reunification, including the assistance of an in-home provider, family team meetings, mental health counseling, substance abuse counseling, and supervised visitation.² Although Miranda initially participated in some services, her participation was inconsistent and sporadic. She did not follow through with mental health counseling or regularly take her mental health medication. After her substance abuse evaluation and diagnosis as an alcoholic, she did not follow the recommended treatment plan. She did not maintain regular visitation with A.S. or progress past supervised visitation status. A caseworker testified that Miranda was unable to maintain employment or a residence that was suitable for a child. Additionally, Miranda associated with male companions who were

¹ The district court also terminated the father's parental rights. His rights are not at issue in this appeal.

² A.S. is the second child to be removed from Miranda's care by DHS and Miranda was offered several services with her first involvement with DHS. Miranda's prior caseworker reported that Miranda lacked consistency and follow through. See *In re J.E.*, 723 N.W.2d 793, 645 (Iowa 2006) ("[W]e look to the parent's past performance because it may indicate the quality of care the parent is capable of providing in the future.").

potential threats to A.S. Therefore, caseworkers testified that A.S. could not be safely returned to Miranda's care.

Miranda argues that at the time of the termination, she was compliant with some of the case plan requirements. As a result of a probation violation stemming from a forgery conviction, Miranda entered into a residential facility on August 27, 2007 and was expected to remain in the facility from four months to a year. In order to avoid incarceration, Miranda is required to attend AA meetings, see a mental health counselor, and maintain employment. Although these are some of the same requirements of the case permanency plan, Miranda testified that she was complying with these services because of the looming threat of ten years in prison for noncompliance. She also testified that she did not follow through with numerous other services offered by DHS to reach the goal of reunification. These would still need to be successfully accomplished for A.S. to be returned safely to Miranda's care. Time is critical for A.S., and Miranda's compliance with only some of the case plan requirements is simply too little and too late. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) ("A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting."). A.S. should not be forced to wait endlessly for her mother to be a responsible parent. See *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). "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 conclude that the State has proved by clear and convincing evidence that A.S. cannot be returned to Miranda's care either now or in the foreseeable future.

Furthermore, we find that termination is in A.S.'s best interests. A.S. requires specialized care due to her mother's use of alcohol during her pregnancy and the resulting damage A.S. has suffered. A.S. has been in the care of her foster parents since her birth. They have tended to A.S.'s developmental and medical concerns, have provided a loving and stable environment, and are willing to adopt A.S. Moreover, Miranda testified that she believes A.S. does not know who she is and that there is no bond between them, due primarily to sporadic visitation and her imprisonment. A.S. needs a safe and permanent home. *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 district court's order terminating Miranda's parental rights to A.S.

AFFIRMED.