

IN THE COURT OF APPEALS OF IOWA

No. 7-977 / 07-1895
Filed January 16, 2008

**IN THE INTEREST OF J.J.I.B. Jr.,
Minor Child,**

**S.M.I., Mother,
Appellant.**

Appeal from the Iowa District Court for Webster County, James McGlynn,
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Brigette P. Cromwell, Fort Dodge, for appellant mother.

Derek Johnson, Fort Dodge, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Timothy Schott, County Attorney, and Sarah Smith, Assistant
County Attorney, for appellee State.

Angela Ostrander of Bennett, Crimmins, Ostrander & Yung, Fort Dodge,
for minor child.

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

MAHAN, J.

A mother appeals from the order terminating her parental rights to her son, Jose. We affirm.

I. Background Facts and Prior Proceedings

Jose was born in July 2001. His parents, Juan and Shannon, separated soon after he was born. Juan raised the child on his own while Shannon lived in Kentucky. Shannon claims that Juan kept her from having a relationship with Jose. The last time she saw Jose was in the summer of 2004.

On February 2, 2006, the court entered an emergency order removing Jose from his father's custody amidst allegations of substance abuse. The State published notice to notify Shannon of the child in need of assistance (CINA) proceedings, but she did not attend the adjudicatory hearing. Jose was adjudicated CINA on April 11, 2006, pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2005). Shortly thereafter, Jose was returned to Juan's care for a trial home visit. This trial visit ended two weeks later when Juan tested positive for cocaine. The court placed Jose with Shannon's stepmother. Jose has remained there ever since.

Shannon contacted the Iowa Department of Human Services (DHS) in May 2006 and expressed an interest in visiting the child. However, she did not do so. She participated in the August 2006 dispositional hearing via telephone. The court ordered that a home study be conducted upon her home in Kentucky. Kentucky authorities initiated a home study, but a full study was never completed because Shannon failed to adequately participate in the process. As a result, the State of Kentucky did not recommend that Jose be placed with Shannon.

During the ensuing months, neither parent made significant progress towards reunification. Juan continued to abuse substances, and Shannon did very little to establish a relationship with Jose. She called Jose a few times, but she did not travel to Iowa to see him or send him any letters or packages. She also had little contact with the DHS caseworker.

The State filed a petition to terminate both parents' parental rights in April 2007. The court held a termination hearing on May 11, 2007. Shannon participated via telephone. Both parents requested six more months to attain reunification. The court noted there was a strong bond between Jose and his father and virtually no relationship between Jose and Shannon. However, the court decided to suspend the hearing for three months so both parents could have more time to prove that they could care for Jose.

During the next three months, Juan tested positive for illegal substances on multiple occasions. Shannon sent Jose several letters and called him on a regular basis, but still did not come to visit him in Iowa.

Shannon participated in the August 10, 2007 hearing by telephone. She again asked for more time to prove that she could care for Jose. She told the court that she had recently sold her home in Kentucky and that she planned to move to Iowa in the next two weeks. After hearing all arguments, the court closed the record and informed the parties that it would issue a ruling.

One week later Shannon filed a motion to reopen the record. In this motion she stated she had moved to Iowa and "would be able to assume custody of her son as soon as possible." The district court denied the motion to reopen

the record. In doing so, the court noted that Shannon had already informed the court that she would be returning to Iowa.

On October 23, 2007, the court entered an order terminating both parents' parental rights, specifically terminating Shannon's parental rights pursuant to Iowa Code sections 232.116(1)(e) (2007) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child) and (f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home).

Shannon appeals, claiming the court erred when it refused to reopen the record. She also challenges the statutory basis for termination under section 232.116(1)(e) and claims the termination was not in Jose's best interests. Juan is not a party to this appeal.

II. Standard of Review

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Grounds for termination must be proved by clear and convincing evidence and our primary concern is the child's best interests. *Id.*

III. Merits

A. Motion to Reopen Record

Shannon claims the juvenile court abused its discretion by denying her request to reopen the record. The question of whether to reopen the record for additional evidence is within the court's discretion. *Bangs v. Maple Hills, Ltd.*, 585 N.W.2d 262, 267 (Iowa 1998); *In re J.R.H.*, 358 N.W.2d 311, 318 (Iowa 1984). In order to show an abuse of discretion, a party must show the juvenile court's action was unreasonable under the attendant circumstances. *In re J.L.L.*,

414 N.W.2d 133, 135 (Iowa 1987). We find no abuse of discretion in this case. The fact that Shannon had followed through with her stated intention to move to Iowa would not substantially affect the issue of whether she was in a position to resume care for her child.

B. Statutory Grounds

“When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.” *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Also, “[f]ailure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.” Iowa R. App. P. 6.14(1)(c).

While Shannon argues the State failed to prove by clear and convincing evidence that termination was appropriate under Iowa Code section 232.116(1)(e), she does not challenge the court’s conclusion that termination was proper under section 232.116(1)(f). Because Shannon has failed to challenge the court decision to terminate her parental rights under section 232.116(f), we affirm on this issue.¹ Therefore we need not address whether termination was appropriate under section 232.116(1)(e).

C. Best Interests

Shannon claims termination of her parental rights is not in Jose’s best interests. Even if the statutory requirements for termination are met, the decision

¹ Regardless of whether this issue was waived, we still find, upon our de novo review of the record, that there was clear and convincing evidence to support the termination under section 232.116(1)(f). We also find the State made reasonable efforts to reunite Jose with his mother.

to terminate must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the children's best interests, we look to the children's long-term and immediate needs. *J.E.*, 723 N.W.2d at 798.

We find the overwhelming evidence shows that termination of Shannon's parental rights is in Jose's best interests. Jose has not seen his mother since the summer of 2004. Although Shannon blames this absence on Juan, she has had more than fourteen months to travel from Kentucky to Iowa to see her son while he resided with her stepmother. She chose not to do so. She also had the opportunity to work with Kentucky authorities to prove her home was suitable for Jose. She failed to carry out the necessary steps to complete such an evaluation.

Our legislature has established a twelve-month period for parents to demonstrate they can parent. Iowa Code § 232.116(1)(f); see *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). Even though the juvenile court gave her an extension on this statutory period, Shannon made little effort to prove that she could parent this child. There is no reason to further delay permanency to see if Shannon will decide to make Jose a priority in her life. See *In re A.C.*, 415 N.W.2d 609, 614 (Iowa 1987). ("It is unnecessary to take from the children's future any more than is demanded by statute."); see also *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests."). Jose deserves permanency now. Therefore, we affirm the termination of Shannon's parental rights.

AFFIRMED.