

IN THE COURT OF APPEALS OF IOWA

No. 7-982 / 07-1934
Filed January 16, 2008

**IN THE INTEREST OF T.T. and D.A.,
Minor Children,**

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

Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

A mother appeals from the juvenile court order terminating her parental rights to her children. **AFFIRMED.**

Tod Beavers of Tod J. Beavers, P.C., Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee State.

Angela Gruber-Gardner, Des Moines, for appellee father.

Steve Clarke of Des Moines Public Defender's Office, Des Moines, for the minor children.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

BAKER, J.

A mother appeals from the juvenile court order terminating her parental rights to her children. We affirm.

I. Background and Facts

Stacy is the mother of D.A., born in September 2003, and T.T., born in July 2006. The children were removed from Stacy's custody on July 21, 2006, because a police search of the maternal grandmother's home, where Stacy and the children lived, revealed methamphetamine and indicia of drug dealing. On September 21, 2006, the children were adjudicated children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)b, c(2), and n (2005). The children have not returned to Stacy's custody since the July 2006 removal.

Throughout this case, the Iowa Department of Human Services (DHS) has offered the family numerous services, including individual therapy and substance abuse evaluation and treatment for Stacy. She progressed from supervised to unsupervised visits with the children, but returned to DHS-supervised visits after D.A. was injured during an unsupervised overnight visit in November 2006.

Stacy's criminal record includes a number of driving charges. While pregnant with another child and on probation for driving while barred, Stacy tested positive for methamphetamine. She testified at the September 19, 2007 termination hearing that she had been given a choice of a year in jail or in-jail treatment. Consequently, at the time of the hearing, Stacy was residing in the Polk County Jail and participating in its treatment program. She testified that she would be leaving the jail in October and moving to the House of Mercy, where her children could reside with her.

At the hearing, Stacy requested the juvenile court grant a six-month extension to allow her to regain custody of her children. The juvenile court terminated Stacy's parental rights to D.A. pursuant to Iowa Code sections 232.116(1)(d) and (f).¹ The court terminated her parental rights to T.T. pursuant to sections 232.116(1)(d) and (h) (2007).² Stacy appeals, contending the State failed to prove the statutory elements relied upon by the court to support the termination of her parental rights.

II. Merits

We review termination orders 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. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Our primary concern is the best interests of the children. *Id.* Even if the statutory requirements for termination of parental rights are met, the decision must still be in the children's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). We look to both long-range and immediate interests, considering what the future holds for the children if returned to the parent. *J.E.*, 723 N.W.2d at 798.

Stacy contends the State failed to prove the statutory elements relied upon to support the termination. The State contends that Stacy has waived these issues on appeal because she "provides no argument in support of any of her stated 'Issues.'" See Iowa R. App. P. 6.14(1)(c) ("Failure in the brief to state, to

¹ Section 232.116(1)(d) was not stated in the petition as a ground for termination of Stacy's parental rights to D.A. Termination under that section was inappropriate. See *In re D.E.D.*, 476 N.W.2d 737, 740 (Iowa Ct. App. 1991) (holding due process requirements were not met where ground for termination was not pled in petition). We will therefore only address the termination of parental rights to D.A. under 232.116(1)(f).

² The court also terminated the parental rights of Michael, T.T.'s father, and D.A.'s unknown father, though neither has appealed the termination.

argue, or to cite authority in support of an issue may be deemed waiver of that issue.”). Without deciding whether her failure to argue or to cite legal authority to support all of her issues waived those issues, upon our de novo review we conclude the State proved the grounds for termination of Stacy’s parental rights.

In order to support termination under section 232.116(1)(f), the State must establish,

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child’s 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.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child’s parents as provided in section 232.102.

To support termination under section 232.116(1)(h), the State must establish,

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child’s parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child’s parents as provided in section 232.102 at the present time.

In her argument that the State failed to prove the statutory elements for termination, Stacy does not specify which elements are not satisfied. Clearly the first three elements of section 232.116(1)(f) are met with regard to D.A., and the

first three elements of section 232.116(1)(h) are met with regard to T.T. Stacy's argument apparently relates to the fourth element, whether there is clear and convincing evidence that at the time of the termination hearing D.A. and T.T. could not be returned to her custody. Upon our de novo review of the record, we concur in the juvenile court's determination that D.A. and T.T. could not be returned to Stacy's custody at the time of the termination hearing. Not only was she in jail at the time, even if she were at the House of Mercy, under their rules it would be some time before she could have her children there with her.

We conclude the State proved the grounds for termination of Stacy's parental rights. Because the State proved the grounds for termination of Stacy's parental rights to T.T. under section 232.116(1)(h) and D.A. under section 232.116(1)(f), we need not address the termination under section 232.116(1)(d). See *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995) (noting that when the juvenile court terminates parental rights on more than one statutory ground, "we only need to find grounds under one of the sections in order to affirm the ruling").

Although she has not raised an issue concerning whether termination of her parental rights is in the children's best interests, we note our agreement with the juvenile court that it is not in the children's best interests "to have them wait longer in the limbo that is foster care to allow Stacy to possibly demonstrate her ability to parent." See *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997) ("A parent does not have an unlimited amount of time in which to correct his or her deficiencies."). We affirm the decision of the juvenile court.

AFFIRMED.