

IN THE COURT OF APPEALS OF IOWA

No. 8-041 / 07-2111
Filed January 30, 2008

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

**D.L.J., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

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

John C. Heinicke of Kragnes & Associates, P.C., Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Stephanie Brown,
Assistant County Attorney, for appellee.

Christine Milligan-Ciha, Juvenile Public Defender, Des Moines, guardian
ad litem for minor children.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

EISENHAUER, J.

A mother appeals the termination of her parental rights to her children. She contends the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the children's best interest. We review her claims de novo. See *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The mother's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d), (e), (f), (h), and (j) (2007). We need only find termination proper on one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). With respect to section 232.116(1)(f) and (h), the mother only disputes that there is clear and convincing evidence that the children could not be returned to her care at the time of the termination hearing. We conclude there is.

At the time of the termination hearing, the mother was still incarcerated. She sought an additional six months of time. The district court found the following regarding the mother:

She is presently incarcerated in a maximum security facility for women in Iowa. She has an extensive history of absconding from less restrictive correctional settings. Although she believes that she will be released to a 90-day program in Davenport within the next two weeks, there is no guarantee. Following her release from the halfway house 90-day program, she expects then to be on seven to eight months of supervised intense parole. [The mother's] testimony was contrasted by the Department of Human Services social worker who testified that [the mother] could be at a halfway house setting where children are not allowed to reside for as long as seven to eight months.

We agree. Furthermore, the mother has a lengthy history of substance abuse and has never maintained a significant period of sobriety. The future can be gleaned by the mother's past performance. *In re T.B.*, 604 N.W.2d 660, 662

(Iowa 2000). While the law requires a “full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,” this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). Children should not be forced to endlessly await the maturity of a natural parent. *Id.* Because there is clear and convincing evidence the children could not be returned to the mother’s care, we affirm the termination of the mother’s parental rights to her children.

The mother also contends termination is not warranted because the children are in the care of a relative. Iowa Code section 232.116(3)(a) states that the court need not terminate parental rights if the child is in the legal custody of a relative. However, section 232.116(3)(a) is permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The juvenile court has the discretion to apply this section and not terminate parental rights based on the circumstances before it and the best interests of the children. *Id.*

We conclude termination is in the children’s best interest. The youngest child has been out of his mother’s care for nearly his entire life and has no bond with her. The older child has suffered emotional harm as a result of his mother’s incarcerations. Both children need permanency and their mother has not been able to provide a stable home. The continued legal relationship of the mother with the children would only continue that instability. At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). That time is now. Accordingly, we affirm.

AFFIRMED.