

IN THE COURT OF APPEALS OF IOWA

No. 8-096 / 07-2131
Filed February 13, 2008

**IN THE INTEREST OF C.J.,
Minor Child,**

**L.J.H., Mother,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
Judge.

A mother appeals from the order terminating her parental rights to her
daughter. **REVERSED AND REMANDED.**

Deborah Skelton, Walford, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Robert Hruska, Assistant
County Attorney, for appellee State.

Cory Goldensoph, Cedar Rapids, for appellee father.

Annette Martin, Cedar Rapids, guardian ad litem for minor child.

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

BAKER, J.

Carrie, who was born in November of 2006, is the daughter of Laura and Michael. Carrie was removed from her parent's care shortly after birth when it was reported that Michael asked hospital staff for money to buy marijuana. In addition, the Iowa Department of Human Services (DHS) was concerned due to Laura's and Michael's previous involvement with it regarding other children. On December 20, 2006, Carrie was adjudicated to be a child in need of assistance (CINA).

After providing a variety of services to the parents, the State filed a petition seeking to terminate their rights to Carrie. Following a trial at which Laura requested that she be granted an additional six months, the court granted the State's request and terminated Laura's parental rights pursuant to Iowa Code sections 232.116(1)(g) and (h) (2007). The court also terminated Michael's parental rights. With regard to Laura, the court was primarily concerned with her inability to distance herself from Michael and his troublesome influences. Laura appeals from this order.

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). While the district court terminated the parental rights on more than one statutory ground, we will affirm if at least one ground has been proved by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Our primary concern in termination proceedings is the best interests of the children. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

On appeal, Laura claims clear and convincing evidence does not support termination under either of the grounds cited. She further claims termination is

not in Carrie's best interests. She notes that her parenting skills have progressed considerably and that Carrie has never been at risk of abuse while in her care. Her recent breakup with Michael is evidence of her progress and her intention to become independent from him.

Iowa Code section 232.116(1)(g) requires clear and convincing proof of, among other elements, that Laura lacks the ability or willingness to respond to services and that an additional period of rehabilitation would not correct the situation. Section 232.116(1)(h) requires proof that the child cannot be returned to Laura's care without being subject to some adjudicatory harm. For reasons that will follow, upon our de novo review of the record we find the record lacks clear and convincing evidence supporting these elements.

The evidence does not support a finding that Laura lacks the ability or willingness to respond to services and that an additional period of rehabilitation would not correct the situation. The family's three service providers—Kelly Morgan, Eric Lehman, and Samantha Grimm—testified at trial. Unanimously, they related that Laura was doing well with services, performing well in visits with Carrie, and in most other ways progressing. Morgan testified that “[t]hroughout this case, Laura has actually done very well in regards to her parenting. She . . . is able to do a lot for Carrie without being prompted.” Lehman found Laura cooperative with services, an active participant, and able to implement different parenting techniques she had been taught. Grimm likewise testified that Laura's parenting has improved, that she asks appropriate questions, and that there are no safety concerns with her.

Laura attended nearly all the visits she was offered with Carrie. Visitation supervisors reported that she does a good job meeting Carrie's basic needs, such as feeding, diapering, and playing with her. She is interactive during visits and asks pertinent parenting questions. She is ready and prepared for all visits. Laura also attempted to help Michael during visits, prompting him to act in an appropriate manner around Carrie.

We also find that the evidence does not support a finding that the child cannot be returned to Laura's care without being subject to some adjudicatory harm. Although the nature of the adjudicatory harm is not explicitly stated, the primary reason provided in the order for granting termination appears to be Laura's relationship with Michael and the court's belief that she will not remain separated from him. First, there is no question Michael has an array of issues that indicate he should not have contact with Carrie. He has an extensive criminal history and a long history of drug abuse. He is considered intellectually low-functioning and he has an explosive temper. Without question, his parental rights properly were terminated and the various service providers appropriately were concerned about Laura's continued contact with him.

However, the evidence presented at trial showed that within one month of the termination hearing, Laura had moved out of her parents' home and into a two-bedroom apartment. Two weeks later, Michael moved out. At the time of trial, they were separated. Service provider Eric Lehman testified that he did not believe Laura had had any contact with Michael since he moved out. Thus it appears to us that Laura was moving in the right direction and understood the need to separate herself from Michael. This concrete step constitutes progress.

Lehman further opined that with Michael out of the picture, Laura would be safe with Carrie and that he would recommend semi-supervised visits. Grimm likewise testified that the only thing standing between Laura and semi-supervised visits was for her to prove she had no other male figures in her house. As we have noted, Laura has taken the first steps toward this goal.

No service provider or social worker found any safety concerns regarding Laura's care of Carrie. It is not disputed that her parenting skills have increased and that she takes visitation and services seriously. Laura has no drug abuse issues and has held a permanent job throughout the CINA proceedings. Despite her low functioning, she has not been diagnosed with any mental illness. Although Carrie was almost immediately removed from her mother's care upon birth, there does appear to be as much of a bond as can be expected. Accordingly, we conclude clear and convincing evidence does not support that Laura is unamenable to further services or that Carrie would be subject to adjudicatory harm if returned to her custody or that any adjudicatory concerns are present.

The primary impediment toward beginning the process of regaining custody of Carrie has been her relationship with Michael. At the time of the termination hearing, however, she was making positive progress towards that necessary goal. At this time, his rights have been terminated and he now appears to be out of the picture. We believe that in light of these considerations, the juvenile court should have granted Laura's request for an additional six months in order to prove her ability to parent Carrie and to show that Michael is out of her life for good. We therefore reverse the order terminating Laura's rights

to Carrie, and remand with directions that permanency be extended for six months.

REVERSED AND REMANDED.