

IN THE COURT OF APPEALS OF IOWA

No. 8-1069 / 08-1488
Filed January 22, 2009

**IN THE INTEREST OF D.N., JR.,
Minor child,**

**J.L.T., Mother,
Appellant.**

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

A mother appeals the termination of her parental rights to her child.

AFFIRMED.

Deborah M. Skelton, Walford, for appellant.

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

Collin Olander, Hiawatha, for appellee-father.

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

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

EISENHAUER, J.

A mother appeals the termination of her parental rights to her child born in March 2007. She contends the State failed to prove the grounds for termination by clear and convincing evidence. She also contends termination was not in the child's best interest. Finally, the mother contends the juvenile court abused its discretion in denying her motion for new trial and to reopen the record.

The mother's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d), (h), (g), and (l) (2007). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(h) where:

- (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.

The mother does not dispute the first three elements have been proved. Instead, she contends there is not clear and convincing evidence the child cannot be returned to her custody as provided in section 232.102.

We conclude the child cannot be safely returned to the mother's care at the present time. The child and mother tested positive for cocaine when the child was born in March 2007. The mother did not begin substance abuse treatment until January 2008, after termination proceedings had already begun. The mother celebrated her graduation from the treatment program by using cocaine

in March 2008, while on holiday leave from a halfway house program. In addition to concerns about the mother's substance abuse issues, the mother did not regularly attend visitation with the child and frequently needed to be prompted to action on the occasions she did engage in visitation. The mother had not advanced beyond supervised visitation at the time of termination. The mother's admitted past substantial substance abuse puts the child at risk of harm if she should relapse. Her recent sobriety is to be commended, but the trial court and this court are not convinced she can continue to avoid drug use and provide a safe home for her child.

Although the child could be returned to the mother's care at some point in the future if she maintained sobriety, obtained housing, and demonstrated an ability to appropriately care for her child, additional time is needed. Considering the mother's history, these conditions are unlikely to occur soon or ever. 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). A child should not be forced to endlessly suffer in parentless limbo. *See In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997). 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).

We further conclude termination is in the child's best interest. The child is currently in pre-adoptive placement with a foster family that previously adopted the child's biological sister. The child has special needs and requires

permanency. The mother has not demonstrated an ability to care for the child and the crucial days of childhood cannot be suspended while the mother experiments with ways to face up to her own problems. See *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997).

Finally, we conclude the district court did not abuse its discretion in denying the mother's motion for new trial and to reopen the record following the destruction of the court file in this matter due to flooding damage. Iowa Rule of Appellate Procedure 6.10(3) provides the mechanism for making a record when the transcript is unavailable. The parties complied with the rule and the summaries submitted are sufficient to permit a de novo review of the record. Accordingly, we affirm.

AFFIRMED.