

IN THE COURT OF APPEALS OF IOWA

No. 8-139 / 08-0031
Filed March 14, 2008

**IN THE INTEREST OF N.S.,
Minor Child,**

**A.R.S., Mother,
Appellant.**

Appeal from the Iowa District Court for Cedar County, Mary Davis Howes,
Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Don Schroeder, West Liberty, for appellant mother.

L. Jeffrey Zearly, Tipton, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Sterling L. Benz, County Attorney, and Jeffrey Renander,
Assistant County Attorney, for appellee State.

Dennis Mathahs, Marengo, for minor child.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

ZIMMER, J.

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

I. Background Facts and Proceedings.

Ashley is the mother and Brandon is the father of Natalie, born in June 2006.

Natalie came to the attention of the Iowa Department of Human Services (Department) in October 2006 after Ashley assaulted her boyfriend in the presence of Natalie. Prior to this incident, Ashley was heavily involved with human services in Iowa and Michigan due to her extensive mental health problems.¹ Natalie was removed from her mother's home on October 2, 2006, and placed with Ashley's sister. On January 2, 2007, Ashley was convicted of domestic assault and was ordered to attend batterer's education program classes and to take care of her mental health issues.

Natalie was adjudicated a child in need of assistance (CINA) on January 8, 2007. On January 22, 2007, the Department sought and was granted a temporary change in custody placing Natalie in family foster care. On May 7, 2007, after a home study was completed, Natalie was placed in the care of Brandon's mother. Following adjudication, Ashley and Brandon received or were offered a variety of services designed to transition Natalie back to their care safely; however, these services were unsuccessful in achieving their intended result.

¹ Ashley was diagnosed with ADHD, bi-polar disorder, borderline personality disorder, possible disassociative disorder, adjustment disorder, learning disabilities, and a variety of other diagnoses.

The State filed a petition to terminate Ashley's and Brandon's parental rights on October 1, 2007. The juvenile court held a contested termination hearing on December 3, 2007. At the hearing, the family counselor testified that although the parents were cooperative with services initially, their attendance at appointments and visitations with Natalie then became inconsistent. The family social worker testified she did not believe Natalie could be returned to the custody of either parent. Natalie's guardian ad litem agreed with the family counselor's and social worker's conclusion that it was in the child's best interests to terminate Ashley's and Brandon's parental rights.

In an order filed December 6, 2007, the juvenile court terminated Ashley's and Brandon's parental rights to Natalie 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 232.116(1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home). Ashley has appealed.²

II. Scope and Standards of Review.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). We are primarily concerned with the child's best interests in termination proceedings. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). Even when the statutory grounds for termination are met, the decision to terminate parental rights must

² In December 2007 Brandon filed a notice of appeal; however, in February 2008 he filed a voluntary dismissal of appeal.

reflect the child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). When we consider the child's best interests, we look to her long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

III. Discussion.

In this appeal, Ashley contends the grounds for termination were not supported by clear and convincing evidence. She also maintains termination is not in the best interests of the child.³ Upon our review of the record, we find no merit in either of the mother's arguments.

When the juvenile court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate under one of the sections cited by the court in order to affirm the court's ruling. *In re S.R.*, 600 N.W. 2d 63, 64 (Iowa Ct. App. 1999). In this case, we choose to focus our attention on section 232.116(1)(e) as the basis for termination.

Natalie has been removed from her mother's care for more than a year. At the termination hearing, the social worker testified that Ashley did not participate in visits with Natalie or with services offered by the Department from March 19 through May 2007.⁴ In May 2007 Ashley was incarcerated. She did not participate in any services between May and August 2007. See *In re M.M.S.*,

³ Ashley further asserts termination was not in the child's best interests because Natalie was placed with a relative. See Iowa Code section 232.116(a) (providing "[t]he court need not terminate the relationship between the parent and child if the court finds . . . [a] relative has legal custody of the child"). However, Ashley did not raise this issue during the termination hearing; therefore, we will not review her claim on appeal. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) (holding an issue not presented to and passed on by the juvenile court may not be raised on appeal for the first time).

⁴ Prior to March 2007, Ashley had supervised visitation with Natalie. At the termination hearing, the social worker testified that some of the visits were positive and some were not. The social worker stated that Ashley would get upset at the service providers and she would yell and scream.

502 N.W.2d 4, 8 (Iowa 1993) (stating a parent cannot use her incarceration as a justification for her lack of relationship with the child, especially where the incarceration results from a lifestyle that is chosen in preference to a relationship with the child). From August to November 2007, while in county jail, Ashley did participate in parenting skills sessions. However, she did not follow through with mental health or substance abuse treatment. Upon Ashley's release from jail in November 2007, she did not contact the Department to set up visitation with her daughter. We find clear and convincing evidence supports the juvenile court's decision to terminate Ashley's parental rights under section 232.116(1)(e).

Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the child's best interests. *M.S.*, 519 N.W.2d at 400. In this case, Natalie has been living with her grandmother since May 2007. She is bonded with her grandmother and is thriving in her care. Natalie's grandmother wishes to adopt her.

In its order terminating Ashley's parental rights to Natalie, the juvenile court stated,

Ashley has no job, no home and no transportation. She has substance abuse problems but no plan to deal with them other than to state she will not use illegal drugs or drink. She has anger management issues, domestic violence issues, and mental health issues.

Upon our review of the record, it is apparent that serious concerns still exist regarding Ashley's stability and her ability to provide adequate care for her child. Ashley has been provided with extensive services since the inception of this case; however, Ashley chose to spend many months resisting services and

ignoring her daughter. The evidence does not support the conclusion that additional time would allow Natalie to be returned to Ashley's care.

When a parent is incapable of changing to allow the child to return home, termination is necessary. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995). Natalie deserves stability and permanency, which her mother cannot provide. *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). We agree with the juvenile court's finding that termination of Ashley's parental rights is in the child's best interests.

AFFIRMED.