

IN THE COURT OF APPEALS OF IOWA

No. 8-196 / 08-0213

Filed April 9, 2008

IN THE INTEREST OF D.M.,

Minor Child,

J.P., Father,

Appellant,

L.M., Mother,

Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A mother and a father each appeal from a juvenile court order terminating
their parental rights to a child. **AFFIRMED ON BOTH APPEALS.**

John D. Jacobsen of Hallberg, Jacobsen, Johnson & Viner, Cedar Rapids,
for appellant-father.

Michael M. Lindeman, Cedar Rapids, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Lance Heeren, Assistant
County Attorney, for appellee.

Phillip Seidl of Seidl & Chicchelly, P.L.C., Cedar Rapids, guardian ad litem
for minor child.

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

MILLER, J.

Jackie is the father, and Lavern the mother, of Diamond, born in April 2004. Jackie and Lavern have never been married or resided together. Jackie has six older children, including some who are adults, by another mother or mothers. Lavern has four older children, two now adults, by three other fathers. In a late January 2008 order the juvenile court terminated each parent's parental rights to Diamond pursuant to Iowa Code section 232.116(1)(h) (2007) (child three years or age or younger, adjudicated a child in need of assistance (CINA), removed from physical custody of parents six of last twelve months, cannot be returned at present time). Each parent appeals. We affirm on both appeals.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Jackie claims the State did not prove that Diamond could not be returned to him at the time of the termination hearing. This claim implicates the fourth element of section 232.116(1)(h). This element is proved when the evidence shows the child cannot be returned to the parent without remaining a child in need of assistance. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supported the child's removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

Jackie's five youngest children had been adjudicated CINA in August 2003 as a result of exposure to illegal drugs and Jackie's criminal history, which included domestic abuse and substance abuse. They had been placed with their mother. Because of their mother's inability to parent them she attempted to leave them with Jackie in April 2004. As of August 2004 the two older children were no longer with Jackie. By late 2004 another child was placed with her mother, in October 2005 the remaining two were returned to their mother, and in April 2006 the juvenile court found the children could not be placed with Jackie.

Diamond has in fact never been in Jackie's physical custody. She was adjudicated CINA in January 2005 and ultimately and finally removed from Lavern's physical custody in January 2007.

Jackie is low functioning and is able to parent children only with extensive assistance. He receives SSI benefits. As of March 2007 Jackie's three younger children from his prior marriage were placed with him because their mother could not handle their behaviors.

In July 2007 Jackie was charged with possession of a controlled substance. About that time he tested positive for marijuana use. By late November he had pled guilty to the drug charge.

Jackie has been unable to exercise even weekly visitation with Diamond, as he is preoccupied with and overwhelmed by trying to care for his other three children, and sees Diamond only an hour every other week at most. As reported by the Iowa Department of Human Services (DHS), in November 2007 there was no structure in Jackie's home. He is apparently unable to direct or control the

three children in his care, who are early to mid teenagers, as he cannot get two of them to attend school.

We agree with the juvenile court that Diamond would be at risk of harm due to lack of supervision and denial of critical care if presently placed with Jackie, and thus would remain a CINA. We conclude the State proved the fourth element of section 232.116(1)(h) as to Jackie by clear and convincing evidence.

Lavern claims the State did not prove that Diamond could not be returned to her at the time of the termination hearing. This again implicates the fourth element of section 232.116(1)(h). Lavern argues she does not have issues regarding substance abuse, domestic abuse, or instability, there was evidence that with enough services she and Diamond could be together, and the State should have provided additional services. For several reasons we find Lavern entitled to no relief on this claim.

First, Lavern does not even suggest what additional services could or should have been provided. She has thus waived this issue. See Iowa R. App. P. 6.14(1)(c) (failure to argue an issue may be deemed waiver of that issue); *In re W.R.C.*, 489 N.W.2d 40, 41 (Iowa Ct. App. 1992) (same).

Second, Lavern makes no claim, and the record does not show, that she at any time before the termination hearing requested or demanded services that were not being provided. She has thus not preserved error on this issue. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa 1999) (holding the issue of whether services were adequate is not preserved for appellate review where a parent does not demand other, different, or additional services prior to the termination hearing).

Third, Lavern's claim has no substantive merit. Numerous and varied services have been provided to her continuously since 1999. However, Lavern is a low-functioning person, with an IQ of 60, and because of her cognitive limitations is unable to retain information concerning parenting that is presented to her. Despite extensive and lengthy services Lavern has been unable to parent and properly supervise her children. All five have been adjudicated CINA. The oldest was removed from Lavern's home for all but about five months between November 2002 and reaching adulthood in mid-2005. The second was removed for all but about one year between June 2002 and reaching adulthood in late 2006. In mid-2006 the third was hospitalized for mental health issues. The fourth, then twelve years of age, was charged with sexual abuse and placed in detention in mid-2006. Two years after Diamond was adjudicated CINA she had to be removed from Lavern in January 2007.

As found by the juvenile court, despite extensive and lengthy services Lavern has not been able to demonstrate that she can provide basic parenting and supervision for Diamond on any sustained basis. We conclude that, contrary to Lavern's claim, the record clearly and convincingly demonstrates that there are not additional services that would have allowed Diamond to be returned to her without being at risk of harm due to lack of supervision and denial of critical care.

Jackie claims, and Lavern's petition on appeal might be read as claiming, that termination of parental rights is not in Diamond's best interest. We disagree.

The juvenile court's detailed and thorough findings include the following:

Diamond has been removed from parental custody for a year. She is overall a healthy, resilient child, but is clearly in need of a permanent home and permanent caretakers. She has made progress physically, developmentally and behaviorally since her

placement in foster family care. Diamond's parents have been given significant time to demonstrate the ability to provide for her and have been unable to do so. Diamond is an adoptable child. She needs stability, basic parenting, basic food, medical care, clothing and shelter in a safe, drug free environment.

The juvenile court's detailed conclusions include the following

Diamond is a very young child in need of stability and permanent placement. She has lived in foster family care for over a year. Lavern and Jackie both love their daughter and clearly want her returned to the care of a parent. However, each parent has significant limitations in judgment and cognitive abilities which prevent them from providing a safe, stable home for the child and minimally adequate care and supervision. Diamond cannot wait any longer for her parents to provide a permanent home for her and the Court finds that termination of parental rights is in the best interests of this child.

These findings and conclusions are fully supported by the record, we adopt them as our own, and we conclude that termination of Jackie's and Lavern's parental rights is in Diamond's best interest.

AFFIRMED ON BOTH APPEALS.