

IN THE COURT OF APPEALS OF IOWA

No. 8-204 / 08-0303

Filed April 9, 2008

**IN THE INTEREST OF D.P.,
Minor Child,**

**S.A.L., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Yvonne Naanep, Des Moines, for appellant mother.

Eric Anderson, West Des Moines, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Chris Gonzales,
Assistant County Attorney, for appellee State.

Charles Fuson of the Youth Law Center, Des Moines, 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 son. We affirm.

I. Background Facts and Proceedings.

Sara is the mother and William is the father of DeShawn,¹ born in July 2004.

DeShawn came to the attention of the Iowa Department of Human Services (Department) in August 2005 when DeShawn, who was not being adequately supervised, dialed 911 while playing with the phone. When the police arrived at Sara's residence, they found Sara present with DeShawn and some of her friends. There was a strong odor of marijuana in the home. The police arrested Sara after they discovered marijuana and a large amount of cash at her residence. A temporary removal order was issued on August 30, 2005, and DeShawn was placed in the care of a maternal relative, Shannon.

DeShawn was adjudicated a child in need of assistance (CINA) on October 31, 2005, primarily based on Sara's and William's substance abuse issues and their inability to adequately care for their son. Following adjudication, both parents received a variety of services, including drug treatment, designed to transition DeShawn back to their care. Sara successfully completed the drug treatment program,² and DeShawn was returned to her care on April 4, 2006, subject to the Department's supervision.

¹ The child in need of assistance and termination actions refer to the child as "DeShawn." However, at the pretrial conference for the termination the mother stated the child's name is spelled "DaShawn."

² William did not successfully complete the drug treatment program.

After DeShawn was returned to his mother's care, Sara continued to participate in services. However, Sara continued to struggle with mental health issues, and it became apparent that she could not parent DeShawn in a way that supported his healthy development. DeShawn was removed from his mother's care for a second time on December 13, 2006. In January 2007 the child was again placed in Shannon's care. Sara made some progress following removal, and she was granted an additional six months to attempt reunification in July 2007. Unfortunately, Sara did not sustain her progress, and the State filed a petition to terminate Sara's and William's parental rights on December 10, 2007.

The juvenile court held a termination hearing on January 23, 2008. At the hearing, William consented to the termination of his parental rights; however, Sara contested termination. An in-home service provider testified that Sara had been inconsistent in following through with the therapy recommended to address her mental health issues. She also testified that Sara becomes overwhelmed during visitations and that DeShawn has tantrums and acting out behaviors. DeShawn's therapist diagnosed DeShawn with "adjustment disorder with mixed disturbance of emotions and conduct" as a result of inconsistent care and caregivers. She stated that after DeShawn's daily contact with his mother was eliminated his behavior improved. The therapist recommended that DeShawn remain with Shannon, but did not object to DeShawn maintaining a relationship with Sara. The family's social worker stated she was concerned that Sara is only externally motivated, and she does not believe that Sara could assume the care and custody of DeShawn. The court appointed special advocate (CASA) submitted a report indicating that termination of Sara's parental rights was in

DeShawn's best interest. The child's guardian ad litem agreed that it was in the child's best interests to terminate Sara's parental rights.

In an order filed February 1, 2008, the juvenile court terminated Sara's parental rights to DeShawn pursuant to Iowa Code section 232.116(1)(d) (2007) (child CINA for physical abuse or neglect, circumstances continue despite receipt of services), and William's parental rights to DeShawn pursuant to sections 232.116(1)(a), (d), and (e). Only Sara has appealed.

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 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 his 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, Sara contends the statutory 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.

³ On appeal, Sara further contends the court erred in terminating her parental rights to DeShawn because extenuating circumstances existed under section 232.116(3).

Sara contends the court erred in terminating her parental rights under 232.116(1)(d) because the State failed to prove by clear and convincing evidence that DeShawn would be subjected to adjudicatory harm if he was returned to her care.⁴ For the following reasons, we disagree.

DeShawn was removed from his mother's care for the first time in August 2005. Despite receiving extensive services since that time, Sara is still not capable of safely parenting DeShawn on her own. While Sara is employed delivering newspapers and is working on her GED, she remains almost totally dependent on her mother and her fiancé. Sara has often failed to attend individual therapy sessions scheduled to address her mental health concerns, and she has not followed up with medication management appointments. Sara has not made much improvement in her ability to set limits for DeShawn. After more than two years of services, Sara continues to struggle to meet her own needs. It is clear that she is not capable of caring for DeShawn without the Department's supervision.

Upon our de novo review of the record, it is apparent that the issues that led to DeShawn's removal continue to exist. Therefore, we find clear and

However, the juvenile court did not address this section in its termination order. Therefore, we will not address this issue 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 for the first time on appeal).

⁴ The State contends that we may also affirm the termination of Sara's parental rights pursuant to section 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). They note that the juvenile court mistakenly found DeShawn was not three years old or younger even though he was born in July 2004. Although we may affirm the juvenile court's ruling on any ground that appears in the record, *In re T.N.M.*, 542 N.W.2d 574, 575 (Iowa Ct. App. 1995), we chose to focus our attention on section 232.116(1)(d) as the basis for termination in this case.

convincing evidence supports the juvenile court's decision to terminate Sara's parental rights under section 232.116(1)(d).

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. DeShawn has twice been removed from his mother's care. Following each removal he was placed in the care of his maternal relative, Shannon. DeShawn and Shannon have formed a bond, and Shannon is willing to adopt DeShawn. DeShawn deserves stability and permanency, which his mother cannot provide. *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). He should not be forced to wait any longer for his mother to demonstrate that she can become a responsible parent. The evidence does not support the conclusion that additional time should be allowed to see if DeShawn can be returned to his mother's care. We agree with the juvenile court's finding that termination of Sara's parental rights is in the child's best interests.

IV. Conclusion.

We affirm the juvenile court's decision to terminate Sara's parental rights.

AFFIRMED.