

IN THE COURT OF APPEALS OF IOWA

No. 8-296 / 08-0219
Filed April 30, 2008

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

**G.L.M., 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 to her
daughter. **AFFIRMED.**

Francis Hurley, Des Moines, for appellant mother.

Patricia Notch, Indianola, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Cory McClure,
Assistant County Attorney, for appellee State.

Charles Fuson of the Youth Law Center, Des Moines, for minor children.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Gina appeals the juvenile court's order terminating her parental rights to her six-year-old daughter, Donyea. We affirm.

I. Background Facts and Prior Proceedings

On July 7, 2006, Donyea and her older brother were removed from Gina's care when police raided Gina's home and found illegal substances and a weapon. Donyea and her brother were eventually placed together with Gina's niece and her niece's husband. Donyea was adjudicated a child in need of assistance (CINA) on September 12, 2006. In November 2006 Gina began to serve a ten-year prison sentence for a drug-related conviction.

In November 2007 the State filed the present petition to terminate Gina's¹ parental rights to Donyea. Because Donyea's brother was nearly fourteen years old and very bonded to his mother, the State opted not to pursue termination of Gina's parental rights to him. Instead, DHS planned to keep him in his current relative placement and possibly pursue a guardianship. These same relatives indicated that they would be willing to adopt Donyea if Gina's parental rights were terminated.

Gina participated in the January 3, 2008 termination hearing via telephone. Although she had not yet met with the parole board, she claimed that she would most likely be released from prison in June 2008. She asked the court to grant her more time to prove she could be a good parent. Donyea's guardian ad litem also made the following professional statement to the court:

¹ The State also petitioned to terminate her father's parental rights. Donyea's father did not actively participate in the CINA proceedings and is not a party to this appeal.

I do believe, Your Honor, that if I could, in some way, adequately represent Donyea's wishes, she would not want her mother's parental rights to be terminated. She's too young to understand everything that's associated with that. But as far as a formal position as her attorney, I think it is probably more accurate and honest to say I believe that she would not want her mother's rights to be terminated.

On January 30, 2008, the juvenile court entered an order terminating both parents' parental rights in regards to Donyea pursuant to Iowa Code sections 232.116(1)(b), (d), (e), and (f) (2007). Gina now appeals.

II. Standard of Review

Our scope of review in juvenile court proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). "Although we give weight to the juvenile court's factual findings, we are not bound by them." *Id.* Our primary concern is the best interests of the child. *Id.*

III. Merits

Gina raises two issues on appeal: (1) termination is not in Donyea's best interests and (2) her request for new counsel was denied.

Because Gina did not raise any claim of error concerning the statutory grounds for termination, she waives any such claim. See Iowa R. App. P. 6.14(1)(c). Therefore, we affirm the termination of Gina's parental rights on statutory grounds. However, even if the statutory grounds for terminations are met, the decision to terminate must still be in the child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

A. Best Interests

Gina contends the State "should not be able to terminate a parent's parental rights due to a lack of participation in services when the parent is

receiving the ultimate service of incarceration.” She also claims the State interfered with her parent/child relationship by failing to make arrangements so that Donyea could visit her in prison.

We find no merit to either argument. First, we do not fault the Iowa Department of Human Services for refusing to transport a six-year-old child to prison so that she could visit her incarcerated mother. Second, it is well established that parents cannot use incarceration as an excuse for their failure to maintain a relationship with their child. *In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa Ct. App. 1994). Gina must take full responsibility for the conduct which has resulted in her confinement. *Id.* She is the one who put her daughter at risk and she is the one who made the lifestyle decisions that led to her present confinement.

Gina also contends the court should have granted her request for more time to prove she could parent her daughter. We find the district court properly denied this request. The statutory period set forth in section 232.116(1)(f) directs that twelve months is the point where the rights and needs of the child surpass the needs of the parents. By the time of the termination hearing, Donyea had been removed from Gina’s care for nearly eighteen months. We find no reason to further delay Donyea the permanency she so desperately needs. *See In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) (“The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.”).

Finally, Gina points to the guardian ad litem’s professional statement that he does not believe Donyea wants her mother’s parental rights terminated. Even

if we were to assume that Donyea had made this statement to the court, we note that it is the best interests of the child, not his or her wishes, that determines the outcome of a case. *In re J.P.B.*, 419 N.W.2d 387, 391 (Iowa 1988). We find this particularly true when dealing with a six-year-old child. While we sympathize with a child's desire to stay with her mother, we must consider the child's long-term interests.

We are convinced that Donyea's long term interests are best served by terminating Gina's parental rights and placing her in a safe and stable home. For the past eighteen months, Gina has been unable to provide Donyea with a safe and stable home. Gina is still in prison, and we find no reason to believe she will be able to effectively parent her child in the foreseeable future. The law demands a full measure of patience with a troubled parent, but a child need not endlessly await the maturity of a parent, especially once the statutory period has elapsed. *A.C.*, 415 N.W.2d at 613-14. Donyea is currently placed with relatives who care for her and are willing to adopt her. Termination would allow her to live the rest of her childhood in a safe and stable environment with parents who will put her interests above their own. We find termination of Gina's parental rights is in Donyea's best interests.

B. Request for New Counsel

Gina also claims the court erred when it did not grant her request for new counsel. We find this argument meritless. In early 2007 during the underlying CINA proceedings, Gina sent a letter to the court asking for new court-appointed counsel. In this letter she indicated a preference for two specific attorneys. The

court assigned Gina a new court-appointed attorney, but did not assign her one of the attorneys she had suggested.

We find no reason to reverse the present termination order simply because the juvenile court did not fulfill her request for a specific court-appointed attorney. See *State v. Williams*, 285 N.W.2d 248, 254 (Iowa 1979) (“While there is an absolute right to counsel, no defendant, indigent or otherwise, has an absolute right to be represented by a particular lawyer.”) There is also no proof Gina received ineffective assistance of counsel during these proceedings. A party claiming ineffective assistance must prove (1) that counsel’s performance was deficient and (2) that actual prejudice resulted. *J.P.B.*, 419 N.W.2d at 390. Unless both showings are made, the claim must fail. *Id.* Gina does not state how her trial counsel’s performance was deficient and does not claim she suffered any prejudice as a result of her counsel’s conduct. Accordingly, we find she has failed to prove that her trial counsel was ineffective.

We affirm the juvenile court’s decision.

AFFIRMED.

Huitink, J., concurs; Sackett, C.J., concurs specially without opinion.