

IN THE COURT OF APPEALS OF IOWA

No. 8-501 / 08-0671

Filed July 16, 2008

**IN THE INTEREST OF L.R.,
Minor Child,**

S.R., Mother,
Appellant.

Appeal from the Iowa District Court for Wapello County, William S. Owens,
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights to her
daughter. **AFFIRMED.**

John Silko, Bloomfield, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Mark Tremmel, County Attorney, and Seth Harrington,
Assistant County Attorney, for appellee State.

Bryan Goldsmith, Ottumwa, for appellee father.

Cynthia Hucks, Ottumwa, for minor child.

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

SACKETT, C.J.

Shameeka, the mother of Lilly, appeals from the juvenile court order terminating her parental rights. She contends the State did not prove Lilly could not be returned to her care nor did it did make reasonable efforts to reunite her with her daughter. She also argues she should be given more time to reunite with Lilly. We affirm.

Lilly, born on January 16, 2007, first came to the attention of the Department of Human Services (Department) when it was revealed that Lilly tested positive for methamphetamine and marijuana at birth. Shameeka, who was on probation to the Iowa Department of Corrections after being convicted of a forgery charge, and Lilly entered residential treatment at Bride of Hope on January 18, 2007. On January 24 Shameeka was arrested for a number of probation violations including testing positive for marijuana and methamphetamine. At the time of her arrest Shameeka signed a voluntary placement agreement agreeing that Lilly could be placed in foster care. On January 25 Shameeka was released on bond and the child's father revoked the voluntary placement agreement. An ex parte removal order was obtained and on February 12, 2007, the order was set aside, and Lilly was returned to her mother's care on the condition that Shameeka continue to reside in a residential substance treatment program. Mother and daughter returned to Bridge of Hope.

On February 27, 2007, Lilly was found to be a child in need of assistance as defined in Iowa Code section 232.2(6)(c)(2), (n), and (o) (2007). At a dispositional hearing on May 6, legal custody of Lilly was ordered to remain with

her mother on the condition they continue to reside in a residential substance abuse facility. Shameeka participated in family drug court as a condition of her probation. In late May she reported in drug court that she was helping at hospice for her community service, was committed to her treatment program, and had been sober for 126 days. On June 11 she reported in drug court she had been sober for 147 days and was attending meetings five times a week. Before the end of June she was found in a car unconscious and unresponsive, and it was learned she had been drinking alcohol and probably, according to a drug screen done at the hospital, she was also using cocaine. Lillie was removed from her care on June 16 and placed in foster care. On June 17 Shameeka went to the Department's office reporting she had alcohol poisoning. Shameeka, with the Department's assistance, attempted to be accepted in another treatment program. Lilly, in the meantime, tested positive for benzylecgonine cocaine metabolite and marijuana metabolite. A removal hearing was held on June 26. Shameeka did not attend. A review hearing was held on July 10 and Lilly's custody was continued with the Department.

On July 11 the Department learned Shameeka was arrested in New York State on a charge of criminal impersonation. She was transported to the Wapello County Jail three days later, and then to Oakdale Medical and Classification Center. On September 9 Shameeka was transferred to the violator's program at the Women's Correctional Facility in Mitchellville. By late September she was taking classes and involved in programs at Mitchellville. While Shameeka was at Mitchellville Lilly was transported to see her three times. Plans were being made

to transfer Shameeka to the House of Mercy in Des Moines in January. However, before this could happen she was charged with taking prescribed medication from another resident and was sent back to the county jail. In February her probation was revoked and she was sentenced to five years in prison. On February 22 she was transported to Oakdale. Termination of Shameeka's parental rights was recommended by the Department. At the time, Lilly was fourteen months old and had been in foster care for nine months.

At the termination hearing on April 1, 2008, the State offered twenty exhibits into evidence, which were admitted without objection. Neither the State nor the guardian ad litem offered any further evidence. Shameeka testified by telephone. She asked for a continuance of the hearing. She challenged the termination, contending she could do nothing more until she was released from prison. She estimated she would be released in November of 2008. The court then called Jane Cardenzana as its witness and examined her. She had been the case manager for Lilly and her testimony reaffirmed certain facts included in the termination report that had been entered into evidence. Following the hearing the court terminated Shameeka's parental rights to Lilly under Iowa Code sections 232.116(1)(g) and (h).

SCOPE OF REVIEW. We review termination of parental rights de novo. *In re D.G.*, 704 N.W.2d 454, 456 (Iowa Ct. App. 2005). The State must prove the grounds for termination by clear and convincing evidence. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). Where the district court terminated the parental rights on more than one statutory ground, we will affirm if at least one

ground has been proved by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

RETURN TO MOTHER'S CARE. Shameeka contends the State did not prove Lilly could not be returned to her care. This claim implicates the fourth element of proof under section 232.116(1)(h). Shameeka argues she demonstrated she could care for Lilly during the period Lilly was in her care from February to June of 2007 and Lilly "could safely be returned to her care in the foreseeable future" after her release from prison in November of 2008. The statute, however, only requires proof a child cannot be returned to a parent's care "at the present time." Iowa Code § 232.116(1)(h)(4). The child could not be returned to Shameeka at the time of the hearing, and Shameeka's past history puts into question whether she will follow the rules to be released in November and, if she is released, will be able to care for the child. Clear and convincing evidence supports the finding Lilly could not be returned to Shameeka's care at the time of the termination hearing. We affirm the termination of Shameeka's parental rights under section 232.116(1)(h). Shameeka does not challenge the termination of her parental rights under section 232.116(1)(g).

REASONABLE EFFORTS Shameeka also contends the State did not make reasonable efforts to reunite her with Lilly. She argues the State "did not agree to provide continuing services to Shameeka after her anticipated date of release from prison, and make efforts at that time to place Lilly with her." Substantial efforts were made to help preserve the family unit. Mother and child were twice put together in residential treatment in Bridge of Hope. Shameeka

was offered a number of services, classes, and programs as well as being a participant in drug court. While to her credit she made an effort to participate for a short time, she relapsed and began using alcohol and drugs again as well as exposing Lilly to them. However, the services offered did not end there. The Department sought to put her in another treatment program and she ultimately entered a program at Mitchellville. Arrangements were made for her and Lilly to enter the House of Mercy in Des Moines. However while waiting for entry to the House of Mercy she was dropped from the Mitchellville program because she stole prescription medication there. The State clearly made more than reasonable efforts to reunify Shameeka and Lilly. It was not the lack of efforts, but rather Shameeka's response to the State's efforts, that prevents Lilly's return to Shameeka's care. We conclude this claim is without merit.

ADDITIONAL TIME. Shameeka further contends she should have been given additional time to reunite with Lilly. We disagree. At the time of the termination hearing Lilly had been out of her mother's care for all but about four months of her life. She had not been in Shameeka's care since June of 2007. Looking at Shameeka's past response to reunification efforts, we cannot find that allowing Shameeka additional time to pursue reunification with Lilly at some point in the future is appropriate. See Iowa Code § 232.104(2)(b) (providing for an additional six-months based on a "determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six month period"). Patience with parents must be limited because delay may

translate into intolerable hardship for a child. See *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997); *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987).

BEST INTEREST. Shameeka also contends termination of her parental rights is not in Lilly's best interest. She argues she is "capable of providing good care for Lilly and that she and Lilly were bonded." A court has discretion not to terminate a parent's rights if "termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c). The juvenile court did not abuse its discretion in its ruling on this issue.

AFFIRMED.