

IN THE COURT OF APPEALS OF IOWA

No. 8-594 / 08-0979
Filed July 30, 2008

**IN THE INTEREST OF T.J.,
Minor Child,**

**C.R.J., Mother,
Appellant.**

Appeal from the Iowa District Court for Marion County, Terry L. Wilson,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Dawn Bowman of Demichelis Law Firm, Chariton, for appellant mother.

Meegan Keller, Altoona, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Terry E. Rachels, County Attorney, and Melissa Clarke,
Assistant County Attorney, for appellee State.

Terri Beukelman, Pella, for minor child.

Considered by Mahan, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

A mother appeals from the juvenile court order terminating her parental rights. She claims the State did not prove the statutory grounds for termination existed and termination of her parental rights was not in her child's best interests. We affirm the judgment of the juvenile court.

Chelsea is the mother and Joshua is the father of Tiara, born in October 2005. The family first came to the attention of the Iowa Department of Human Services (DHS) in May 2007 due to allegations that Joshua was abusing illegal substances. DHS began providing in-home services to the family at that time. Chelsea completed a substance abuse evaluation and started participating in substance abuse treatment in June 2007. She attended weekly individual and group sessions when she could.

In July 2007 both parents were arrested after the police discovered a large quantity of marijuana in the family's home. Chelsea admitted to using marijuana. She was charged with possession of marijuana and child endangerment. She pled guilty to both charges and received a deferred judgment with two years of probation.

Tiara was removed from her parents' physical care after their arrest and placed in the temporary legal custody of DHS for placement in foster care. Following a hearing, the juvenile court confirmed the removal and ordered Chelsea to participate in in-home services, supervised visits, substance abuse treatment, and drug testing. Tiara was subsequently adjudicated a child in need of assistance (CINA) on August 22, 2007. Chelsea tested negative for drug use that same day, and Tiara was returned to her care two days later.

Chelsea initially cooperated with services “to a degree.” However, she did not make herself readily available for in-home services, and she provided a specimen for drug testing that was believed to be diluted. Following a dispositional hearing in September 2007, the juvenile court entered an order that provided Chelsea could retain care of Tiara if she entered a residential treatment program.

Chelsea failed to comply with the juvenile court’s directive. She did not enter a residential treatment program or participate in any other type of substance abuse treatment, and she stopped providing drug screens for her probation officer. As a result, in October 2007 the court modified the dispositional order to place Tiara in the legal custody of her maternal grandfather, Marvin.

Chelsea lived with Marvin, his wife Janet, and Tiara until December 2007. She moved out of their home following an argument with Marvin and Janet regarding DHS’s requirement that her visits with Tiara be supervised due to her failure to participate in substance abuse treatment. Chelsea began working at a topless bar after she left their home and did not maintain regular contact with her DHS caseworker. Her contact with Tiara also began to be sporadic. Between January and June 2008, Chelsea estimated she visited Tiara only three times, which she blamed on transportation difficulties and interference by Marvin and Janet.

A petition to terminate Chelsea’s and Joshua’s parental rights was filed in April 2008. Shortly before the termination hearing, Chelsea was arrested for possession of a controlled substance, unlawful possession of a prescription drug,

and probation violations. She admitted to recent drug usage at the hearing. Following the hearing, the juvenile court entered an order terminating Chelsea's and Joshua's parental rights pursuant to Iowa Code sections 232.116(1)(e), (h), and (l) (2007). Chelsea appeals.¹

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).

Chelsea first claims the statutory grounds for termination are not supported by clear and convincing evidence. When the juvenile court terminates parental rights under more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Because we find termination proper under section 232.116(1)(h), we need not address the merits of termination under sections 232.116(1)(e) or (l).

Termination under section 232.116(1)(h) requires proof that Tiara is three or younger, has been adjudicated CINA, removed from her parents' care for six of the last twelve months, and cannot be returned to her parents' care as provided in section 232.102. The first three elements were clearly proved and are not in dispute. Thus, we need only address whether Tiara can presently be returned to her mother's custody.

¹ Joshua has not filed a notice of appeal from the order terminating his parental rights.

Chelsea admits that Tiara could not presently be returned to her care due to her unresolved criminal charges, which she recognized could result in her incarceration. See *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa Ct. App. 2005) (finding mother's potential imprisonment for pending felony drug charges and "her resulting inability to care for the children" is a risk that prevents the court from "finding the children would not be at risk if returned to her care"). However, she argues that the juvenile court should have granted her request for an additional six months in which to address the barriers to reunification.

A parent does not have unlimited time in which to correct deficiencies. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *J.L.W.*, 570 N.W.2d at 781. "[P]lans which extend the . . . period during which parents attempt to become adequate in parenting skills should be viewed with a sense of urgency." *In re A.C.*, 415 N.W.2d 609, 614 (Iowa 1987).

While we acknowledge Chelsea's recent efforts in maintaining stable housing and employment, we cannot ignore her persistent failure throughout these proceedings to address her substance abuse issues. She continually refused to participate in substance abuse treatment. In addition, she was arrested on drug-related charges and admitted to using a controlled substance shortly before the termination hearing. "Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting . . . there is little hope of success in parenting." *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). Unfortunately, Chelsea's assurances at the termination hearing that she was "willing to go into treatment" come too late.

“Children simply cannot wait for responsible parenting.” *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990).

Based on our de novo review of the record, we agree with the juvenile court that there was clear and convincing evidence supporting termination of Chelsea’s parental rights under section 232.116(1)(h) and that a deferral of termination for six months was not warranted. However, 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 the child’s long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

Chelsea claims termination of her parental rights was not in Tiara’s best interests because Tiara was in the legal custody of her maternal grandfather. See Iowa Code § 232.116(3)(a) (stating the court may decline to terminate parental rights if a relative has legal custody of the child). We need not address this issue because it was neither presented to nor passed upon by the juvenile court. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) (“Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.”).

Furthermore, we agree with the juvenile court that termination of Chelsea’s parental rights was in this child’s best interests. Tiara has been in her grandparents’ care since October 2007, and they are willing to adopt her. She is doing very well in their home and has had only three visits with her mother since January 2008. At the time of the termination hearing, Chelsea was facing possible imprisonment on drug-related charges. She has not followed through

with substance abuse treatment recommendations or maintained regular contact with DHS. Nor has she exhibited the ability to parent her child effectively, although given ample time to do so.

Tiara deserves stability and permanency, which her mother cannot provide. *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). She should not be made to wait any longer for Chelsea to become a responsible parent. *J.L.W.*, 570 N.W.2d at 781. We agree with the juvenile court's finding that termination of Chelsea's parental rights is in the child's best interests and affirm its decision to terminate her parental rights.

AFFIRMED.