

**IN THE COURT OF APPEALS OF IOWA**

No. 8-904 / 08-1427  
Filed November 13, 2008

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

**D.J.B., Mother,**  
Appellant,

**G.R., Father,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Karla J. Fultz,  
Associate Juvenile Judge.

A mother and father appeal the juvenile court's termination of their  
parental rights. **AFFIRMED.**

Joey T. Hoover of Kragnes & Associates, P.C., Des Moines, for appellant  
father.

Karen Taylor of Taylor Law Office, Des Moines, for appellant mother.

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

Edward Bull of Bull Law Office, P.C., Des Moines, for minor child.

Considered by Huitink, P.J., and Vaitheswaran and Potterfield, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

Dona and Guadalupe are the parents of a child who was born in September 2006. The child was removed from Dona's custody at the hospital with her consent due to her use of narcotics during the pregnancy and Guadalupe's narcotics use and history of domestic violence. A child in need of assistance petition was filed three days later. On November 7, 2006, Guadalupe was arrested for assaulting Dona. On November 28, 2006, the juvenile court adjudicated the child as a child in need of assistance and placed her in foster care.

Dona began outpatient treatment at the House of Mercy and provided clean drug screens until she relapsed on cocaine in the middle of January 2007. She then chose to enter inpatient treatment at House of Mercy beginning on February 9, 2007. During this time, the child remained in her foster home placement. Guadalupe was still incarcerated. Dona made consistent improvement in all areas while at House of Mercy, and the child was returned to Dona's custody on July 11, 2007.

On October 31, 2007, Dona accepted a plea offer from the federal government that would result in her incarceration for a substantial period of time. The guardian ad litem filed a motion to modify placement. The court placed the child in the legal custody of the Iowa Department of Human Services (DHS) but allowed Dona to retain physical custody to allow the child to make a gradual transition back to foster care.

On January 3, 2008, Guadalupe was released from prison. He had never cared for his child, who was then fifteen months old. While in prison, Guadalupe took a relapse prevention class and saw a therapist to deal with his drug usage issues. He attended BEP and anger management classes. On January 23, 2008, the guardian ad litem filed a second motion to modify physical custody of the child based on Dona's upcoming federal prison sentence, the transition that had been occurring with the foster parents, and statements made by Dona leading the guardian ad litem to believe she was a flight risk.

Staff at House of Mercy overheard Dona commenting that she could leave with her daughter and they would never find her. Dona had added Guadalupe to her visitors list at House of Mercy when he was released from prison. Staff noted that Dona was dishonest about the contact she had with Guadalupe and that she did not understand why contact with him or her dishonesty would create concern. The child was returned to her former foster parents. A petition to terminate parental rights was filed on April 25, 2008.

Guadalupe began visitation with the child in March 2008. The visits were supervised and took place for about one hour per week. Guadalupe had not used drugs since he was incarcerated. Guadalupe was not forthcoming with information about his residence and testified that the residence was not appropriate for the child.

Dona was arrested for driving while barred on July 10, 2008.<sup>1</sup> On July 14, 2008, Guadalupe and Dona were involved in an altercation with a third party.

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<sup>1</sup> Dona later entered a guilty plea to the charge of operating a motor vehicle without a valid license.

Dona was arrested and charged with assault causing bodily injury. Dona did not disclose either arrest to the court at a July 21, 2008 hearing on her motion for additional visitation and placement. The juvenile court made a finding that the parties were not candid with the court regarding their relationship and living arrangements.

In August 2008, the juvenile court determined that clear and convincing evidence supported the termination of parental rights of both parents under Iowa Code section 232.116(1)(d), (g), (h), (i), and (l) (2007). The court further found that the termination of Guadalupe's and Dona's parental rights was in the best interests of the child.

Guadalupe appeals arguing that the juvenile court erred in: (1) denying the admission into evidence of a report he had prepared that explained his view of the case; (2) finding that clear and convincing evidence supported the termination of parental rights under Iowa Code section 232.116(1)(d), (f), and (h); and (3) finding that termination of parental rights was in the child's best interests.

Dona appeals arguing that the juvenile court erred in: (1) finding that clear and convincing evidence supported the termination of parental rights under Iowa Code section 232.116(1)(d), (g), (h), (i), and (l); (2) finding that termination of parental rights was in the child's best interests; and (3) failing to find that there was clear and convincing evidence that the termination would be detrimental to the child due to the closeness of the parent-child relationship.

## **II. Standard of Review**

We review proceedings to terminate parental rights *de novo*. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We review the facts as well as the

law and adjudicate parents' rights anew. *Id.* We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

### **III. Termination of Father's Parental Rights**

#### **A. Statutory Grounds for Termination**

Though the juvenile court terminated Guadalupe's rights on more than one statutory ground, we only need to find grounds to terminate his parental rights under one of the grounds in order to affirm the ruling of the juvenile court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Guadalupe does not argue on appeal that the juvenile court erred in terminating his parental rights under Iowa Code section 232.116(1)(g) or (i). His failure to argue these statutory grounds is deemed a waiver of the issue. Iowa R. App. P. 6.14(1)(c).

#### **B. Failure to Admit Evidence**

Guadalupe sought to admit into evidence his "point of view on the case." The guardian ad litem objected on the basis of best evidence. The juvenile court then advised Guadalupe's attorney that she would either accept the document or his testimony, but not both, and his attorney agreed. We review evidentiary rulings for an abuse of discretion. *In re E.H. III*, 578 N.W.2d 243, 245 (Iowa 1998). We find that the juvenile court did not abuse its discretion in refusing to admit Guadalupe's report. Guadalupe was present to testify at the hearing. He was given ample opportunity to present his view of the case.

#### **IV. Termination of Mother's Parental Rights**

We find that clear and convincing evidence supports the juvenile court's finding that a termination of Dona's parental rights is appropriate under Iowa Code section 232.116(1)(h). Dona argues that evidence did not support termination under the fourth element of this section, clear and convincing evidence that the child cannot be returned to her custody at the present time. The record shows that Dona is facing a substantial federal prison sentence and will be unavailable to parent. She has been dishonest with care providers. She has refused to provide the child with necessary items, such as a bed and highchair. The juvenile court found that circumstantial evidence supports the contention that Guadalupe, who has an extensive history of domestic abuse and whose parental rights we are terminating, has been residing in Dona's home. Dona's alleged close relationship with the child cannot overcome the weight of the other factors that militate against her receiving custody of the child.

#### **V. Best Interests of the Child**

We agree with the juvenile court's finding that a termination of parental rights is in the best interests of the child. At the time of the trial, the child had been in foster care for fifteen of the last twenty-two months. Dona is facing a lengthy federal prison sentence. Guadalupe has an extensive history of domestic abuse and has not been able to arrange for a stable residence. The child is in need of a safe home, which neither Dona nor Guadalupe can provide.

We therefore affirm the juvenile court's termination of Guadalupe's and Dona's parental rights.

**AFFIRMED.**