

**IN THE COURT OF APPEALS OF IOWA**

No. 9-166 / 09-0053  
Filed March 26, 2009

**IN THE INTEREST OF O.K.W. and A.M.R.,  
Minor Children,**

**S.B.H., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

A mother appeals from the juvenile court orders terminating her parental rights to two children. **AFFIRMED.**

Maxine M. Buckmeier, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and David Dawson, Assistant County Attorney, for appellee.

Stephanie Forker Parry of Forker & Parry, Sioux City, for father of O.K.W.

Joseph Kertels of the Juvenile Law Center, Sioux City, attorney and guardian ad litem for minor children.

Considered by Sackett, C.J., and Potterfield and Mansfield, JJ.

**PER CURIAM**

Sarah, the mother of nine-year-old Alejandra and seven-year-old Orion, appeals from the September (Alejandra) and October (Orion) 2008 orders terminating her parental rights.<sup>1</sup> She contends the State did not prove the statutory grounds for termination by clear and convincing evidence. She further contends termination is not in the children's best interest. We affirm.

This family came to the attention of the Iowa Department of Human Services in March of 2004 based on an investigation of domestic violence in the home and abuse of illegal substances and alcohol. The children were found to be in need of assistance in June of 2004. For most of the next four years, Sarah was in and out of substance abuse treatment and the children were in her custody subject to the protective supervision of the department. Shortly after successful or unsuccessful completion of treatment, Sarah would relapse. She also violated the no contact order designed to keep Orion's father from abusing Sarah or having unsupervised contact with the children. In early 2008 evidence came to light that Sarah had relapsed in September of 2007 and also was allowing Orion's father to live with her and the children. Custody was transferred to the department and the children were placed with their maternal grandparents. After the court considered and rejected establishing the grandparents as guardians, it ordered the State to seek termination of all parents' parental rights.

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<sup>1</sup> All fathers' parental rights were terminated, but are not at issue in this appeal.

A hearing concerning Alejandra was held in September of 2008, but the hearing concerning Orion was continued to October of 2008 to allow for notice to an Indian tribe. Following the hearings, the court found:

The department has been involved with this family for four years. Numerous services have been offered to Sarah to address her substance abuse issues and her parenting skills. Sarah did make some progress, but she appears to be locked into a cyclical pattern and after four years, is back where she started with when the department first became involved. Sarah has been dishonest with the department and has been having contact with [Orion's father] in violation of the no contact order. She has been unable to provide to her children a consistently safe and stable home.

The court found termination of Sarah's parental rights was in the best interest of Alejandra and Orion. It ordered her parental rights terminated under Iowa Code sections 232.116(1)(d) and (f) (2007).

**Scope and Standards of Review.** Our review of termination proceedings is de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). We review the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the juvenile court's factual findings but are not bound by them. *In re E.H. III*, 578 N.W.2d 243, 248 (Iowa 1998).

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). When the juvenile court terminates a parent's rights, we affirm if clear and convincing evidence supports the termination under any of the cited statutory provisions. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The State has

the burden of proving the allegations by clear and convincing evidence.<sup>2</sup> “Clear and convincing evidence” is evidence leaving “no serious or substantial doubt about the correctness of the conclusion drawn from it.” *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002).

The issue of whether to sever the biological ties between parent and child legally is an issue of grave importance with serious repercussions to the child as well as the biological parents. See *In re R.B.*, 493 N.W.2d 897, 899 (Iowa Ct. App. 1992). The goal of a child-in-need-of-assistance proceeding is to improve parenting skills and maintain the parent-child relationship. A parent does not have an unlimited amount of time, however, in which to correct deficiencies. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). We have repeatedly followed the principle that the statutory time line must be followed and children should not be forced to wait for their parent to grow up. See *In re M.Z.*, 481 N.W.2d 532, 536 (Iowa Ct. App. 1991). We have also indicated that a good predictor of the future conduct of a parent is to look at the parent’s past conduct. See *In re C.C.*, 538 N.W.2d 664, 666 (Iowa Ct. App. 1995). Thus, in considering the impact of drug or alcohol addiction, “we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future.” *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). “Where the parent has been unable to rise above the addiction and

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<sup>2</sup> The Rosebud Sioux Tribe earlier had determined neither child was enrolled in the tribe or eligible for enrollment. Subsequently, Orion was enrolled. Consequently, the juvenile court found evidence for termination of Orion’s parents’ parental rights was supported by evidence beyond a reasonable doubt instead of clear and convincing evidence. See Iowa Code 232B.6(6)(b) (2007); see also 25 U.S.C. § 1912(f).

experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.” *Id.*

**Statutory Grounds for Termination.** Sarah contends the State did not prove either statutory ground for termination. From our review of the record, we find evidence supports termination on both statutory grounds.

Sarah first contends the evidence does not support termination under section 232.116(1)(d) because she has taken significant steps to correct the circumstance that led to the adjudication by completing substance abuse treatment and following through with the halfway and three-quarter way programs. The children were found to be in need of assistance under sections 232.2(6)(b), (c)(2), (n), and (o) (2003) based on their exposure to domestic disputes and the parents’ alcohol and drug abuse. There was a founded and registered report for denial of critical care, failure to provide adequate shelter, failure to provide proper supervision, and presence of illegal drugs in the body of a child. Sarah was one of the named perpetrators. Throughout the pendency of these proceedings, Sarah has repeatedly participated in substance abuse treatment and either did not successfully complete the treatment or quickly relapsed after completing treatment. She has not demonstrated the ability to maintain sobriety for any period outside of a regulated or supervised setting. As soon as she resumes her relationship with Orion’s father, she returns to illegal substance and alcohol use. Despite the entry of a no contact order between Orion’s father and Sarah in 2004, she repeatedly returned to him and allowed

him to live in the home. She was adept at concealing their continued relationship from service providers, the department, and the court. We agree with the court's findings that Sarah, despite numerous services offered over a period of more than four years, was basically "back where she started when the department first became involved" and "has been unable to provide her children a consistently safe and stable home." The same basic circumstances that led to the children's adjudication continue to exist despite the offer and receipt of services designed to correct the circumstances. We affirm the termination of Sarah's parental rights under section 232.116(1)(d) (2007).

Sarah also contends the evidence does not support termination under section 232.116(1)(j). She first argues the children were not adjudicated as children in need of assistance "pursuant to section 232.96"<sup>3</sup> but rather pursuant to sections 232.2(6)(b), (c)(2), (n), and (o). This argument is without merit. The children were adjudicated "pursuant to section 232.96," which describes the adjudicatory hearing. The adjudicatory hearing occurred on June 11, 2004, and resulted in a finding the evidence supported the statutory grounds for finding the children were in need of assistance.

Next Sarah argues custody of the children was not transferred from her pursuant to section 232.102, as required by section 232.116(1)(j)(1). This argument is without merit. Although the initial adjudicatory order continued the children in Sarah's custody, they later were removed from Sarah's custody and

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<sup>3</sup> Iowa Code section 232.116(1)(j)(1) provides:

The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

placed in the department's custody. They were returned to Sarah's custody, then again removed and placed in the department's custody in 2008, where they remained at the time of the termination.

Sarah's history of abuse of alcohol and illegal substances, treatment, and relapse, along with the accompanying history of domestic violence and an inability to maintain a safe home for her children demonstrates she has "a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts." Iowa Code § 232.116(1)(1)(2). She has repeatedly participated either successfully or unsuccessfully in substance abuse treatment without any lasting positive results. Although at the time of the termination hearing she apparently had been sober for eight months, she had not been out of a supervised setting or demonstrated that *this time* she had truly changed. We find her "prognosis indicates that the child[ren] will not be able to be returned to [her] custody . . . within a reasonable period of time considering the child[ren]'s age and need for a permanent home." *Id.* § 232.116(1)(1)(3). We affirm the termination of her parental rights under section 232.116(1)(1).

Sarah also contends termination of her parental rights is not in the children's best interest because she loves and is bonded to her children, she has made significant efforts to understand and meet the children's special needs, and she "would be able to regain custody and parent the children in less than six months time." Although Sarah has made progress in dealing with her own parenting and substance abuse issues and we acknowledge she loves and is bonded to her children, she has not demonstrated the ability to care for them

both outside of a supervised setting. Because of her substance abuse history, she would need to demonstrate a period of sobriety after completing treatment before she could potentially be in a position to take care of the children. Orion has behavioral issues and is physically aggressive. Alejandra has impaired hearing, but her communication skills and success in school have improved since she received a cochlear implant.

The statutory time period for correcting the circumstances that led to the children's adjudication as children in need of assistance is long past. The court correctly determined that establishing a guardianship in the maternal grandparents was not in the children's best interest. These children should not have to wait any longer for Sarah to demonstrate she can become a responsible parent. See *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). These children deserve stability and permanency that Sarah cannot provide. See *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). When we look at Sarah's history, the uncertainty the children have endured, and their immediate and long-range interests, we agree with the juvenile court that termination of Sarah's parental rights is in her children's best interest. See *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

**AFFIRMED.**