

**IN THE COURT OF APPEALS OF IOWA**

No. 9-201 / 09-0206  
Filed April 8, 2009

**IN THE INTEREST OF H.F., Minor Child,**

**E.A.S., 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.**

Leanne M. Striegel-Baker of Booth Law Firm, Osceola, for appellant.

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.

D. William Thomas, Des Moines, for father.

Jerry R. Roxhoven and Jill M. Oleson, Drake Legal Clinic, for minor child.

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

**SACKETT, C.J.**

A mother appeals from the juvenile court order terminating her parental rights. She contends the (1) State failed to make reasonable efforts tailored to the family's needs, (2) court abused its discretion in not continuing permanency for an additional six months, (3) statutory grounds for termination are not supported by clear and convincing evidence, (4) termination is not in the child's best interest, and (5) judge should have recused herself. The mother also filed a motion for leave to amend her petition on appeal. We affirm the termination of the mother's parental rights. Her motion to amend the petition on appeal is denied.

**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. "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 goals of a child-in-need-of-assistance proceeding are to improve parenting skills and to 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 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.*

**Background Facts and Proceedings.** The child, born in November of 2002, was removed from her parents’ care in October of 2006 and found to be in

need of assistance that December. The removal followed her mother's hospitalization for cocaine-induced psychosis. The child was placed with maternal relatives. A year later, in December of 2007, the child was returned to the mother during the mother's participation in residential substance abuse treatment, contingent on the mother's continued participation in the program. The mother left that residential program and entered another. In the spring of 2008 the mother relapsed again. The child was removed from her mother's care in July of 2008 after her mother had to leave the second residential program. The child was placed with maternal relatives.

In September of 2008 the State petitioned to terminate both parents' parental rights. It alleged termination of the mother's parental rights was proper under Iowa Code sections 232.116(1)(d), (f), and (l) (2007). Following hearings on October 31 and December 5, the court filed its order terminating both parents' rights on January 21, 2009. It terminated the mother's parental rights on all three statutory grounds pled. The court found the State had made reasonable efforts toward reunification. The court found and concluded termination was in the child's best interest.

**Claims on Appeal.** The mother raises several claims on appeal.

*Reasonable Efforts.* The mother contends the State did not make reasonable efforts to reunify the family because it did not adapt or tailor the services to the individual needs of the family. See Iowa Code § 232.102(10). The State responds both that the mother did not preserve error on this claim because she did not raise the particular failures in juvenile court that she now

claims on appeal, and even if error was preserved, the failures raised by the mother do not warrant a finding the State did not make reasonable efforts.

We first note that the statutory provision the mother cites for the principle that services must be adapted to the individual needs of a family, provides only that “[f]amily-centered services are adapted to the individual needs of a family *in the intensity and duration of service delivery* and are intended to improve overall family functioning.” Iowa Code § 232.102(10)(b)(1) (emphasis added).

From our de novo review of the record we, like the juvenile court, find that the mental health, substance abuse, medication, counseling, and family foster care services offered were reasonable. The mother’s lack of success is not attributable to the failure of services offered, but to her failure either to avail herself of the offered services, or her failure to respond to the services. We conclude the State’s fulfilled its obligation to make reasonable efforts to reunify this family.

*Statutory Grounds for Termination.* The mother contends none of the statutory grounds for termination are supported by clear and convincing evidence. The juvenile court terminated the mother’s parental rights based on her failure to maintain significant and meaningful contact with the child pursuant to section 232.116(1)(d), her severe and chronic substance abuse problem pursuant to section 232.116(1)(f), and the fact the child could not safely be returned home at that time after being out of the mother’s care for at least twelve

of the preceding eighteen months pursuant to section 232.116(1)(f).<sup>1</sup> We will affirm if any of the multiple grounds relied on by the juvenile court are supported by clear and convincing evidence. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

We find clear and convincing evidence that the mother has a severe, chronic substance abuse problem and presents a danger to herself or the child, and that, based on her past and recent failures in treatment, the prognosis indicates the child could not be returned to the mother's care within a reasonable period of time, given the child's age and need for a permanent home. Iowa Code § 232.116(1)(l). We affirm the termination on this statutory ground.

*Delaying Permanency.* The mother contends the juvenile court abused its discretion in not delaying permanency for an additional six months to allow her to be reunited with her child. A juvenile court has the discretion to continue a child's placement out of the home for an additional six months if it determines the need for removal will no longer exist at the end of the additional period. See *id.* § 232.104(2)(b). The evidence in the record does not allow such a determination. We find no abuse of discretion.

*Best Interest.* The mother contends termination of her parental rights is not in the child's best interest. She argues the child is placed with relatives and there is a "genuine" parent-child bond such that the child would be devastated if it were severed. See *id.* § 232.116(3). Although the juvenile court expressly found

---

<sup>1</sup> The child was returned to the mother's physical custody for nearly seven months between December 18, 2007, and July 11, 2008. This prevents a finding she had been removed either for "the last twelve consecutive months" or for "at least twelve of the last eighteen months." See Iowa Code § 232.116(1)(f)(3).

and concluded termination was in the child's best interest, it did not rule on the claims the mother raises now on appeal. We find no post-trial motion to amend or enlarge. This mother's specific arguments on appeal are not preserved for appellate review.

The child is currently placed with relatives who may adopt her. At the time of the termination hearings, the child had been in and out of her mother's physical custody for two years. The mother has not demonstrated the ability to meet her own needs and has not acted in the best interest of the child. Considering both the child's immediate and long-term interests, we find termination of the mother's parental rights is in the child's best interest. See *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989).

*Recusal.* The mother contends the judge who presided over the termination proceedings erred by failing to recuse herself after the mother moved for a change of judge prior to the termination hearings. She argues the judge could not be impartial and fair because she had presided over this matter from the child's initial removal in 2006. She further argues a judge who has been involved in the child-in-need-of-assistance proceedings "has seen the struggles of the case and has formed an opinion of the parents," so cannot be impartial.

The mother had the burden of showing grounds for recusal. See *In re S.D.*, 671 N.W.2d 522, 528 (Iowa Ct. App. 2003). This is a substantial burden, and we will not overturn the judge's decision absent an abuse of discretion. *Id.* An appearance of impropriety is not sufficient. *In re C.W.*, 522 N.W.2d 113, 117

(Iowa Ct. App. 1994). The mother must show actual prejudice before recusal is required. *Id.* Beyond the bare conclusory statements in her petition on appeal, the mother offers no evidence that would support recusal. We also reject the mother's argument her right to due process was violated. The record reveals she received a full and fair hearing before an impartial tribunal. We find no abuse of discretion in the judge's refusal to recuse herself.

**Motion for Leave to Amend.** After this appeal was transferred to the court of appeals, the mother filed a motion for leave to amend her petition on appeal. She asserts the rules for expedited appeals require her to file the petition on appeal within fifteen days, but the transcript was not available until several days after the petition was filed. She asserts she will be denied due process if she is not allowed to amend her petition.

We deny the mother's motion for leave to amend. Our supreme court has already rejected a similar challenge to the expedited appeals in termination cases. See *In re C.M.*, 652 N.W.2d 204, 212 (Iowa 2002).

**AFFIRMED.**