

IN THE COURT OF APPEALS OF IOWA

No. 9-208 / 09-0236
Filed April 8, 2009

**IN THE INTEREST OF C.B.,
Minor Child,**

**G.B., Mother,
Appellant.**

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

A mother appeals from the district court's order terminating her parental
rights to her son. **AFFIRMED.**

Ryan Mitchell, Ottumwa, for appellant mother.

Mary Krafka of Krafka Law Office, Ottumwa, for father.

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

Samuel Erhardt, Ottumwa, for minor child.

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

MANSFIELD, J.

Gena appeals from the district court's order terminating her parental rights to C.B. (born February 2007) pursuant to Iowa Code section 232.116(1)(h) (2007) (child is three years of age or younger, has been adjudicated a child in need of assistance, removed from the home for at least six of the last twelve months, and cannot be returned to parent's custody).¹ On appeal, Gena asserts that termination is not in C.B.'s best interests.

Upon our de novo review, we find Gena's position is without merit and termination is in C.B.'s best interests. See *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) (de novo review). The district court had significant evidence to support termination of Gena's parental rights.

This is not Gena's first appearance before this court. In August 2006 C.B.'s older siblings were removed from Gena's care due to unsafe living conditions, including the fact that they were living in a camper along the Des Moines River. Gena began receiving services from the Iowa Department of Human Services (DHS). Ultimately, Gena failed to progress such that she could safely parent C.B.'s siblings, and her parental rights were terminated as to these two children pursuant to Iowa Code section 232.116(1)(h). She appealed, and we affirmed in a memorandum opinion. See *In re K.B.*, No. 08-0604 (Iowa Ct. App. May 29, 2008).

In September 2007 C.B. was removed from Gena's care due to Gena leaving C.B. unsupervised with his two older siblings and allowing a registered sex offender to have unsupervised contact with C.B. Although DHS continued to

¹ C.B.'s father's parental rights were also terminated, but are not at issue in this appeal.

offer Gena services, she was unable to learn basic parenting skills, failed to follow through with mental health services, and did not regularly exercise visitation with C.B. At the time of the termination hearing, visitation was fully supervised because Gena had been found with a fifteen-year-old boy in her bed. Gena testified that she did not have a residence, but stayed with friends or her boyfriend of a few weeks (whose last name she did not know). She planned to reside at a women's shelter if C.B. were returned to her care. She had also talked about moving to Montana. We agree with the district court that "Gena is really no closer to having [C.B.] returned to her today than when he was removed."

C.B. has done well in foster care and is in need of permanent placement. See *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (stating child's safety and need for a permanent home are the defining elements in determining a child's best interests). At the time of the termination hearing, C.B. had been out of Gena's care for fifteen months. "At some point, the rights and needs of the [child] rise above the rights and needs of the [parent]." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

We conclude the grounds for termination under Iowa Code section 232.116(1)(h) were proved by clear and convincing evidence and termination is in C.B.'s best interests. Thus, we affirm the district court pursuant to Iowa Court Rule 21.29(1)(a), (b), (c), (d), and (e).

AFFIRMED.