

**IN THE COURT OF APPEALS OF IOWA**

No. 9-249 / 09-0284  
Filed May 6, 2009

**IN THE INTEREST OF J.J., A.J., and C.D.,  
Minor Children,**

**L.M.J., Mother,  
Appellant.**

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

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

Jennifer L. Oetker of Parrish, Kruidenier, Dunn, Boles, Gribble, Parrish,  
Gentry & Fisher, L.L.P., Des Moines, for appellant mother.

Stephie Tran, Des Moines, for father of J.J.

Jane Orlanes, Des Moines, for father of A.J.

Christine Bisignano, West Des Moines, for father of C.D.

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.

Jessica Miskimins and Nicole Garbis Nolan of the Youth Law Center, for  
minor children.

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

**MANSFIELD, J.**

Lacy appeals from the juvenile court's order terminating her parental rights to A.J. (born January 2002), J.J. (born October 2004), and C.D. (born March 2008) pursuant to Iowa Code sections 232.116(1)(d), (i), and (l) (2007).<sup>1</sup> She challenges the sufficiency of the evidence and asserts that termination is not in the children's best interests. We affirm.

We review termination of parental rights cases *de novo*. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). "When the juvenile court terminates parental rights on 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). Among other sections, Lacy's parental rights to A.J., J.J., and C.D. were terminated pursuant to section 232.116(1)(i). Termination pursuant to this section requires that the children meet the definition of a child in need of assistance based upon a finding of abuse or neglect; the abuse or neglect constituted imminent danger to the children; and services would not correct the conditions that led to the abuse or neglect within a reasonable amount of time. Lacy's challenge to termination under this subsection is limited to the third element—whether there is clear and convincing evidence that services would not correct the conditions which led to the neglect within a reasonable amount of time.

In November 2006, The Iowa Department of Human Services (DHS) became involved with the family following a domestic violence incident, which led

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<sup>1</sup> The district court also terminated the parental rights of A.J.'s father and J.J.'s father, which are not at issue in this appeal.

to a founded report of denial of critical care and failure to provide proper supervision. Although Lacy agreed to participate in services, she failed to do so and remained unemployed and homeless. Lacy had mental health and substance abuse issues, and had struggled with substance abuse since she was a teenager. Additionally, she mainly allowed for family members and friends to care for A.J. and J.J. As a result, in February 2007, A.J. and J.J. were removed from Lacy's care and placed with A.J.'s paternal grandparents. Subsequently, they were adjudicated in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) and (n).

DHS continued to offer Lacy services, but her participation was sporadic. In July 2007, while in drug court, Lacy reported that she was pregnant with C.D. In September 2007, Lacy entered an inpatient treatment center, the House of Mercy. In March 2008, Lacy gave birth to C.D., who was subsequently adjudicated a child in need of assistance, but remained in Lacy's care so long as she resided at the House of Mercy. Although workers remained concerned about Lacy's parenting skills, they felt the House of Mercy was a safe environment that would provide structure and supervision to allow the children to be returned to Lacy's care. Thus, on May 14, 2008, A.J. and J.J. were also returned to Lacy's care so long as she resided at the House of Mercy.

Although Lacy was in a structured environment, she continued to have substance abuse issues and failed to progress so that she could safely parent the children. She allowed the children to have contact with an individual whom the children's therapist suspected had sexually abused A.J. When given her first weekend pass in June 2008, she relapsed on alcohol. Lacy also failed to feed

C.D. on several occasions. In a July 2008 report, the children's therapist stated that "Lacy is still struggling to meet her children's needs in a highly structured setting." On October 8, 2008, A.J. and J.J. were returned to the care of A.J.'s paternal grandparents and C.J. was placed with his father.

In November 2008, Lacy continued to struggle and not participate in services. After she was granted a weekend pass, Lacy submitted to a drug test, which was extremely diluted and caused concerns that she had been drinking alcohol or using drugs. A report stated that Lacy had not attended her counseling sessions for the past three weeks, stopped taking her mental health medication, missed parenting sessions, and stopped participating in self-sufficiency assistance, such as budgeting and employment assistance. In December 2008, Lacy had received maximum benefits and was discharged from the House of Mercy.

On January 15, 2009, the termination hearing was held. The evidence indicated that since leaving the House of Mercy, Lacy has not been properly attending to either her mental health or substance abuse issues. She had supervised visitation with the children once a week for two hours. When asked if she could take the children home with her today, Lacy answered no and stated she could not take care of all three children. However, her plan was to get one child back and have "joint custody" of the other two.

Indeed, Lacy's testimony was revealing. On friendly, direct examination from her attorney, Lacy initially gave the "right" answers. However, when it came to the concluding questions about her children, Lacy appeared to surprise her own attorney with her responses:

Q. Do you believe that all three children could be returned to you today? A. No, they probably wouldn't.

Q. And why don't you think that that would be an option for you? A. Because it's the State versus me, which they always win.

Q. But do you think that you could take all three children home with you today and be able to get them to day care, get them to school, get them to doctor's appointments? That's the question I'm asking you. A. No. That's why I would ask for one child and joint custody of the other two.

Q. And what plan is that? I mean, you must have thought that through a little bit. What specifically are you thinking about?

A. What do you mean?

Q. Well, I mean, you're picking a child over the other kids. I mean who— A. I wouldn't know who to pick. You know, I love my kids very much, and, yeah, it does get nerve-racking with three children, but, you know, I shouldn't have to sign my rights over. It ain't like I was starving my kids for days.

The denouement continued when Lacy was cross-examined. It then became clear that Lacy's direct testimony had exaggerated her work hours, her UA compliance, and her record of taking prescribed medications.

In addition to contesting the finding that services would not correct the conditions that led to the neglect, Lacy also asserts that the district court should have entered a permanency order finding that the children could be returned to Lacy within six months. However, Lacy had been offered services from November 2006 to January 2009, but she simply did not progress such that she could safely parent A.J., J.J., and C.D. The evidence clearly supports the district court's finding that "[Lacy] was unable to adequately care for the children even in the structured and supportive atmosphere of the House of Mercy." We agree with the district court that Lacy has "had every opportunity to regain custody of [her] children, and [she] is simply unable to place the children's needs above [her] own to ensure a safe and stable environment." We conclude that neither

additional time nor additional services will result in the return of the children to Lacy's care.

Furthermore, we find termination is in the children's best interests. The children are in need of a safe and permanent home. See *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (stating a child's safety and need for a permanent home are the defining elements in determining a child's best interests). A.J. and J.J. have found that home with A.J.'s paternal grandparents, who are willing to adopt them and have attended to their needs. Both A.J. and J.J. have needed therapy and their therapist reported that "[A.J. and J.J.'s] mental health continues to stabilize in the care of their grandparents . . . . [A.J. and J.J.] feel safe and protected in their current environment and trust that their grandparents are there for them." C.D. has been in his father's custody since October 2008, who has demonstrated his ability to provide for C.D so far.

Thus, we conclude that the grounds for termination pursuant to Iowa Code section 232.116(1)(i) were proved by clear and convincing evidence and termination is in A.J., J.J., and C.D.'s best interests. We affirm the juvenile court.

**AFFIRMED.**