

IN THE COURT OF APPEALS OF IOWA

No. 9-311 / 08-2023
Filed May 29, 2009

**IN THE INTEREST OF J.F., III,
Minor Child,**

**B.L.B.-F., Mother,
Appellant.**

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

A mother appeals from a juvenile court order terminating her parental
rights to her child. **AFFIRMED.**

Stephie N. Tran, Des Moines, for appellant mother.

Jared Harmon, Des Moines, for father.

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

Nicole Garbis-Nolan of Youth Law Center, Des Moines, for minor child.

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

DOYLE, J.

Barbara is the mother of one-year-old James. She appeals from a December 2008 ruling terminating her parental rights to him.¹ We affirm.

James was removed from his parents' care in July 2008 after Barbara was arrested for assault causing serious injury. Police responded to a report of a fight at a motel room where the family was residing. When the police arrived, they encountered an injured woman covered in blood walking away from the family's motel room. The woman told the police that Barbara had assaulted her. Barbara admitted she attacked the woman upon finding her in bed with James's father. A broken glass crack pipe and other drug paraphernalia were discovered in their motel room.

James, who was present when the fight occurred, later tested positive for exposure to cocaine. He was placed in the temporary legal custody of the Iowa Department of Human Services (DHS), where he has since remained. He was adjudicated a child in need of assistance (CINA) in July 2008 pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2007).

Barbara has a lengthy history of substance abuse, unstable housing, unemployment, and criminal activity. She began smoking marijuana when she was sixteen years old, progressing to crack cocaine by the time she was seventeen years old. Her first child, DaShawn, was removed from her care in 2005 due to her substance abuse. She was homeless and smoking crack cocaine five to seven times per week at that time. She was also in and out of jail

¹ The order also terminated the parental rights of James's father. He has not appealed the termination of his parental rights.

for probation violations stemming from a 2005 conviction for prostitution. Her parental rights to DaShawn were eventually terminated in 2006.

Barbara's circumstances did not improve in the intervening years. At the time of James's removal, she was unemployed and involved in a violent relationship with James's father, who had been convicted of assaulting Barbara on several occasions. Barbara entered an inpatient treatment program in early August 2008 but reported using crack cocaine the day before she was admitted into the facility. She was unsuccessfully discharged from the program at the end of August after she provided prescription pain medication to another resident at the facility. Barbara's probation was revoked, and she was incarcerated in early September. The juvenile court waived reasonable efforts to preserve and unify the family soon thereafter, finding "the issues which caused the termination of [Barbara's] rights to DaShawn have continued."

The State filed a petition to terminate parental rights in October 2008. Following a hearing, the juvenile court entered an order terminating Barbara's parental rights pursuant to Iowa Code sections 232.116(1)(b), (d), (g), (i), and (l). Barbara appeals.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Barbara challenges only one of the grounds under which her parental rights were terminated: section 232.116(1)(d).² We could affirm the termination based on the unchallenged grounds as urged by the State. See Iowa R. App. P. 6.14(1)(c) (“Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.”); *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (“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.”). However, we elect to proceed to the merits of the challenged ground.

Section 232.116(1)(d) requires the State to prove the child was previously adjudicated a child in need of assistance and “[s]ubsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.”

Barbara has been offered numerous services since 2005, which she unfortunately failed to take full advantage of prior to her incarceration in September 2008. She admitted at the termination hearing that she smoked crack cocaine the day before she entered an inpatient treatment program. She was discharged from that program a short time later for providing prescription pain medications to another resident. There were also reports that Barbara herself was improperly using those prescription pain medications, resulting in her probation being revoked.

² The other grounds challenged by Barbara—sections 232.116(1)(e), (f), and (h)—were not grounds used by the juvenile court in terminating her parental rights.

In support of her argument that the circumstances leading to James's adjudication no longer exist, Barbara observes "that she is currently in the jail-base[d] treatment and will complete the program on January 26, 2009," at which time she will be released to a women's facility where James could reside with her. However, children "should not be forced to endlessly await the maturity of a natural parent." *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *Id.* While we recognize and commend the progress Barbara made during her incarceration in addressing her long-standing issues with substance abuse, such efforts are simply too little, too late. See *C.B.*, 611 N.W.2d at 495 ("A parent cannot wait until the eve of termination, after the statutory time periods for reunification have passed, to begin to express an interest in parenting.").

Although Barbara may have, as she asserts, "complied with services when she could and visited with her child as much as she was able to" until she was incarcerated, "[a]n incarcerated parent must take full responsibility for the conduct which has resulted in h[er] confinement." *In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa Ct. App. 1994). Any services DHS could have provided to Barbara while she was in jail were limited due to her own actions that produced the situation. Moreover, Barbara's poor past performance and response to services in the juvenile court proceedings involving her older son are indicative of the quality of future care she is capable of providing to James. See *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

A parent does not have unlimited time in which to correct her deficiencies. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). At some point, the rights and needs of the child rise above the rights and needs of the parent. *J.L.W.*, 570 N.W.2d at 781. As the juvenile court found,

James has been waiting for his parents to address their substance abuse issues, and they continue to fail to make him their priority. He is placed in a pre-adoptive home where his needs are met and he is safe. He should not be required to wait any longer for his parents. He is in need of a safe, stable, drug and violence free home now.

Upon our de novo review, we fully agree with the juvenile court that Barbara was not capable at the time of the termination hearing of providing James with the type of home he needs and deserves despite the extensive services that have been offered to her since 2005. See *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) (“A child’s safety and the need for a permanent home are now the primary concerns when determining a child’s best interests.”). In light of the foregoing, we conclude, as the juvenile court did, that termination of Barbara’s parental rights is in the child’s best interests despite Barbara’s arguments to the contrary.³ We therefore affirm the termination of Barbara’s parental rights to James.

AFFIRMED.

³ Citing Iowa Code sections 232.116(3)(c) and (e), Barbara claims the juvenile court erred in terminating her parental rights to James due to the closeness of the parent-child relationship and her incarceration. It does not appear that any section 232.116(3) issues were either raised by Barbara in the termination proceedings or addressed by the juvenile court in its order terminating her parental rights. See *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) (“As a general rule, an issue not presented in the juvenile court may not be raised for the first time on appeal.”) Barbara thus has not preserved error on this claim, and we do not address it any further.