

**IN THE COURT OF APPEALS OF IOWA**

No. 9-408 / 09-0678  
Filed June 17, 2009

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

**T.L.H.-M., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Scott County, John G. Mullen,  
District Associate Judge.

A mother appeals from the order terminating her parent rights.

**AFFIRMED.**

G. David Binegar, Davenport, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Michael Walton, County Attorney, and Gerda Lane, Assistant  
County Attorney, for appellee State.

Brenda Drew-Peebles, Davenport, for minor child.

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

**DOYLE, J.**

Terri is the mother of one-year-old C.H. She appeals from an April 2009 ruling terminating her parental rights to this child.<sup>1</sup> We affirm.

Terri has a long history of substance abuse and involvement with the Iowa Department of Human Services (DHS). She began using marijuana and LSD when she was fourteen years old, progressing to cocaine by the time she was sixteen years old. The longest period of sobriety this thirty-six-year-old mother has sustained since she was a teenager has been three years, but she admitted she still drank alcohol during that time period.

Terri has four other children from prior relationships. None of these children are currently in her care. DHS was last involved with Terri in 2005 when her son tested positive for cocaine at birth. That child is now in the guardianship of his maternal grandmother due to Terri's inability to care for him.

Terri used cocaine throughout her pregnancy with C.H. As a result, C.H., like her older brother, also tested positive for cocaine at birth. In March 2008, Terri left then three-month-old C.H. in the care of a friend. That friend called DHS when Terri did not return for the child. She reported Terri was on a "drug binge." When Terri showed up several days later to reclaim her child, she was transported to a hospital where she was briefly held for mental health treatment.

Terri voluntarily placed C.H. in the care of Terri's maternal aunt, and the child was adjudicated a child in need of assistance (CINA) in May 2008, pursuant to Iowa Code sections 232.2(6)(c)(2), (n), and (o) (2007). The juvenile court's

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<sup>1</sup> The juvenile court also terminated the parental rights of all putative fathers, whose rights are not involved in this appeal.

order allowed Terri to live with her aunt and daughter, but she chose instead to reside with a man she had just met in early June 2008.

Terri made some attempts to participate in outpatient substance abuse treatment early on in these proceedings, none of which were successful. Her caseworker reported being “guardedly optimistic” about Terri’s sobriety in July 2008, but by August, Terri had relapsed. In mid-September, Terri told her aunt she was going out to buy some formula for her daughter and did not return. Her whereabouts were unknown for a couple of weeks. After Terri disappeared, her aunt informed DHS she could no longer care for C.H., and the child was placed in foster care.

In late September 2008, Terri was charged with possession of drug paraphernalia. She agreed to try substance abuse treatment again, but did not follow through. Terri finally entered an inpatient treatment program in December after she was arrested for public intoxication and domestic abuse assault. She was unfortunately discharged in January 2009 for verbally threatening another resident.

The State filed a petition to terminate parental rights in February 2009. Following a hearing, the juvenile court entered an order terminating Terri’s parental rights to her child pursuant to Iowa Code sections 232.116(1)(h) and (l) and section 232.117 (2009). Terri 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).

Terri claims “while the evidence showed the minimum necessary pre-requisites for granting the termination petition, the underlying facts show that [she] has made significant progress towards her drug problem since December 2008.” Citing Iowa Code section 232.117,<sup>2</sup> she argues

the Court does not need to terminate parental rights even where there is clear and convincing evidence that the child is still in need of assistance and [section 232.117] gives the Court power to continue the case by transfer[r]ing custody back to the parent and continuing services.

Terri is correct that termination is not mandatory upon satisfaction of the statutory elements for termination. See *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996). Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the child’s best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). Upon our de novo review, we agree with the juvenile court that termination of Terri’s parental rights is in her daughter’s best interests.

At the time of the termination hearing, Terri was unemployed and living in a halfway house after having successfully completed intensive outpatient substance abuse treatment. She testified that she had been sober for almost four months. While we commend her recent efforts at sobriety, those efforts are insufficient in light of her lengthy twenty-year history of substance abuse, past failed attempts at treatment, and relapses during this case. See *In re Dameron*,

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<sup>2</sup> Section 232.117(3) provides: “If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence, the court may order parental rights terminated.”

306 N.W.2d 743, 745 (Iowa 1981) (stating evidence of a parent's past performance may be indicative of the quality of the future care that parent is capable of providing). This is especially so given Terri's candid admission at the termination hearing that she was still tempted to use drugs. It is simply too soon to conclude her chronic substance abuse problems will not recur. See *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993) (finding termination of parents' rights appropriate where parents struggled with severe chronic substance abuse problems despite some attempts at treatment).

We deny Terri's claim that the juvenile court erred in not affording her "additional time to show her parenting ability." 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[ ]." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). "A child 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). In this case, Terri's efforts at sobriety came too late.

"A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). C.H. has been out of her mother's legal custody and care for the majority of her young life. She is doing very well in her pre-adoptive foster home. She needs and deserves permanency, which her mother admittedly cannot provide her with now.<sup>3</sup>

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<sup>3</sup> Terri nevertheless claims the juvenile court erred in terminating her parental rights due to her strong bond with C.H. See Iowa Code § 232.116(3)(c). This issue was not raised

We conclude, as the juvenile court did, that termination of Terri's parental rights is in the child's best interests. The judgment of the juvenile court is accordingly affirmed.

**AFFIRMED.**

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before the juvenile court. An issue not presented in the juvenile court may not be raised for the first time on appeal, even an issue of constitutional dimensions. *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). We thus conclude Terri did not preserve error on this claim and do not address it any further.