

**IN THE COURT OF APPEALS OF IOWA**

No. 9-466 / 09-0679  
Filed July 2, 2009

**IN THE INTEREST OF S.E. and A.E.,  
Minor Children,**

**J.E., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Constance Cohen,  
Associate Juvenile Judge.

A mother appeals the juvenile court order terminating her parental rights.

**AFFIRMED.**

Jami J. Hagemeyer of Williams, Blackburn & Maharry, P.L.C., Des Moines,  
for appellant.

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

Jon Garner, Des Moines, for the father.

Charles Fuson, Youth Law Center, Des Moines, guardian ad litem for  
minor children.

Considered by Mahan, P.J., and Mansfield, J., and Beeghly, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**BEEGHLY, S.J.****I. Background Facts & Proceedings**

Jami and Marcus are the parents of Shataya, born in 2006, and Alessandra, born in 2007. The mother has a history of mental health and substance abuse issues. The parents' relationship involved instances of domestic violence. The children were removed from the parents' care on April 10, 2008, after the mother attempted to commit suicide by hanging herself while the children were present. The children were placed in the care of the maternal grandmother.

The children were adjudicated to be in need of assistance under Iowa Code sections 232.2(6)(c)(2) and (n) (2007). Jami was charged with assault after an altercation with her mother in May 2008, and the children were present during this incident as well. She received treatment and medication for her mental health problems. She also took classes for anger management. Jami made sufficient progress so that on September 2, 2008, the juvenile court ruled that she could move in with her mother and the children. The children were returned to Jami's care on October 3, 2008, so long as she and the girls continued to live with the maternal grandmother.

The children were again removed from Jami's care on January 7, 2009. The juvenile court found that Jami was not meeting the children's basic needs, but was permitting her mother to care for them. She was not consistently attending therapy. There were also concerns that Jami was using alcohol. Furthermore, she had continuing problems with anger management.

On March 10, 2009, the State filed a petition seeking termination of the parents' rights. Jami had another suicide attempt in March 2009 by taking pills. In April 2009, Jami filed a motion seeking to have the children placed with her at a substance abuse treatment program. She also filed a motion seeking more visitation with the children. These motions were denied by the court. She had a drug test that was positive for marijuana on April 2, 2009.

After a hearing, the juvenile court terminated Jami's parental rights on April 17, 2009. At the termination hearing Jami admitted she had been using marijuana and ecstasy, even while caring for the children. Jami was not addressing her mental health problems or her anger management problems. The court terminated Jami's parental rights under sections 223.116(1)(d), (h), (k), and (l) (2009). The court determined termination was in the children's best interests, stating "[t]here is no reasonable likelihood that Jami would be able to meet her children's needs for a safe and stable drug-free environment in the foreseeable future." Jami appeals the termination of her parental rights.

## **II. Standard of Review**

The scope of review in termination cases is *de novo*. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2000). The grounds for termination must be proven by clear and convincing evidence. *In re T.P.*, 757 N.W.2d 267, 269 (Iowa Ct. App. 2008). Evidence is clear and convincing when it leaves 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). Our primary concern is the best interests of the children. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

### **III. Merits**

**A.** Jami contends there is not sufficient evidence in the record to support termination of her parental rights under sections 232.116(1)(d), (h), (k), and (l). “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).

On our de novo review, we find there is clear and convincing evidence in the record to support termination of Jami’s parental rights under section 232.116(1)(h). Jami admitted she was not in a position to have the children returned to her care at the time of the termination hearing. Jami was still using illegal drugs within two weeks of the termination hearing. She needed to address her problems with substance abuse, mental health issues, and anger management. We conclude the children could not be safely returned to Jami’s care, and her parental rights were properly terminated.

**B.** Jami claims the juvenile court could have decided not to terminate her parental rights because a relative has legal custody of the child. See Iowa Code § 232.116(3)(a). This section is permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The juvenile court found that under the facts of this case there were no compelling reasons to maintain the parent/child relationship. We agree with the juvenile court’s conclusion.

Jami also asserts that there was no need to file the termination petition because it was possible the children could be safely returned home within six

months. See Iowa Code § 232.111(2)(b)(2). The issue of whether the termination petition should have been filed was not addressed by the juvenile court. We conclude the issue has not been preserved for our review. See *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) (noting an issue not presented in the juvenile court may not be raised for the first time on appeal, even an issue of constitutional dimensions).

**C.** Jami asserts termination of her parental rights is not in the children's best interests. She states she has a bond with the children. The juvenile court found the children share a strong bond with Jami. Despite this strong bond, the court found the children could not wait longer for permanency. Although Jami received services, at the time of the termination hearing many of the same problems remained that had led to the children's removal. We determine that termination of Jami's parental rights is in the children's best interests.

We affirm the decision of the juvenile court.

**AFFIRMED.**