

**IN THE COURT OF APPEALS OF IOWA**

No. 9-668 / 09-1014  
Filed September 2, 2009

**IN THE INTEREST OF A.M.V.,  
Minor Child,**

**A.A.V., Mother,  
Appellant.**

---

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

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Jolie B. Juckette of Nelissen & Juckette, P.C., Des Moines, for appellant  
mother.

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.

Michelle Saveraid of the Youth Law Center, Des Moines, for minor child.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

**DOYLE, J.**

A mother appeals from the order terminating her parental rights. Upon our de novo review, we affirm.

***I. Background Facts and Proceedings.***

A.V. is the mother of A.M.V., born July 2004.<sup>1</sup> A.M.V. first came to the attention of the Iowa Department of Human Services (Department) in November 2006 after the mother admitted she used marijuana in her home while A.M.V. was present. A child protective case was initiated, and the family began participating in Department services. However, the mother's cooperation with the services was sporadic.

On December 20, 2007, the mother was arrested for willful injury after allegedly stabbing a man at her apartment complex. A.M.V. was present in the apartment complex when the stabbing occurred. Police searched the mother's apartment after the stabbing and discovered a large quantity of crack cocaine in a shoebox under her bed. The mother was then additionally charged with possession of crack cocaine with intent to deliver and failure to affix a tax stamp.

Following her arrest, the mother was placed in the Polk County jail, and A.M.V. was temporarily removed from the mother's care. On December 28, 2007, the State filed a petition asserting A.M.V. to be a child in need of assistance (CINA). On January 4, 2008, the juvenile court placed A.M.V. in the legal custody of D.F. and J.F., family friends.

---

<sup>1</sup> This appeal concerns only the mother's parental rights. A.M.V.'s father has not appealed from the termination of his parental rights.

On February 20, 2008, an uncontested adjudicatory hearing was held, and the court adjudicated A.M.V. to be a CINA. The mother was in jail and stipulated to the adjudication. The court ordered that services continue.

On April 2, 2008, an uncontested disposition hearing was held. The mother remained in jail but was to be sentenced on April 3, 2008. The court adopted the case permanency plan and further ordered that the mother demonstrate a commitment to a clean and sober life. Thereafter, the mother was sentenced and placed on probation. The mother was placed in the women's correctional facility and was available to participate in services. She was successfully discharged on August 27, 2008, and began having semi-supervised visitation with A.M.V. in September 2008.

A review hearing was held on September 30, 2008. The mother advised the court that she was pregnant. Additionally, it was brought to the court's attention that A.M.V.'s legal custodians, D.F. and J.F., needed to leave the country for a few months to care for a sick relative. D.F. and J.F. also expressed that they were no longer sure they could adopt A.M.V. The court ordered that the mother comply with prenatal care and not use any drugs or alcohol unless medically prescribed. Additionally, on October 14, 2008, the court entered a modification order placing A.M.V. in the legal custody of C.F.M. and W.M., D.F. and J.F.'s daughter and son-in-law, while D.F. and J.F. were out of the country.

On November 3, 2008, the mother successfully completed an extended outpatient drug treatment program and was scheduled to begin therapy in December. The mother continued to have semi-supervised visitation with

A.M.V., but A.M.V. was sometimes irritable after a visit with her mother. A.M.V. continued to thrive in her custodians' home.

A permanency review hearing was held December 16, 2008. The Department reported that the mother was generally participating and cooperating with services and the Department's recommendations. The Department recommended an extension of time for the mother to address a few of the Department's concerns so that the mother could be reunited with A.M.V. The juvenile court found A.M.V. would be able to return home in three months if the mother maintained her sobriety, complied with therapy, managed her anger, obtained appropriate housing, continued to demonstrate insight as to her accountability, and maintained her employment.

On January 27, 2009, after an overnight visit with the mother, A.M.V. reported that she saw the mother's boyfriend hit her mother in the face. After another visit in early February, A.M.V. reported to an in-home provider that the mother was sad because the mother and her boyfriend were fighting and because the police came to the house. The child stated that the police were going to take the boyfriend to jail but did not. A.M.V. also stated that her mother told her not to tell the providers about the police. A.M.V. told the provider not to tell her mother what she reported. The in-home provider then confronted the mother about A.M.V.'s statements and the mother began shouting at the provider and denied that the police came to the residence. After the in-home provider picked up A.M.V. from the visitation with the mother, A.M.V. said to the provider "I told you not to tell!" and reported that the mother screamed at her, made her cry, and then spanked her bottom. When asked what her mother screamed at

her, A.M.V. shouted to mimic the mother “The police did not come to our house! You tell her the police did not come!” A.M.V. also reported to her therapist that her mother punishes her for “telling,” and anything she reports needs to be “our secret.” After a discussion with A.M.V.’s therapist, it was decided that contact between A.M.V. and the mother remain supervised. Thereafter, A.M.V.’s therapist opined that A.M.V. “has felt responsible for her mother’s inability to care for her and this misconception will be an ongoing treatment issue for [A.M.V.]” and recommended that the mother’s parental rights be terminated.

On March 9, 2009, the court appointed special advocate (CASA) reported that the mother advised her she had not been working since Christmas because her employer was not giving her any hours, but that she still had a job and called her employer every day. The mother then stated that she had not been in contact with the Department, the visiting nurse, and the CASA because she did not have a phone because she had been in a car accident and lost her phone with all of their numbers. The mother told the CASA that her doctor advised her she needed bed rest because of the accident, but the doctor did not provide anything in writing. The mother stated the accident and bed rest made her unable to phone anyone or have visits with A.M.V. The mother also stated that her doctor put her on depression medication and she had not been to her therapist because she was feeling too depressed. The mother stated that she thought her mother would send her money to pay her bills and get her phone back on, but her place of residence is unable to receive mail because of other dogs on the street and not because of the two pit bull terriers in her home. The mother stated she is also unable to receive her food stamps for this reason. The

mother acknowledged that she was driving illegally, but had no other options and wanted to return A.M.V. back on time to the legal custodians following her visitation. The legal custodian reported to the CASA that A.M.V. does not want to be alone with her mother. The CASA recommended that a petition to terminate the mother's parental rights be filed and that no additional extension be given.

The in-home provider advised the court that although she observed a strong bond between the mother and A.M.V., A.M.V. was in great need of permanency that could not be provided by the mother at this time. The in-home provider noted that A.M.V. had significant issues with anxiety that are likely to be furthered the longer she remains in temporary care. The in-home provider recommended that A.M.V. be placed long-term with D.F. and J.F. The in-home provider stated this would give A.M.V. stability while allowing her to maintain her bond with C.F.M. and W.M., as well as her mother and newborn half-sister.<sup>2</sup>

On March 10, 2009, the State filed its petition to terminate the mother's parental rights. On April 23, 2009, the mother filed a motion to continue and motion to modify placement. The mother's motion asserted that the foster parents were no longer to be a long-term placement for A.M.V. and requested A.M.V.'s maternal grandmother be considered for placement. The mother requested that the termination hearing be continued until a viable concurrent plan was set in place.

---

<sup>2</sup> The mother gave birth to R.M. in April 2009. The mother's parental rights to R.M. are not at issue in this appeal.

A contested permanency review hearing was held March 17 and 25, 2009. The court ultimately agreed that the State should file a termination of parental rights petition. The court found the mother had not demonstrated the anticipated behavior changes that would support modification as set forth in the court's December 16, 2008 order, specifically, that the mother failed to comply with therapy, demonstrate anger management, obtain appropriate housing, maintain employment, or gain insight as to her accountability. The court found that the mother exposed A.M.V. to domestic violence and expected the child to keep secrets.

A hearing on the State's petition to terminate the rights of the mother was held on May 1, 2009. At the hearing, the mother asserted that D.F. and J.F. were not long-term placement options for A.M.V. and asked that the petition be continued until there was a placement plan in place for A.M.V. The State and the child's guardian ad litem resisted the continuance, asserting that D.F. and J.F. were long-term placement options for A.M.V. and that A.M.V. was in need of permanency. The court denied the mother's motion to continue. After the State's exhibits were admitted, the mother was asked to present her record. The mother's attorney responded, as follows:

My client, after much soul-searching and much discussion with myself and with [the parent partners], has come to, I think, the very mature and obvious change in her position. She recognized that, even though she believes she's made significant progress, that due to [A.M.V.'s] needs and everything that has happened that she understands that at this time placement with her is not a possibility.

She does, however, believe that a guardianship would be the best alternative and in the best interest of her child. I think, and I would ask the court to take into consideration, that this woman who, in the past, has sometimes looked out—and most of the time

looked at what's in her best interest. And the fact that she recognizes today that she cannot parent this child, due to the child's needs at this point in time, but given the progress that has been made and the extremely strong bond that this mother and child have, as well as the fact that, by all accounts, the planned custodian intends on maintaining a relationship between this mother and child, permanency can, in fact, be effectuated through a guardianship.

I know that a guardianship is not something that courts normally do, but I believe in this situation it's something that would be in this child's best interest. There is a sibling that is involved and needs to be considered . . . .

This court is also aware, due to proceedings yesterday and ongoing proceedings scheduled . . . , that there is a plan imminent to return [R.M.] to this mother. Given all circumstances and given the recent rulings and case law regarding sibling relationships, my client is asking that this court enter a guardianship rather than do termination of parental rights.

And, truly, I can inform the parties and the court that this is because she believes it's in her daughter's best interest. She has no intention of disrupting the guardianship. She has, in the past, requested placement with relatives. And although she would prefer that, she recognizes that [D.F.] is, at this point in time, the best placement for her daughter. But would ask that this court enter a guardianship, given the fact of the bond and the close relationship that she will continue to have with this child as well as a sibling relationship.

And with that, I would have nothing further at this time other than to ask that the court ask my client if she has had enough time to make the determination that a professional statement is the way she wishes to proceed in this matter rather than presenting evidence.

The court then conducted the following colloquy with the mother:

Q: [Mother], have you had enough time to talk to your lawyer about this matter? A. Yes, ma'am.

Q: And are you satisfied with [your lawyer's] help? A. Yes, ma'am.

Q: Do you believe that [your lawyer has] accurately portrayed your position in this matter? A. Yes, ma'am.

Q: And you know that you have the right to present witnesses who will testify under oath and be questioned by other lawyers, and you understand you have that right today? A. Yes, ma'am.

Q: And . . . you're comfortable proceeding with the statements that were made by [your attorney]? A. Yes, ma'am.



A.M.V.'s guardian ad litem argued that termination of the mother's parental rights was in A.M.V.'s best interests, not a guardianship.

On June 16, 2009, the juvenile court entered its order terminating the mother's parental rights to A.M.V. pursuant to Iowa Code sections 232.116(1)(d) (2009) (child CINA for physical or sexual abuse (or neglect), circumstances continue despite receipt of services ) and 232.116(1)(f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home). Additionally, the court concluded:

The State is unable to document compelling reasons to maintain the parent/child relations, and the court is unable to find them. Accordingly, even though the permanency plan is for a relative to adopt [A.M.V.], termination of parental rights is in [A.M.V.'s] best interest and would be less detrimental than the harm that would be caused to her by continuing the parent/child relationships. Given her age, need for permanency, and the extended amount of time that the parents were given to demonstrate sobriety, stability, and suitability to parent this child, their past behaviors indicate that it would be contrary to [A.M.V.'s] welfare to enable them to potentially disrupt a guardianship. Given her age, and her parents' inability and inconsistency in succeeding with reunification services, permanency for [A.M.V.] can best be established by termination of parental rights.

The mother now appeals. The mother argues the State failed to establish by clear and convincing evidence grounds for termination. Additionally, the mother contends the court erred in determining termination was in the child's best interests.

## ***II. Scope and Standards of Review.***

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001).

When the juvenile court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate under one of the sections cited by the court in order to affirm the court's ruling. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). 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 in termination cases is the best interests of the child. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

### ***III. Discussion.***

#### ***A. Grounds for Termination.***

The mother contends the State failed to establish by clear and convincing evidence grounds for termination. The State argues the mother failed to preserve error on this issue, given her position at the termination hearing. We agree.

The mother did not challenge the grounds for termination asserted by the State in its petition to terminate parental rights. 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 the mother has not preserved error on this claim. Nevertheless, we find the state proved by clear and convincing evidence that the child could not be returned home. The mother acknowledged at trial that the child could not be returned to her care, thus satisfying section 232.116(1)(f).

***B. Best Interests and Child in Legal Guardianship of a Relative.***

Additionally, the mother contends termination of her parental rights is not in the child's best interests and is contrary to Iowa Code section 232.116(3). We disagree.

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must be in the child's best interests. *A.S.*, 743 N.W.2d at 867; *see also In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). The child's safety and the need for a permanent home are now the primary concerns when determining the child's best interests. *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Those best interests are to be determined by looking at the child's long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the child if the child is returned to her parent. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

At the termination of parental rights hearing, the mother acknowledged that A.M.V. could not be placed with her and recognized that D.F. was at that time the best placement for A.M.V. She requested, in lieu of termination of her rights, that the court established a guardianship with A.M.V.'s legal custodians because of the bond between her and A.M.V. and the closeness of their relationship. Pursuant to Iowa Code section 232.116(3), a termination, otherwise

warranted, may be avoided if “[a] relative has legal custody of the child” or “[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.” The factors in section 232.116(3) are permissive, not mandatory, and it is in the court’s discretion, based on the unique circumstances of the case and the best interests of the child, whether to apply such factors. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa Ct. App. 1996).

After a careful review of the record, we agree with the juvenile court that even though the permanency plan was for a relative to adopt A.M.V., termination of the mother’s parental rights was in A.M.V.’s best interests and would be less detrimental than the harm that would be caused to her by continuing the parent-child relationship. While we commend the mother for her progress, A.M.V. remains waiting for a mother to be able to care for her and protect her in a secure environment, as well as provide stability. The child’s therapist and guardian ad litem both noted A.M.V.’s need for permanency and recommended the termination of the mother’s parental rights. Given the mother’s recent setbacks combined with her acknowledgement that A.M.V. could not be returned to her immediate care, we agree that termination of the mother’s parental rights is in A.M.V.’s best interests. Our legislature has made the determination that point is reached when the statutory time for patience with a parent has passed. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). 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). There is no dispute that A.M.V. is bonded with her current legal custodians and doing very well in their care. D.F. and J.F. have

indicated they desire to adopt A.M.V. should none of A.M.V.'s biological family be able to do so. Because the mother is unable to provide stability or safety to A.M.V., we conclude the juvenile court did not abuse its discretion in terminating the mother's parental rights and therefore affirm.

#### **IV. Conclusion.**

Because we conclude the mother failed to preserve error on her statutory grounds claim and termination of the mother's parental rights was in A.M.V.'s best interests, we affirm the judgment of the juvenile court.

**AFFIRMED.**