

IN THE COURT OF APPEALS OF IOWA

No. 9-887 / 09-1350
Filed November 25, 2009

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

**N.S.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Hardin County, Kim M. Riley,
District Associate Judge.

A mother appeals from the order terminating her parental rights.

AFFIRMED.

Bethany J. Currie of Johnson, Sudenga, Latham, Peglow & O'Hare,
P.L.C., Marshalltown, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Randal J. Tilton, County Attorney, for appellee State.

Richard N. Dunn of Dunn & Dunn, P.C., Eldora, for minor child.

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

DOYLE, J.

A mother appeals the district court order terminating her parental rights to one-and-a-half-year-old J.J. We affirm.

I. Background Facts and Proceedings.

The Iowa Department of Human Services became involved with this family shortly after J.J.'s birth in April 2008. The mother has a full-scale IQ of 61, placing her in the mild mentally retarded range. Since J.J.'s birth, the mother has received numerous services, including financial assistance, budgeting, transportation (the mother did not have a valid driver's license), and help with housekeeping and tidiness. The mother has also received help to receive Social Security benefits for her mental impairment.

DHS arranged for thirty days of intensive in-home safety services by a Youth and Family Center worker. After the thirty days, the worker continued to meet with the mother on a weekly basis to assist with parenting skills development, supervision, and other daily living skills. The mother also met weekly with Greenbelt Home Care to evaluate J.J.'s physical health, and AEA 267 to evaluate J.J.'s developmental needs.

In July 2008, the mother married a man that she claimed was J.J.'s father. She later denied these allegations, and J.J.'s biological father has not been identified. The couple lived together with J.J. in Ackley in the mother's apartment. The marriage became unstable by September 2008, and the mother reported the husband was physically abusive toward her. The couple separated in January 2009. The mother filed for divorce and moved into an apartment in Iowa Falls.

The mother cooperated with the services offered to her, but failed to exhibit any significant amount of improvement in her parenting skills. The mother was unable to safely parent J.J. on her own without the assistance of a professional agency, and lacked the appropriate knowledge of beliefs and attitudes toward child care.

J.J. was removed from the mother's care on December 2, 2008, and was placed in family foster care where she has remained since that time. The removal was necessitated by the mother's travel to California, when she left J.J. with a person that DHS had not approved of, and without financial and medical care.¹ The mother indicated to service providers that she intended to be gone in California for at least thirty days and made threats to abscond with J.J. Since J.J.'s removal, the mother has had regular visitation, initially supervised visits once a week, and progressed to partially unsupervised visits twice weekly.

The mother's requests for fully unsupervised visits were denied, as she failed to make adequate improvements in her parenting. At one point, the visits were increased in frequency and duration; however, service providers reported the increased visits were stressful for J.J., and the visits were decreased. J.J. became agitated and anxious during visits. The mother often got angry and yelled or swore at J.J. The mother did not recognize that J.J. was not old enough to comprehend what she was saying, and that J.J. did not understand why she was being disciplined.

¹ The mother had voluntarily placed J.J. in foster care for several weeks around August 2008, when J.J. had suffered severe burns to her feet during a bath and the mother recognized she could not appropriately tend to the burns. The mother missed two scheduled visits with J.J. during this removal, and chose to spend time in Waterloo with her half-sister instead.

The mother's home was not a safe environment for J.J. On numerous visits to the mother's apartment, J.J. would find cigarette butts and other debris on the floor and put them in her mouth. Even with the help of service providers to clean her apartment, the apartment was usually cluttered and messy at the time of J.J.'s visits. The mother consistently failed to have appropriate food for J.J., and failed to cut food into small pieces that J.J. would not choke on. These problems continued even after service providers repeatedly reminded the mother that she needed to be careful with J.J. and keep her apartment clean and safe for J.J. The mother failed to understand that J.J. could not distinguish household dangers. Service providers demonstrated how to perform specific parenting duties, and although the mother listened and complied, she failed to make sufficient improvements. The mother did not intentionally disregard the service providers' parenting advice and suggestions, but rather, her limited mental capacity impaired her abilities.

Service providers informed the mother that she would likely need someone else providing twenty-four-hour supervision over J.J. in order to safely return J.J. to her care. The mother attempted to find a roommate, but several plans fell through. The mother did not have good relationships with family members, and her relationships with friends were unstable and routinely deteriorated after a matter of months. Shortly before the termination hearing, the mother moved in and signed a month-to-month lease with a friend in Hampton. The mother indicated this friend was a mother of three children who could assist the mother with parenting J.J.

In July 2009, the State filed a termination petition. After a contested hearing, the court terminated the mother's parental rights on September 1, 2009, pursuant to Iowa Code section 232.116(1)(h) (2009). The mother now appeals.

II. Scope and Standard 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). 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. Issues on Appeal.

A. Clear and Convincing Evidence.

The mother argues the court erred in finding J.J. cannot be immediately returned to her care. She contends the State failed to prove by clear and convincing evidence that J.J. would suffer further adjudicatory harm if returned to her care.

The mother has been involved with DHS since early 2008, and has received numerous and extensive services since that time. The mother has essentially received help with every aspect of day-to-day life, from transportation to financial assistance, to parenting skills and development. Throughout this

time, however, the mother has failed to show significant improvement in her abilities to safely and adequately parent J.J. without agency assistance.

The same problems continued to arise throughout these proceedings. Although these problems are somewhat basic, they demonstrate the extent the mother's limited intellectual capacity impairs her ability to care for J.J. The mother was unable to keep her apartment clean and allowed J.J. to crawl and walk on the floor amidst cigarette butts and other debris. The mother had trouble keeping J.J.'s clothes clean and failed to feed J.J. appropriate foods or cut the food into small pieces. The mother was impulsive and yelled and swore at J.J. She failed to understand that J.J. did not know what she was saying, and the fact that J.J. could not protect herself from household dangers.

Aside from the mother's inability to provide general childcare to J.J., the mother could not obtain a job and did not have stable housing. In less than two years, the mother had lived with several different people, each for short periods of time, and in at least three different towns. She also indicated she wanted to move to California, and threatened to leave the state with J.J. When DHS did not give her permission to leave with J.J., the mother left J.J. with a friend (unknown to DHS) and went to California anyway. Prior to J.J.'s removal, the mother got married, but then filed for divorce less than a year later because her husband physically abused her. Although DHS indicated the mother may be able to care for J.J. if someone else provided twenty-four-hour supervision over J.J., the mother has demonstrated that she continues to put herself and J.J. in harmful situations, and that she is unable to maintain a stable relationship with anyone for more than a period of months.

The mother has not progressed to completely unsupervised or overnight visits, and attempts to increase visitation were halted because longer and more frequent visits adversely affected J.J. There continue to be major concerns about the mother's relationship choices, accountability, limited mental functioning, lack of employment and consistent housing, and lack of responsibility for the harms she causes J.J. For nearly the past year, J.J. has lived in family foster care.

The mother has not demonstrated significant improvement over more than a year of extensive services. Past performance of a parent may be indicative of the quality of future care the parent is capable of providing. *In re C.W.*, 554 N.W.2d 279, 283 (Iowa Ct. App. 1996). The legislature incorporated a six-month limitation for children in need of assistance aged three and below. Iowa Code § 232.116(1)(h)(3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the State having been legislatively set, we are obligated to heed the statutory time periods for reunification. Here, the evidence establishes that the child will not be able to return to the mother's custody within a reasonable period. Additionally, the evidence at trial established that the child is in need of permanency, and the child should not have to wait any longer. *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("[P]atience with parents can soon translate into intolerable hardship for their children."). "At some point, the rights and needs of the child rise above the rights and needs of the parents."

In re J.L.W., 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The record clearly supports the mother's inability to provide a safe environment for J.J., now or in the future. We find clear and convincing evidence supports termination of the mother's parental rights under section 232.116(1)(h).

B. Best Interests.

The mother also argues termination was not the child's best interests. As stated above, our primary concern in termination cases is the best interests of the children. *A.S.*, 743 N.W.2d at 867. "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). 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 the parents. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parents' 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).

The mother clearly loves J.J. and is bonded to her, and there is no evidence the mother physically abused J.J. or intentionally mistreated her. Indeed, the mother participated in all services offered to her and exhibited commitment to learning the skills needed to return J.J. to her care. The State offered the mother parenting and day-to-day living assistance both before and

after J.J. was removed from her care. Unfortunately, the mother was not able to assimilate the training and function at the level required for J.J.'s return home.

As mentioned above, a number of the problems were related to the mother's limited intellectual abilities. We agree with the juvenile court's determination that the mother's limited abilities were a substantial factor in the decision to terminate her parental rights. A parent's mental disability is a proper factor to consider in determining whether a child is neglected and his or her welfare requires termination. *In re F.M.*, 506 N.W.2d 463, 465 (Iowa Ct. App. 1993). "A parent's mental disability, while not alone sufficient to terminate parental rights, can be a contributing factor to the parent's inability to perform essential parenting functions, and termination can be appropriate where a parent lacks the capacity to meet a child's present and future needs." *In re T.T.*, 541 N.W.2d 552, 556 (Iowa Ct. App. 1995) (citing *In re A.M.S.*, 419 N.W.2d 723, 733 (Iowa 1988)). Such is the case here.

We are convinced that J.J.'s interests are best served by terminating the mother's parental rights and continuing J.J.'s placement in a safe and stable home. Returning J.J. to the mother's home without a number of services and full-time supervision is not an option. There is no reason to further delay J.J. the permanency she needs and deserves. We find termination of the mother's parental rights is in J.J.'s best interests.

AFFIRMED.