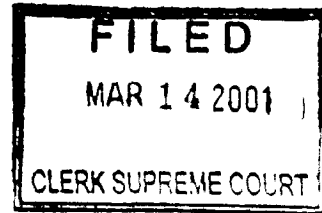


IN THE COURT OF APPEALS OF IOWA

No. 1-146 / 00-0226
Filed March 14, 2001

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

**T.S., Mother,
Appellant.**



Appeal from the Iowa District Court for Polk County, James D. Birkenholz,
District Associate Judge.

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

AFFIRMED.

Christopher Kragnes, Sr., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Jennifer G. Navis, Assistant County Attorney, for appellee-
State.

Nicole Gabis Nolan, Youth Law Center, Des Moines, for minor child.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

MILLER, J.

A mother appeals the decision of the juvenile court terminating her parental rights to her minor child. She claims the court abused its discretion in terminating her rights because a relative has custody of the child. We affirm.

Theresa is the mother of Jordan, born in April 1991. Theresa has a history of alcohol abuse. She first came to the attention of the Department of Human Services (DHS) in July 1996, when she became extremely intoxicated and was unable to care for Jordan. DHS issued a founded report of denial of critical care. In January 1998, DHS issued a founded report of physical abuse against Theresa due to scratches Jordan received from her. Theresa attended a substance abuse treatment program.

In May 1998, Theresa was arrested for shoplifting. Jordan was with her at the time. Jordan told investigators his mother sometimes passed out, and he would have to take care of himself. DHS issued another founded report of denial of critical care. Jordan was removed from the home and placed in foster care for a short period of time, then in the care of the maternal grandparents. He was adjudicated to be a child in need of assistance under Iowa Code section 232.2(6)(c)(2).

The grandparents were unable to continue caring for Jordan, and in August 1998, he was placed in foster care. Theresa obtained a psychological evaluation; she was diagnosed with alcohol dependence and a histrionic personality disorder. She successfully completed a treatment program, and began to participate in individual therapy.

In December 1998, Jordan was returned to Theresa's care. One week later, however, Jordan was forced to seek assistance from neighbors because Theresa had passed out. Police officers found vodka bottles in the garbage. In January 1999, after another incident where Theresa had been drinking, Jordan was removed from Theresa's care and placed in the care of his adult brother. Theresa engaged in harassing behavior by calling the home up to nine times a day. After about a week Jordan was placed in foster care. DHS issued a founded report of denial of critical care because Jordan stated his mother had been drinking and driving.

Theresa attended a substance abuse treatment program for a short period of time in April 1999. She then began another treatment program, but was unsuccessfully discharged. In May 1999, Theresa was arrested for public intoxication. Because of her continued drinking, she lost her job and her apartment. Jordan was placed in the care of a maternal aunt in Colorado. The aunt has expressed an interest in adopting Jordan. Theresa maintained telephone contact with Jordan.

In July 1999, Theresa was arrested for public intoxication. She began an inpatient treatment program in Iowa City, which was unsuccessful. She returned to Polk County, where she began an intensive outpatient treatment program, but was again unsuccessful. In August 1999, she was arrested for domestic assault with injury. Her boyfriend indicated she was intoxicated at the time. The State filed a petition to terminate Theresa's parental rights in September 1999.

The first part of the termination hearing was held on October 5, 1999. At that time Theresa was in jail for violating a no-contact order associated with the

domestic abuse charge.¹ She also had a pending charge of operating while intoxicated (OWI). She testified she had not had a drink since July 14, 1999.

The termination hearing was continued to November 9, 1999. In the interim, Theresa pled guilty to the OWI charge. She was ordered to attend a residential treatment facility, which she successfully completed. By the time the termination hearing resumed, she was in a half-way house. Theresa admitted she had not been truthful at the previous hearing about her last relapse, which she now admitted was September 15, 1999.

The juvenile court entered an order on December 30, 1999, terminating Theresa's parental rights to Jordan pursuant to sections 232.116(1)(c) and (k). The court found:

Theresa [] has throughout, failed to exercise judgment that was in the best interests of her son and has failed to take advantage of the substance abuse treatment, individual therapy and other services offered to effect reunification. Jordan is in a very appropriate, loving, protective home with his aunt and uncle and the only way he can really be assured of that protection is through a termination of parental rights.

Theresa appeals the decision of the juvenile court.

The scope of review in termination cases is *de novo*. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the child. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

Theresa does not contest the statutory grounds for termination of her parental rights. She asserts the juvenile court should have exercised its

¹ The underlying domestic abuse charge was dismissed.

discretion under section 232.116(3)(a) to refuse to terminate her parental rights because Jordan is in the care of a maternal aunt. Under this section, the court need not terminate the relationship between the parent and the child if the court finds a relative has legal custody of the child. Iowa Code § 232.116(3)(a).

Section 232.116(3) has been interpreted to be permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). It is within the sound discretion of the juvenile court, based upon the unique circumstances before it and the best interests of the child, whether to apply this section. *J.L.W.*, 570 N.W.2d at 781. We must consider a child's long-range and immediate best interests. *In re A.B.*, 492 N.W.2d 446, 450 (Iowa Ct. App. 1992).

Jordan attended individual therapy with Dave Greenwood since July 1998. Even after Jordan moved to Colorado, Greenwood had sessions with Jordan over the telephone. At the termination hearing, Greenwood testified:

And I think Jordan needs an opportunity to get on with his own life. And I don't think he's going to have that if he still has contact with his mom, because he's been trained to be there to meet his mom's needs. He's a parentified child. He's there to meet his own needs. And so any contact he has trains him to do that.

Greenwood testified termination of Theresa's parental rights would be more beneficial for Jordan than if he were placed in a long-term guardianship with his aunt. The aunt has expressed an interest in adopting Jordan. Also, Jordan has expressed an interest in being adopted by the aunt and her husband.

Jordan needs the permanency a termination of Theresa's parental rights will bring. As Greenwood pointed out, Jordan took care of his mother while she was drinking. He would hide her liquor or pour it down the drain in order to try to keep her from drinking. He would try to keep her from driving when she was

drinking. More than once he sought the assistance of police officers or friends when she passed out. In the past, Jordan met his mother's needs, rather than she, as the parent, meeting his needs. It is in Jordan's best interests to terminate Theresa's parental rights.

We affirm the decision of the juvenile court.

AFFIRMED.