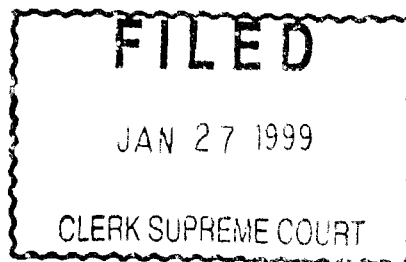


IN THE COURT OF APPEALS OF IOWA

No. 8-746 / 98-0175  
Filed January 27, 1999

IN THE INTEREST OF  
J.L.M.W.,  
Minor Child,

S.H., Mother,  
Appellant.



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Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Richard Kallsen, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Dewey Sloan, Assistant County Attorney, for appellee.

Karen Epp of Berenstein, Moore, Berenstein, Heffernan & Moeller, Sioux City, guardian ad litem for minor child.

Considered by Sackett, C.J., and Streit and Vogel, JJ.

**STREIT, J.**

Sarah, the mother of Javonte, appeals the termination of her parental rights. She contends the court erred in determining there was clear and convincing evidence it was in her son's best interests to terminate the rights. We affirm.

Javonte was born in February 1997. Sarah was high on crack cocaine when she was admitted for the delivery and admitted to using drugs throughout the pregnancy. At birth, Javonte tested positive for cocaine and two days later he was taken directly to a foster home. Sixteen days after Javonte's birth, Sarah entered an in-patient drug treatment program. Javonte joined her after six weeks, however, days later Sarah quit treatment against medical advice and left Javonte, claiming she could not take care of him.

In April 1997, Javonte was adjudged a child in need of assistance (CINA). Sarah has a significant mental health history dating from her childhood including such problems as personality disorder, depression, and post-traumatic stress disorder. She has a lengthy criminal history with at least thirty-nine arrests over a three-year period for prostitution, theft, and failure to appear. She was arrested nine times during the pendency of this case. The case permanency plan dated May 30 set forth several responsibilities for Sarah including completing chemical dependency treatment, providing clean drug screens, obtaining stable housing and employment, and having no further arrests. She did not comply with any of the requirements. In November 1997, the State filed a petition to terminate Sarah's parental rights under Iowa Code

sections 232.116(1)(b), (c), (d), (g), (h), and (k). After a hearing which Sarah did not attend, the court terminated her parental rights on four grounds: Iowa Code sections 232.116(1)(d), (g), (h), and (k).<sup>1</sup> The court also terminated the father's rights but he did not appeal.

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<sup>1</sup> These sections read:

d. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, "significant and meaningful contact" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

g. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

h. The court finds that all of the following have occurred:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

k. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

Sarah appeals the termination order. She contends the termination was not in Javonte's best interests and challenges the sufficiency of evidence supporting the termination. She also argues the Department of Human Services (DHS) failed to offer her the services necessary to resume custody of Javonte.

We review proceedings to terminate parental rights *de novo*—we review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Our primary concern is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). Those best interests are determined by looking at the child's long-range as well as immediate interests. We consider what the future likely holds for the child if that child is returned to his parents. Insight for that determination may 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 at 493; *Dameron*, 306 N.W.2d at 745; *In re T.T.*, 541 N.W.2d 552, 555 (Iowa App. 1995).

Javonte has been out of Sarah's care basically all of his life. Sarah has continued her unstable and self-destructive lifestyle since Javonte's removal from her care. Her refusal to comply with any of the requirements of the case permanency plan resulted in her having no contact with Javonte. She complains DHS did not provide her with services designed to reunite her with Javonte. Challenges to services should be made when the case plan is entered. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997); *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). The State has an

obligation to make reasonable efforts, but it is the parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa App. 1997); *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App.1993). Sarah neither demanded services nor made any efforts, other than her aborted attempt at substance abuse treatment, to put herself in a position to care for Javonte. Indeed, she did not contact DHS for several months nor inform them of her address so they could contact her.

When the district court terminates a parent's rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996); *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa App. 1995). In light of Sarah's failure to maintain "significant and meaningful contact [with Javonte] during [his life]" and her failure to make "reasonable efforts to resume care [of Javonte]" we find the State has provided clear and convincing evidence termination of her parental rights is appropriate under Iowa Code section 232.116(1)(d).

Sarah has not changed her lifestyle. Her current substance abuse, prostitution, and unstable lifestyle would place Javonte at risk if returned to her care. She demonstrated her inability to care for him in the few days they were together. He cannot safely be returned to her care at this time. It is often disputed how long parents should be allowed to demonstrate they can develop the ability to be parents. Accordingly, the legislature, in section 232.116(1)(g)(3), has established a six-month

standard. *See In re A.C.*, 415 N.W.2d 609, 614 (Iowa 1987) (“It is unnecessary to take from the children's future any more than is demanded by statute”). The legislature adopted the standard in the belief this period must be reasonably limited because, “beyond the parameters of chapter 232, patience with parents can soon translate into intolerable hardship for their children.” *Id.* at 613. The record contains clear and convincing evidence termination is appropriate under Iowa Code section 232.116(1)(g).

Even though clear and convincing evidence establishes termination is appropriate under Iowa Code section 232.116(1), Sarah argues it is not in Javonte’s best interests. We disagree. Even if the statutory requirements for termination are met, the decision to terminate must still be in the best interests of the children. *In re N.H.*, 383 N.W.2d 570, 574 (Iowa 1986); *In re D.W.K.*, 365 N.W.2d 32, 34-35 (Iowa 1985). The best interests of the child are paramount considerations in determining whether to terminate parental rights. *In re L.L.*, 459 N.W.2d at 493; *In re N.H.*, 383 N.W.2d at 574. The legislature has categorically determined “the needs of a child are promoted by termination of parental rights” if the grounds for termination of parental rights exist. *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990). Javonte’s best interests require permanency and a chance for life in a home which can address his current and long-term needs. We find termination of Sarah’s parental rights to be in Javonte’s best interests.

**AFFIRMED.**