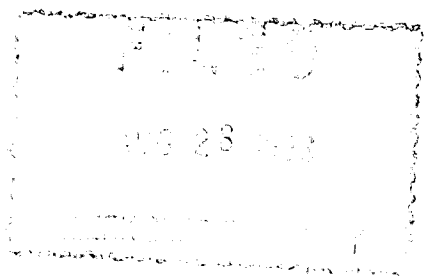
IN THE COURT OF APPEALS OF IOWA

No. 8-390 / 97-2281



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

K.D., Mother,
Appellant.

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

Mother appeals the district court order terminating her parental rights. **AFFIRMED.**

Ryan B. Moorman, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Mary W. Vavroch, Assistant Attorney General, for appellee-State.

Kimberly S. Ayotte of Youth Law Center, Des Moines, guardian ad litem for minor child.

Considered by Sackett, P.J., and Huitink and Vogel, JJ.

VOGEL, J.

Katherine is the mother of Jonathan, who was born in September 1981. Jonathan's father has not been involved in his life and is not a party to this appeal.

Jonathan has Down's Syndrome and is severely mentally retarded. He also has some health problems, including recurrent ear infections and asthma. Jonathan came to the attention of the Department of Human Services (DHS) in January 1988. DHS issued a founded report of denial of critical care due to lack of proper supervision and failure to meet Jonathan's medical needs. In 1988 and 1989, there were at least four founded reports of denial of critical care of Jonathan and two reports of physical abuse.

Jonathan was adjudicated to be a child in need of assistance. He was placed in foster care for a period of time. In December 1990 he was returned to Katherine's care. She made significant progress in keeping Jonathan safe, and the case was closed in December 1991.

During this period of time Katherine was married to Mark. Their relationship was beset by domestic violence. In 1991, Mark pled guilty to domestic abuse enhanced and served a period of time in prison. In 1994, Katherine allowed Mark to move back into the home. Mark continued to engage in domestic violence and abuse of Jonathan. In October 1994, Jonathan was removed from the home and placed in

foster care. He was adjudicated to be a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b), and (c)(2).

Katherine completed a substance abuse program in September 1995. In December 1995, she was asked to leave an after-care program due to noncompliance. In March 1996, Katherine was hospitalized for depression after she attempted to climb out of a moving car. Katherine separated from Mark several times, but then returned to him.

Jonathan has done very well in foster care and his health has improved. He had reconstructive surgery on his ears and now wears hearing aids. He also has eyeglasses. Jonathan has become more communicative. Jonathan's foster family has expressed a desire to adopt him, even though they realize this is a lifetime commitment because Jonathan will never be able to care for himself.

In September 1997, the State filed a petition to terminate Katherine's parental rights to Jonathan. At the termination hearing, Katherine testified she was no longer taking recommended medication for depression. She stated she had obtained a dissolution of marriage from Mark, but still spoke to him occasionally. Katherine admitted Jonathan could not be immediately returned to her care, but asked for more time to obtain employment.

The juvenile court terminated Katherine's parental rights to Jonathan pursuant to sections 232.116(1)(c) and (e). The court found Katherine was not able to provide

Jonathan with a stable home or to meet his special needs. The court determined that despite extensive services, Katherine was in no better position to care for Jonathan than she was in 1994, when he was removed from her care. Katherine has appealed.

The scope of review in termination cases is de novo. *In re S.N.,* 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.,* 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re A.B.,* 554 N.W.2d 291, 293 (Iowa App. 1996).

Katherine contends the State failed to present sufficient evidence of the elements of section 232.116(1)(c), which requires proof by clear and convincing evidence that the circumstances which led to the adjudication of the child as a child in need of assistance continued to exist at the time of the termination hearing, despite the offer or receipt of services. Katherine states she is no longer married to Mark, she has suitable housing, and she is overcoming her depression.

We find there is clear and convincing evidence in the record to show circumstances have not improved since the time Jonathan was removed from Katherine's care. There is no evidence Katherine has addressed her inability to protect herself and Jonathan from further domestic abuse. Katherine still faces problems with depression, particularly since she is not taking recommended medication nor involved with recommended therapy. Additionally, there was no

evidence she was now able to meet Jonathan's medical needs. We find Katherine's parental rights were properly terminated under section 232.116(1)(c).

Katherine also raises arguments concerning section 232.116(1)(e). Because we have found termination of Katherine's parental rights was proper under section 232.116(1)(c), we do not need to address her claims regarding section 232.116(1)(e).

We affirm the decision of the juvenile court terminating Katherine's parental rights to Jonathan.

AFFIRMED.