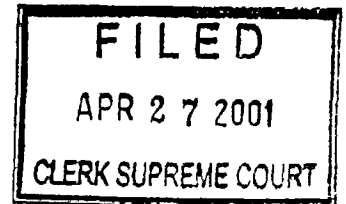


IN THE COURT OF APPEALS OF IOWA

No. 1-221 / 00-1358
Filed April 27, 2001

**IN THE INTEREST OF E.J.M., J.L.M., and M.M.,
Minor Children,**

**L.B., Mother,
Appellant.**



Appeal from the Iowa District Court for Johnson County, Stephen Gerard,
II, District Associate Judge.

Mother appeals from the termination of her parental rights. **AFFIRMED.**

Dennis A. Bjorklund, Coralville, for appellant-mother.

Thomas J. Miller, Attorney General, M. Elise Pippin, Assistant Attorney
General, and Deborah Farmer Minot, Assistant County Attorney, for appellee
State.

Lars G. Anderson, Iowa City, attorney for minor children.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

Lori appeals a juvenile court order terminating her rights to parent her three children. We affirm.

I. Background Facts and Proceedings

Lori had a long-term, abusive relationship with Lawson. Together, Lori and Lawson had three children: Malissa, born on June 22, 1994, Emily, born on May 2, 1996, and Jennifer, born on May 8, 1997.

Lori first came to the attention of the Department of Human Services in 1996, when it was discovered Lori was not adequately feeding Emily. The Department issued a founded child abuse report. Around the same time, a social worker reported concerns with the way Lori cleaned Emily following a diaper change and with her use of physical discipline.

A year later, Malissa sustained physical injuries. Although the Department suspected Lawson was the perpetrator, Lori admitted to the abuse and a second founded child abuse report was issued against her. Several months later, the Department again cited Lori for denial of critical care after two of the children were discovered outside her home nude or partially clothed in cold weather.

The Department began intensive services designed to improve Lori's parenting skills and preserve the family. Although Lori's performance appeared to get better after the receipt of these services, her improvement was short-lived. Just days after a rehabilitation agency closed its case on Lori, Lawson reported she left town with her new boyfriend Jason, leaving her young children to fend for themselves for several hours.

The Department sought and obtained an order removing the children from the home. The children were placed in foster care. The parents stipulated Malissa, Emily, and Jennifer were children in need of assistance. The children remained in foster care through the termination hearing in January 2000 and the court's subsequent ruling in July 2000.

By the end of 1998, Lawson had discontinued contact with the children and left the home. The court later ordered him to have no contact with the children after allegations surfaced that he had sexually abused the two older children. Following an investigation, the Department confirmed those allegations and issued a founded child abuse report against him. Lawson was subsequently imprisoned for unrelated crimes.

The juvenile court terminated the parental rights of both Lori and Lawson as to all three children. Only Lori appeals.

II. Standard of Review

Our review of a termination proceeding is de novo. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The grounds supporting termination must be proven by clear and convincing evidence. *Id.* Where a juvenile court terminates a parent's rights under multiple statutory provisions, we may affirm if we find a single ground was satisfied. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996).

III. Termination Grounds

Initially, we must address a discrepancy between the statutory provisions pled by the State in its termination petitions and the grounds relied on by the juvenile court. The State sought termination of Lori's parental rights as to

Malissa under Iowa Code sections 232.116(1)(c) and (e) and as to Emily and Jennifer under subsections (c) and (g). The juvenile court terminated Lori's rights to parent all three children under Iowa Code sections 232.116(1)(b), (d), (e), and (h). The court additionally terminated her right to parent Jennifer under Iowa Code section 232.116(1)(g).

The State concedes the court lacked authority to terminate Lori's rights under subsections (b), (d), and (h), as the State did not plead these provisions in the termination petitions. However, the State maintains there was clear and convincing evidence to support termination of her right to parent Malissa and Emily under subsection (e) and Jennifer under subsection (g).¹ We agree.

IV. Iowa Code sections 232.116(1)(e) and (g)

The juvenile court terminated Lori's rights to parent Malissa and Emily under Iowa Code section 232.116(1)(e)² and her right to parent Jennifer under

¹ The juvenile court terminated Lori's right to parent Emily under subsection (e), a statutory ground not pled by the State. However, under the circumstances of this case, we do not detect a problem with this nonconformity between the pleadings and the court's ruling. Although similar in substance, Iowa Code section 232.116(1)(g) only applies to three year olds, while Iowa section 232.116(1)(e) applies to children four or older. Emily was three years old when the termination petition was filed but turned four by the time the court issued its termination order. The court apparently took that fact into account when issuing its ruling, terminating her rights under subsection (e) rather than (g). Cf. *In re M.T.*, 613 N.W.2d 690, 693 (Iowa Ct. App. 2000) (ordering limited remand where court terminated parent's rights under subsection (g), a statutorily pled code section which was incorrect at the time of termination, based on the child's advancing age).

²This provision authorizes termination if:

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

- (1) The child is four years of age or older.
- (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 twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

Iowa Code section 232.116(1)(g).³ Lori does not challenge the first three prongs of each provision. She focuses on the fourth prong, which requires the State to prove by clear and convincing evidence that the child cannot at the present time be returned to the custody of the child's parents as provided in Iowa Code section 232.102. Lori maintains she is an excellent parent who babysat other children, properly disciplined her children, never physically abused them, had no history of substance abuse, kept her house clean and orderly, fed, bathed, and diapered the children, and improved her lifestyle after Lawson left the home. The record contradicts this characterization.

The most compelling evidence of Lori's inability to parent her children was presented after the termination hearing via a motion to re-open the record. The motion was granted, permitting the introduction of a new child abuse report against Lori. This report was issued after the Department determined Lori smoked marijuana in the presence of a four-month old child she was babysitting.

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

³ That provision authorizes termination if:

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.

Additionally, the report confirmed Lori was living with her boyfriend Jason, a person with a violent past. Lori and Jason were charged with and pled guilty to child endangerment and possession of a controlled substance.

These newest departmental findings were consistent with Lori's prior experiences. Contrary to Lori's assertion, the record reveals she had a history of substance use and abuse, including drinking to get drunk and using marijuana and possibly crack cocaine. By her own admission, she had a history of associating with violent men and exposing her children to the violence, a habit which did not change after Lawson left the home. When associated with Jason, she appeared at Department meetings with bruising and began wearing long-sleeved shirts and full-length pants after the bruising was noticed. Additionally, an evaluation of Jason revealed violent and self-destructive conduct and a significant history of abuse perpetrated upon him. Jason readily admitted his belief that children should be physically punished. As the juvenile court stated, "his social history was very alarming." Lori's continued association with violent men despite her knowledge of the effects of such violence on herself and her children raises serious doubts about her ability to keep the children safe if they were returned to her.

Lori's record during visits also does not support a conclusion the children could be safely returned to her. The children had been in foster care for seventeen months prior to the termination hearing. Although Lori exercised fairly regular weekly supervised visitation with them during this period, the quality of the visits left little hope Lori would graduate to unsupervised visitation. Shortly before the termination hearing, a Department worker noted "[i]f visits were not

supervised every minute, the children's safety would be [sic] not be assured." The worker also noted Lori continued to display frustration and irritability in attempting to parent the children during the short span of the visits. A social worker involved with the family since 1997 expressed concern at the minimal improvements in Lori's treatment of the children. She cited Lori's continued use of physical discipline, concerns about her parenting skills and ability to keep the children safe, differential treatment of the children, unrealistic expectations of the children, and lack of "focus and effort regarding the children."

The juvenile court stated and we agree that Lori "truly seems to love the children." However, as the court went on to state, she "simply has not shown that she has the ability to put the children's needs ahead of her own, and to develop the skills needed even for minimally adequate parenting." On this record, we agree with the juvenile court that the children could not safely be returned to Lori. Accordingly, the State has satisfied its burden of proving the fourth element of Iowa Code sections 232.116(1)(e) and (g).

We also agree with the juvenile court it is in the children's best interests to terminate Lori's parental rights. Whether termination is in a child's long-range best interests can be determined from evidence of the parent's past performance, "for that performance may be indicative of the quality of the future care that parent is capable of providing." *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000)(quoting *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)). As noted, Lori's past performance bodes ill for the children. Additionally, the record suggests termination would prove minimally disruptive to the children, as Malissa, the oldest of the children, had begun expressing impatience with the

visits and the younger children had little opportunity to develop a close bond with Lori in the first instance. We have repeatedly stated patience with parents should be limited to avoid intolerable hardship to the child. *See In re A.Y.H.*, 508 N.W.2d 92, 96 (Iowa Ct. App. 1993). This is such a case.

We affirm the court's decision to terminate Lori's rights to parent Malissa and Emily under Iowa Code section 232.116(1)(e) and Jennifer under subsection (g).

AFFIRMED.