

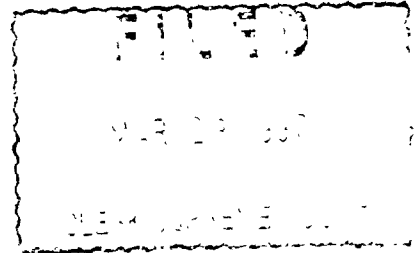
IN THE COURT OF APPEALS OF IOWA

No. 7-117 / 96-1773

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

S.F., Mother,
Appellant,

J.H., Father,
Appellant.



Appeal from the Iowa District Court for Clayton County, Alan D. Allbee,
Associate Juvenile Judge.

The mother and father of a minor child, J.H., appeal a district court ruling
terminating their parental rights. **AFFIRMED.**

Linzy E. Martin, Strawberry Point, for appellant, S.F.

John J. Goen of Jenk & Goen, Dyersville, for appellant J.H.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General,
Kevin H. Clefisch, County Attorney, and Stephen D. Saunders, Assistant County
Attorney, for appellee.

Considered by Sackett, P.J., Cady and Streit, JJ.

CADY, J.

This is an appeal by both parents from an order by the juvenile court terminating their parental rights. We affirm on our de novo review.

Sandy and Jason are the parents of Jakob. Jakob was born March 1, 1995. He was removed from the home in May 1995 when Sandy fractured his right femur after becoming frustrated with his fussy behavior. Jakob was placed in foster care and has never returned home.

Jakob was adjudged to be in need of assistance based on the abuse by Sandy and the imminent likelihood of neglect by Sandy and Jason. Services were implemented but produced few results. The parents were frequently uncooperative.

Sandy is mildly to moderately retarded and has the social development of an eight-year-old. She has aggressive impulses, poor emotional control, and difficulty handling stress. Jason harbors a great degree of mistrust and anger. He abuses alcohol, which enhances his hostilities. He exhibits little enthusiasm for parenting. Jason has been abusive to Sandy and an older child.

Following a hearing in September 1996, the juvenile court terminated the parental rights of Sandy and Jason to Jakob pursuant to Iowa Code section 232.116(1)(g) (1995). Sandy and Jason both appeal.

Sandy claims the State failed to prove Jakob could not be safely returned to her custody. She also claims she was denied a suitable opportunity to resume care of

Jakob. In particular, she asserts the State failed to provide services to accommodate her special needs as a mentally challenged person.

Like Sandy, Jason argues the State failed to show Jakob could not be returned to his custody. He further claims termination was not in Jakob's best interest because there was no evidence presented by the State to show Jakob was adoptable.

We reject the claims by Sandy and Jason that the State failed to prove by clear and convincing evidence Jakob could not be returned to their care as provided by Iowa Code section 232.102. *See* Iowa Code § 232.116(1)(g)(4). Sandy and Jason have demonstrated little change as parents since Jakob was removed. Clearly, Jakob would be at risk to suffer further physical harm if returned home to either parent. The behaviors of Sandy and Jason which led to Jakob's removal have not abated, and neither parent has made enough progress to enable Jakob to be safely returned. We have previously recognized “some progress” is not enough. *In re D.A.*, 506 N.W.2d 478, 480 (Iowa App. 1993). There must be adequate overall care in all critical areas. *Id.*

We also reject the claim by Sandy she was not given a suitable opportunity to resume care of Jakob. We observe the claim was first raised on appeal, at a time when it does little good to achieve reunification. *See In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). Moreover, the record reveals the State provided an abundance of services, including a specialist in working with mentally retarded persons and in-home family therapy. The scope of services provided by the State afforded Sandy

with a suitable opportunity to resume care of Jakob. We also find the services provided did not deny Sandy her rights under the Americans With Disabilities Act. *See In re C.M.*, 526 N.W.2d 562, 566 (Iowa App. 1994). The juvenile judge ordered services tailored to meet Sandy's limitations, which were provided.

Finally, we reject Jason's claim that termination was not in Jakob's best interest because there was no specific evidence presented concerning his adoptability. Although evidence of adoptability is helpful in deciding a termination of parental rights case, it is not a precondition to termination. *See In re T.C.*, 522 N.W.2d 106 (Iowa App. 1994). Nevertheless, there was ample evidence that Jakob could be adoptable. He appears bright and is developing at a normal pace in foster care. His age is also appropriate for adoption.

We have considered all issues raised by Sandy and Jason. We find clear and convincing evidence their parental rights to Jakob should be terminated. We affirm the juvenile court.

AFFIRMED.