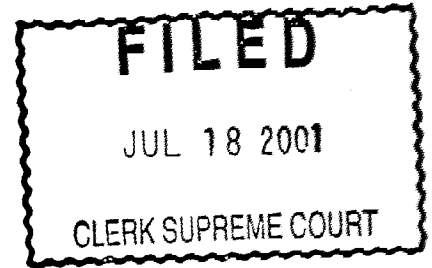


IN THE COURT OF APPEALS OF IOWA

No. 1-409 / 01-0109
Filed July 18, 2001



IN THE INTEREST OF
A.H., C.H. and R.H., Minor Children,

J.H., Mother,
Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis,
District Associate Judge.

The mother appeals from the order terminating her parental rights to her
daughter. **AFFIRMED.**

Sally Weyer of Bergan & Weyer, L.L.P., Iowa City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Deborah Minot, Assistant County Attorney, for appellee-
State.

Paul Miller, Iowa City, guardian ad litem for minor child.

Considered by Streit, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

The mother, Joni, appeals from the order terminating her parental rights to her daughter Robin. She contends clear and convincing evidence does not support the juvenile court's findings her daughter had been out of her home for twelve months and could not be safely returned to her custody. She also asserts the decision to terminate her rights was not in her daughter's best interests. We affirm.

Background Facts and Proceedings. Joni is the mother of four children: Ashley, born in 1993; Christina, born in 1995; John, born in 1997; and Robin, born in 1999. All four children have different fathers. Only Ashley's father has been identified. Joni's parental rights to John were terminated in October 1999. Her parental rights to Ashley and Christina were terminated in December 2000. The appeal before us involves only the termination of Joni's parental rights to Robin.¹

Joni has a long history with the Department of Human Services (DHS), beginning at the age of seven. At the time of Ashley's birth, Joni was fifteen-years old and herself adjudicated a child in need of assistance. In the years following Ashley's birth, Joni moved frequently, often relying on others for her housing needs. She received extensive community support and services from DHS. Joni dropped out of school in the tenth grade and has never obtained her GED or participated in any type of vocational training. Her employment history is

¹ Joni voluntarily dismissed the appeal of the termination of her parental rights to Ashley and Christina. She did not appeal the termination of her parental rights to John.

sporadic and inconsistent. She has never worked full-time on a consistent basis. She did not pay child support while her children were in family foster care.

Joni has a history of unstable relationships with a number of men. She and Ashley's father lived together off and on for a number of years. In 1997, Joni experienced some stability after moving in with a man. Within a few months, however, Joni and the man separated and her situation deteriorated. Joni was living with Ashley's father when Robin was born in January 1999. Joni and Robin left the home a few months after Robin's birth, and lived in at least five different locations over a period of six or seven months. After a boyfriend got into a confrontation with family members in November 1999, Joni was asked to leave her half-brother's home, where she and Robin had been staying. Joni and Robin were homeless.

The juvenile court adjudicated Robin a child in need of assistance in October 1999. The court based its finding upon the prior adjudication of Joni's three older children, the fact Joni was essentially homeless and supporting Robin solely on government assistance, her relationship with a man having a criminal record and substance abuse issues, and additional reasons stated on the record. Robin remained in Joni's custody pending disposition.²

At the December 10, 1999, dispositional hearing, the court found Joni failed to "make every effort to stabilize her lifestyle to be able to provide the appropriate parenting for her daughter, Robin." Robin was immediately placed in family foster care.

² Ashley, Christina, and John had been removed from Joni's care by this time.

At the time of the dispositional hearing, Joni was living with her boyfriend in Burlington. She left him in January 2000, reporting he had become very abusive toward her. She lived with her mother and friends for several weeks. In late February 2000, Joni moved in with her new boyfriend, Robert, and his daughter. In May 2000, she obtained her own apartment, but continued spending most of her time with Robert. As with previous boyfriends, Joni developed a strong dependency on Robert to meet her daily needs. He gave Joni odd jobs at his business so she could earn some money. He encouraged her to cooperate with services, and participated in visits between Joni and Robin. Robert had an arrest record which included arrests for possession of a controlled substance, simple assault, driving while barred and while suspended, carrying a toy gun in the city limits, and four arrests for public intoxication. He also had a founded child abuse report on his own daughter in April 1999, for denial of critical care.

DHS summarized the situation in August 2000, as follows:

[Robin] continues to thrive in foster family care. Her health has been good and she is a happy little girl. She is walking age appropriately, her language is developing and her overall development is significant. The foster parents describe Robin as a bright, cheerful, enthusiastic child who likes to explore the world. The foster parent's report Robin is a joy and a blessing to be in their home.

Robin's mother, [Joni], also reports Robin is a bright energetic child who is a joy to be around. Robin enjoys time with her mother but eagerly returns to the foster home. Joni has demonstrated an ability to parent Robin in a supervised setting and can meet most of Robin's needs in an unsupervised setting for short periods of time. However, Joni has not completed the necessary responsibilities to care for herself and Robin for an extended period of time. Joni continues to be involved in a male-dependent relationship, this time

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with [Robert]. Although [Robert] has provided Joni with some support, if that support ends where would that leave Joni? Joni cannot provide for herself and has not ever been able to despite her recent employment status. Robert also has some questionable history that indicates he can make some poor choices though recently he seems to be much more responsible.

. . . Robin has been in foster care since 12/10/99. Although [Joni] has recently maintained housing and employment she still has been unable to meet her needs and unable to comply with her responsibilities as stated in case plans. Joni has no history of being able to sustain a relationship with a significant adult, with employment or income or with housing. Because of this instability she places herself and children in risky situations increasing the probability of further abuse/neglect. Proceeding with termination of parental rights with all her children is the only way to disrupt the unhealthy family cycle.

The State filed its petition to terminate parental rights to Ashley, Christina, and Robin in August 2000. It requested the court terminate parental rights to Robin pursuant to Iowa Code sections 232.116(1)(c), (1)(f), and (1)(g). The court terminated Joni's parental rights to all three children on December 12, 2000, pursuant to Iowa Code section 232.116 "and as pled in the state's petition." Joni appeals the termination of her parental rights to Robin.

Standard of Review. We review termination proceedings 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 E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. 14(f)(7); *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). Our primary concern is the best interests of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). When the juvenile court terminates parental rights on

more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996).

Section 232.116(1)(g). Iowa Code section 232.116(1)(g) provides the court may order termination of parental rights if it finds 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*.

Iowa Code section 232.116(1)(g) (1999) (emphasis added). Joni argues the court inaccurately found Robin had been placed out of the home for over twelve consecutive months pursuant to Iowa Code section 232.102. She contends clear and convincing evidence does not support the court's finding Robin could not safely be returned to her custody at the time of the termination hearing.

The court terminated Joni's rights pursuant to section 232.116 "and as pled in the State's petition." The State's petition alleged Joni's parental rights to Robin should be terminated pursuant to sections 232.116(1)(c), (f), and (g). At the time of the termination hearing, Robin had been placed out of the home for eleven months. The period of removal meets the requirements of Iowa Code section 232.116(1)(g).

Testimony at the termination hearing from providers supports the conclusion Robin could not have been safely returned to Joni's care at the time of the termination hearing. The providers, including Joni's therapist, recommended extending the reunification plan for at least three months, in order to give Joni more time to demonstrate her ability to maintain stability in housing, employment, and her relationship. They indicated, however, Joni was not ready to resume care of Robin at the time of the hearing. Even if Joni did regain custody of Robin, the providers indicated she would still need services.

"Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). A court must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children. *In re A.Y.H.*, 508 N.W.2d 92, 96 (Iowa Ct. App. 1993). The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. *In re D.A.*, 506 N.W.2d 478, 479 (Iowa Ct. App. 1993). At some point, the rights and needs of the children rise above the rights and needs of the parents. *J.L.W.*, 570 N.W.2d at 781.

Testimony from the termination hearing indicated Joni needed more time to address her deficiencies. Joni, however, has been given eight years of services to address her parenting deficiencies. Her parental rights to her three older children have been terminated. Robin should not be required to wait any

longer for her mother to mature and develop the parenting skills necessary to raise her child. As the district court found:

Joni has been involved with at least ten different men during her children's lives. The reports indicate that she demonstrated more stability during the time she was living with [K.L.], but then became homeless and disintegrated when that relationship ended. In December of 1999, Joni was in a relationship with [R.A.] and thought they would get married. This relationship ended and she then recognized [R.A.] was an abusive alcoholic. Joni has now been in a relationship with [Robert] and is doing better than she has done in a long time. [Providers] both recommend that Joni be given more time to determine whether Joni can sustain the progress she has made. At the time of hearing, [Robert] and Joni had been living together for about one month. Robert has purchased a car for Joni and made the downpayment on her apartment.

....
Joni has been given the opportunity to parent each of her own children in their infancies. She has received extensive services over a period of nine years. [The social worker] testifies that \$50,000 have been expended for family centered services in this case. Joni's progress has been uneven at best. Her cooperation and participation has varied with the influence of the male partner she has in her life. Her history is one of poor choices in relationships and a high degree of dependence. [The providers] have recognized that Joni's most recent progress is due in part to her relationship with [Robert] and may soon unravel if this relationship follows patterns from the past.

Clear and convincing evidence supports the termination of Joni's parental rights to Robin.

Best Interests of the Child. Even if the statutory requirements for termination are met, the decision to terminate still must be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In assessing the best interest of the child, we evaluate the child's long-range as well as immediate interests. *Id.* We must consider what the future likely holds for the child if returned to his or her parents. *Id.* We gain insight into the child's future

prospects by reviewing evidence of the parent's past performance – for it may be indicative of the parent's future capabilities. *Id.*

Joni argues on appeal the juvenile court should have withheld termination based on clear and convincing evidence termination would be detrimental to Robin due to the closeness of the parent-child relationship. See Iowa Code § 232.116(3)(c). We disagree.

The record indicates Joni and Robin have an affectionate relationship, but Robin sees Joni as a loving companion, rather than a mother figure. Reports from Robin's foster family indicate she has "changed dramatically" and thrived during eleven months in their home, overcoming a number of emotional and health problems she exhibited upon her arrival. Robin considers the foster home, where she has spent nearly half her life, as her own home. Robin's long-range and immediate interests are best served through the termination of Joni's parental rights, thereby giving Robin an opportunity for permanency.

We affirm the decision of the juvenile court terminating Joni's parental rights to Robin.

AFFIRMED.