

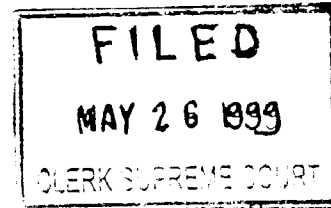
IN THE COURT OF APPEALS OF IOWA

No. 1999-33 (9-144) / 98-1765

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

L.T., Father,
Appellant,

B.T., Mother,
Appellant.



Appeal from the Iowa District Court for Polk County, Karen A. Romano,
District Associate Judge.

Mother and father appeal from a juvenile court order terminating their parental
rights. **AFFIRMED.**

Barbara J. Diment of the Diment Law Office, West Des Moines, for appellant-
father.

Jeffrey T. Mains of the Benzoni Law Office, P.L.C., Des Moines, for
appellant-mother.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General,
and Cory McClure, Assistant County Attorney, for appellee-State.

Martha L. Johnson, Des Moines, guardian ad litem for minor child.

Heard by Sackett, C.J., and Vogel and Zimmer, JJ.

ZIMMER, J.

Bonnie T. and Larry T. appeal from a juvenile court order terminating their parental rights. We affirm.

Jessica T. was born to Bonnie and Larry on March 28, 1994. Jessica has Treacher Collins Syndrome. Her manifestation of this syndrome includes under-development of the jaw, throat, mouth and ears, as well as hearing loss, cardiac arrests, and sleep apnea. She breathes with the help of a tracheotomy tube, requires G-tube feeding, and needs skilled nursing care.

Jessica remained hospitalized after her birth until May 17, 1994. At this time, she returned home briefly, but was readmitted to the hospital for two to three weeks. In July, 1994, Jessica was admitted to the Children's Habilitation Center. She remained there until February 3, 1997, when she was discharged to her mother's care. On June 9, 1997, Juvenile Court Services petitioned for temporary removal of Jessica from her parents' custody after the Department of Human Services had been contacted twice by the nursing service providing in-home care for Jessica. Jessica was removed from her parents on June 9, due to concerns about the parents' failure to adequately care for Jessica. She was subsequently placed in a foster home, where she has since remained.

On August 4, 1997, Jessica was adjudicated a child in need of assistance because of her parents' failure to supervise her and their unwillingness to provide medical treatment. *See Iowa Code* § 232.2(6)(c)(2), (6)(e) (1997). As part of the case permanency plan, the parents were ordered to submit to drug testing. On three

occasions in February and March of 1998, Larry tested positive for marijuana, and in March of 1998, Bonnie tested positive for crack cocaine. On April 3, 1998, the State filed a petition to terminate their parental rights. The State thereafter filed an amended petition on May 22, 1998.

After a hearing on June 15, the court found the parents had not fulfilled their obligations under the case permanency plan. They failed to complete substance abuse evaluations and treatment programs and continued to use drugs. According to Bonnie, she no longer used marijuana because her new drug of choice was crack cocaine. The court further found Larry had a poor relationship with DHS, failed to cooperate with DHS workers, and generally resisted efforts by DHS to resolve the problems that lead to Jessica's removal. The court found the parent's continued smoking and drug use significantly threaten Jessica's life and health and demonstrated their inability to place their daughter's health ahead of their own needs. The court concluded additional time would not result in changes necessary to allow Jessica to return to her parents' custody and that Jessica was doing well in foster care. On September 3, 1998, the court determined there was clear and convincing evidence Jessica could not be returned to her parents and terminated Bonnie and Larry's parental rights pursuant to Iowa Code section 232.116(1)(e) (1997).¹

¹ Juvenile Court Services also requested termination under Iowa Code section 232.116(1)(c). Both Larry and Bonnie are named perpetrators in founded reports of child abuse for denial of critical care in 1997. The district court, however, found no grounds for termination under 232.116(1)(c) because Jessica had not previously been adjudicated a child in need of assistance due to physical or sexual abuse under Iowa Code sections 232.2(6)(b) and 232.2(6)(d). This matter has not been raised on appeal.

The mother and father subsequently filed separate appeals, which have now been consolidated. Larry and Bonnie both contend on appeal the juvenile court erred in finding reasonable efforts were made to reunite them with Jessica and in finding clear and convincing evidence she could not be returned to their custody. The mother also contends the court erred in failing to dismiss the State's petition because it contained an inapplicable ground for termination.

I. Scope of Review. We review terminations of parental right de novo. *See In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Nevertheless, we give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *See In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); Iowa R. App. P. 14(f)(7). Where, as here, proceedings are brought under Iowa Code section 232.116(1)(e), we must determine whether there is clear and convincing evidence to support the termination of parental rights. *See Iowa Code* § 232.116(1)(e)(4); *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Termination of Parental Rights. Because both Larry and Bonnie raise essentially the same arguments on appeal, we consider their claims collectively. We determine reasonable efforts were made by DHS to reunite Larry and Bonnie with Jessica. We further determine there is sufficient evidence to sustain termination of their parental rights.

DHS attempted to rehabilitate the parents and prepare them for Jessica's return to the family home. The department's case permanency plan included drug abuse treatment and parental counseling. Though DHS offered reasonable reunification

services, neither parent fulfilled their obligations under the DHS plan. If the parents have been unable to rehabilitate themselves it is because they have not availed themselves of the services offered — not, as they contend, because the services themselves were inadequate. Bonnie argues DHS never offered her services to free her from her addiction to cigarettes. This, however, was not the department's responsibility. The responsibility rests upon the parent to demand appropriate services prior to a hearing on the termination of parental rights. *See In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). Bonnie made no such requests. If the parents felt they needed rehabilitation services beyond what was already reasonably offered, they should have requested additional help. The parents cannot use their own indifference towards rehabilitation as a basis to block termination of their parental rights.

Despite the efforts of DHS, Jessica cannot be returned to her parent's custody. The record clearly shows the problems leading to Jessica's initial removal have not been resolved. The parents have continued to use drugs and have not demonstrated the desire and ability to care for Jessica's special medical needs. We are also concerned the unstable social fabric of the family relationship will not provide Jessica adequate emotional support.

The parents have made some effort towards rehabilitation, but did so only a few weeks before and after termination proceedings began. We question the sincerity of their actions aimed at preserving their parental rights when, at the same time, the threat of losing those rights loomed so close on the horizon. Moreover, Bonnie and Larry had adequate time to substantially complete the rehabilitation process. We

cannot justify affording them additional time to mend their ways. We will not force Jessica to endure the social, physical, and psychological hardships associated with the parentless limbo of foster care imposed upon her in the course of endlessly awaiting the maturity of her natural parents. *See In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990); *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). Larry and Bonnie have a poor track record and we discern little evidence they will be able to resume Jessica's care and supervision in the future. *See In re T.T.*, 541 N.W.2d 552, 556 (Iowa App. 1995) ("parent's past performance may be indicative of the quality of future care the parent is capable of providing"). We determine there is clear and convincing evidence Jessica cannot be returned to her parent's custody. *See* Iowa Code § 232.116(1)(e)(4).

See Iowa R. App. P. 14(f)(15) ("In child-custody cases the first and governing consideration of the courts is the best interest of the child."); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995) (primary concern in termination proceedings is the best interests of the child). She is a child with significant special needs which her parents have been unable to demonstrate they can satisfy. Larry and Bonnie have not demonstrated commitment or desire to adequately care for Jessica's medical needs. We determine her physical, mental, and emotional needs demand termination of natural parental rights and permanent placement in a supportive environment. *See* Iowa Code § 232.116(2) (1997).

We have also considered Bonnie's argument that the original petition contained an inapplicable ground for termination. The State's original petition

incorrectly stated Jessica's date of birth, requesting termination pursuant to Iowa Code section 232.116(1)(g). The State thereafter filed an amended petition correcting the error and accordingly requested termination pursuant to section 232.116(1)(e). The district court's subsequent order terminating parental rights was based on this amended petition. We therefore find her argument is without merit.

AFFIRMED.

No. 98-1765. [1999-33 (9-144)] IN RE J.T.

Appeal from the Iowa District Court for Polk County, Karen A. Romano, District Associate Judge. **AFFIRMED.** Heard by Sackett, C.J., and Vogel and Zimmer, JJ. Opinion by Zimmer, J. (7 pages \$2.80)

Bonnie T. and Larry T. appeal from a juvenile court order terminating their parental rights. The mother and father subsequently filed separate appeals, which have now been consolidated. Larry and Bonnie both contend on appeal the juvenile court erred in finding reasonable efforts were made to reunite them with Jessica and in finding clear and convincing evidence she could not be returned to their custody. The mother also contends the court erred in failing to dismiss the State's petition because it contained an inapplicable ground for termination. **OPINION HOLDS: *Termination of Parental Rights.*** We determine reasonable efforts were made by DHS to reunite Larry and Bonnie with Jessica. We further determine there is sufficient evidence to sustain termination of their parental rights. DHS attempted to rehabilitate the parents and prepare them for Jessica's return to the family home. The department's case permanency plan included drug abuse treatment and parental counseling. If the parents felt they needed rehabilitation services beyond what was already reasonably offered,

they should have requested additional help. The parents cannot use their own indifference towards rehabilitation as a basis to block termination of their parental rights. The record clearly shows the problems leading to Jessica's initial removal have not been resolved. The parents have continued to use drugs and have not demonstrated the desire and ability to care for Jessica's special medical needs. Bonnie and Larry had adequate time to substantially complete the rehabilitation process. We cannot justify affording them additional time to mend their ways. Larry and Bonnie have a poor track record and we discern little evidence they will be able to resume Jessica's care and supervision in the future. We determine there is clear and convincing evidence Jessica cannot be returned to her parent's custody. Furthermore, termination is in Jessica's best interests. Larry and Bonnie have not demonstrated commitment or desire to adequately care for Jessica's medical needs. We determine her physical, mental, and emotional needs demand termination of natural parental rights and permanent placement in a supportive environment. We have also considered Bonnie's argument that the original petition contained an inapplicable ground for termination. The State's original petition incorrectly stated Jessica's date of birth, requesting termination pursuant to Iowa Code section 232.116(1)(g). The State thereafter filed an amended petition correcting the error and accordingly requested termination pursuant to section 232.116(1)(e). The district court's subsequent order terminating parental rights was based on this amended petition. We therefore find her argument is without merit.