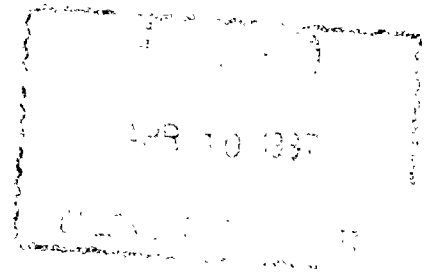


IN THE COURT OF APPEALS OF IOWA

No. 7-190 / 96-2141



IN THE INTEREST OF D.A., Minor Child,

L.A., Mother,
Appellant.

Appeal from the Iowa District Court for Appanoose County, Gene W. Glenn,
Associate Juvenile Judge.

A mother appeals from the termination of her parental rights. **AFFIRMED.**

Kevin S. Maughan of Pabst & Maughan, Albia, for appellant.

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

Sheila Sidles, Centerville, for minor child.

Considered by Habhab, C.J., and Huitink and Streit, JJ.

STREIT, J.

A mother, who continues to use alcohol and test positive for marijuana and cocaine, appeals from the termination of her parental rights. She argues the juvenile court lacked clear and convincing evidence to terminate her rights pursuant to Iowa Code section 232.116(1)(g) (1995), and the best interests of the child do not support the termination.

Linda is the mother of Dakota, born June 5, 1993. The father of the child is unknown. Dakota was born with marijuana in his system. At the time of Dakota's birth, Linda was on probation for forgery and OWI convictions. In November 1993, Linda was charged with OWI second offense. In December 1993, she signed a release of custody and voluntarily placed Dakota in the care of some friends.

Linda's probation was revoked and in March 1994 she was placed in a residential facility in Ottumwa. While visiting with Dakota in June 1994, she noticed he had some bruises and she reported this to the Iowa Department of Human Services (DHS). Linda signed a voluntary agreement placing Dakota in foster care. She agreed to his adjudication as a child in need of assistance (CINA).

Due to disciplinary problems in her residential placement, Linda was transferred to a violators program in Mitchellville in September 1994. She was returned to the residential facility in Ottumwa a month later. In late February 1995, she was released to "live-out" status. Linda had a relapse of drug usage in May 1995

and was required to participate in relapse classes. Linda lost two jobs in August 1995 due to her absenteeism and tardiness.

Linda was allowed extended visits with Dakota in August 1995. On August 22, 1995, she left Dakota with a day care provider at 11:45 a.m. At 8:30 p.m. Linda called the day care provider and told her she had to work late and would pick up the child at 10:30 p.m. When she failed to get the child, the day care provider called Linda's place of employment and learned she had not been to work that day. The day care provider called DHS and unsupervised visits between Linda and Dakota were discontinued. Linda also refused to comply with requests for breath tests which were a requirement of her probation, and she was arrested for a probation violation.

Linda tested positive for marijuana and cocaine usage in November 1995. She was jailed for thirty days in November for contempt of court conviction. Linda's efforts to visit Dakota were sporadic. DHS recommended visits be discontinued because Dakota was adversely affected by his mother's inconsistencies. Linda gave birth to a second child in late May 1996. Linda tested positive for drug usage when this baby was born.

A petition to terminate Linda's parental rights was filed on September 12, 1996. On October 28, 1996, the juvenile court terminated her parental rights pursuant to Iowa Code section 232.116(1)(g) (1995).¹

On appeal, Linda argues the court lacked clear and convincing evidence to terminate her parental rights pursuant to section 232.116(1)(g). She does not dispute that the first three elements were established but argues the evidence does not support the court's finding that Dakota would be at risk of harm if returned to her care. She also argues Dakota's best interests do not support the termination of her parental rights because Dakota is bonded to her and his new half-brother. Iowa Code § 232.116(3)(c).

Appellate review of termination proceedings is de novo. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1989), *cert. denied sub nom.*, *J.G. Tauke*, 469 U.S. 1222 (1985). We give weight to the findings of fact made by the juvenile court, but we are not bound by them. *Id.* at 491-92.

The primary concern in termination proceedings is the best interests of the child. Iowa R. App. P.14(f)(15); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

We look to the child's long-range, as well as immediate interests. We consider what the future holds for the child if returned to his or her

¹ Child three years of age or younger, adjudicated CINA, removed from physical custody of parent for at least six of last twelve months or for last six consecutive months and any trial period at home was less than thirty days, and child cannot be returned to parent's custody without risk of adjudicatory harm.

parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App 1988) (citing *Dameron*, 306 N.W.2d at 745).

The court found if Dakota were returned to his mother's care he could be subjected to harmful effects from: Linda's prospective drug use; the neglect of his basic needs caused by Linda's inadequate parenting skills and commitment; mistreatment at the hands of his mother's live-in companion or other unknown males; Linda's frequent moves and lack of environmental stability; and prospective emotional abuse caused by Linda's erratic attention and interest in the child. It is clear that Dakota cannot be returned to his mother. The requirements of Iowa Code section 232.116(1)(g) (1995) have been proved. Based on Linda's past and present performance, Dakota's best interests do not lie in returning him to Linda.

Dakota will turn four years old this next June. He is at an age when he is still likely to be adopted by parents who can provide a permanent stable environment for him to grow up in. Linda has been inconsistent in providing for Dakota's needs due to her drug addictions and use of alcohol. She has not maintained employment and has been in and out of jail. She was not participating in any substance abuse treatment at the time of trial.

Linda argues that Dakota has a strong bond with her and his half-brother. Linda has not had physical custody of Dakota since December 1993, when he was six months old. The visitations have also been sporadic since the birth of Linda's second son in May 1995. A bond does not exist.

Dakota has suffered enough emotional trauma. We affirm the juvenile court and find in the best interests of Dakota, his mother's rights should be terminated.

AFFIRMED.