

**IN THE COURT OF APPEALS OF IOWA**

No. 23-1676  
Filed March 6, 2024

**IN THE INTEREST OF A.S.,  
Minor Child,**

**D.W., Father,  
Appellant.**

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Appeal from the Iowa District Court for O'Brien County,  
Shawna L. Ditsworth, District Associate Judge.

The biological father appeals the termination of his parental rights.

**AFFIRMED.**

Tobias A. Cosgrove, Sibley, for appellant father.

Brenna Bird, Attorney General, and Tamara Knight, Assistant Attorney  
General, for appellee State.

Alexandria Celli Smith of Sandy Law Firm, Spirit Lake, attorney and  
guardian ad litem for minor child.

Considered by Greer, P.J., and Ahlers and Buller, JJ.

**BULLER, Judge.**

D.W., the biological father of A.S. (born 2011), appeals the termination of his parental rights. Because the juvenile court found the biological father was not credible and case law forecloses some of his claims, we affirm.

**I. Background Facts and Proceedings**

Our court previously affirmed termination of the mother's parental rights to A.S. and another child. See *In re A.S.*, No. 23-1400, 2023 WL 7015739, at \*1 (Iowa Ct. App. Oct. 25, 2023). And before that, we affirmed a dispositional order finding the State made reasonable efforts to return the child to the mother. *In re A.S.*, No. 22-0260, 2022 WL 1100304, at \*1–3 (Iowa Ct. App. Apr. 13, 2022). Because these other opinions provide significant detail, we recite only the facts pertinent to D.W.

This family first came to the attention of the Iowa Department of Health and Human Services (HHS) in February 2021, when A.S. was sexually abused by her mother's husband. See *A.S.*, 2023 WL 7015739, at \*1. At the time, HHS knew D.W. was A.S.'s biological father, but the mother had reported that her husband had adopted A.S. When HHS learned no legal adoption took place—the mother's husband only filled out a paternity affidavit—HHS investigated and moved to test D.W. for paternity.

There is conflicting evidence in the record on whether D.W. knew he was the father of A.S. during this time. D.W. had been friends with the mother's husband since high school, and the two families spent significant time together before the juvenile cases—attending family gatherings, football parties, camping, and other events at least once a month. According to D.W., he did not know he

was the father for sure until genetic testing, and the mother testified she did not tell D.W. he was A.S.'s father.

But records from a meeting of the foster care review board and the court appointed special advocate (CASA)'s testimony indicated the mother told D.W. he was the father when she was pregnant—though the mother later denied this. One of the mother's friends testified the mother said she told D.W. he was the father and that she and the mother had "numerous" conversations about this over the years with the mother repeatedly indicating D.W. knew. The friend also offered specifics, including the mother describing D.W.'s lack of objection or hesitation to her husband completing a paternity affidavit and discussions about when the mother would tell A.S. The mother admitted to telling the friend D.W. fathered A.S. but said she could not "recall, off the top of [her] head," whether she shared with the friend that she told D.W. he was the father.

Despite his claim he did not know about paternity, D.W. told a home-study worker—before the genetic testing was completed—that "it was suspected he was [A.S.'s] biological father, but things were going so well with [the mother's husband] that he did not want to disrupt that." He similarly told the CASA he suspected he was A.S.'s biological father but couldn't afford a paternity test. And he remarked on another occasion, "seeing it on paper is different than knowing about it—than being told about it." One of A.S.'s siblings told A.S. that D.W. was her father before testing was completed.

There was also conflicting evidence about whether D.W. learned the results of genetic testing in late 2022 or early 2023. He testified he did not learn the results until early February 2023, when the county attorney gave him a copy of the results.

But HHS workers testified D.W. was informed by mail and by phone in December. One HHS worker testified that, during these conversations, she tried to arrange a therapeutic visit between A.S. and D.W., but D.W. declined because he “had other mouths to feed and it wasn’t worth his time to drive three and a half hours one way for a [fifteen]-minute therapy session.”

The juvenile court, after recounting a long list of inconsistent statements by the mother and D.W., concluded “neither [D.W.] nor [the mother] is a credible witness.” The court specifically found their testimony that D.W. didn’t know he was the father was “not credible.” And the court found there was clear and convincing evidence D.W. knew he was the father before the juvenile cases began and was informed of the test results in late 2022 when HHS offered him the in-person therapeutic meeting he declined.

After D.W. received formal notice of the termination proceedings in February 2023, he filed a motion for reasonable efforts. The court ordered services in early June. Despite these services, D.W. and A.S. made relatively little progress in establishing a father-daughter connection.

A.S. has made significant progress in individual therapy. D.W. eventually set up family therapy sessions, but none occurred until mid-August 2023. The therapist, who was also A.S.’s individual therapist, opined that family therapy would be a “tediously slow process” given the lack of trust and A.S.’s trauma history. In the words of the juvenile court, subsequent interactions between D.W. and A.S. involved only communication on a “superficial level.”

At first, A.S. was open to the idea of getting to know D.W. and having him involved in her life as her father; she even asked for and received additional time

to explore that possibility in early 2023. But D.W.'s conduct during a video therapy session with A.S. had a significant negative impact on her mental health and the prospect of a relationship with D.W. A.S. and D.W. were discussing the abuse perpetrated against A.S. by her mother's husband and whether D.W. believed A.S. that the abuse happened. D.W. pressed A.S. for more information about the specifics of the abuse despite his receipt of the relevant reports; A.S. did not want to verbalize the specifics, so the therapist did. Despite the reports and therapist offering significant detail, and D.W. previously telling an HHS worker it would not be "fair" to ask A.S. about the abuse, D.W. said "he would need to hear it come out of [A.S.'s] mouth" to believe she was telling the truth about his friend abusing her. D.W. asked A.S. where specifically her mother's husband had touched her. And D.W. "continued to press," even after A.S. asked him to stop, so the therapist ended the session to protect A.S.

After this and other re-traumatizing interactions (such as D.W. recording their video chats without A.S.'s knowledge or permission, demanding all of A.S.'s therapy records, and asking A.S. a question like, "What do you want me to do, terminate my rights?"), A.S. expressed to all involved that she didn't want a parental relationship with D.W. She then resisted any in-person visits and was minimally cooperative with supervised phone and video visits.

By trial, A.S. had come to "dread" visits with D.W. She testified she did not want a parental relationship with D.W. and she wanted people to respect her boundaries. She also pointedly corrected the father's attorney at points, explaining, "There is no father and daughter relationship" between her and D.W. Despite this, A.S. described getting "a lot of encouragement to try" to have visits

with D.W., including from the HHS worker, guardian ad litem (GAL), and foster parents.

For his part, D.W. blamed everyone but himself for his lack of progress: A.S.'s therapist (who he called a "worthless ass"), HHS ("screwed up and did not do their job"), and service providers ("not flexible"). He also blamed A.S., who he claimed had manipulated the adults around her and should be forced to have face-to-face visits regardless of her wishes. And he reported to the CASA that, when his attorney suggested guardianship be placed with the foster family, he "laughed him off the fuckin' phone."

It was still unclear at trial whether D.W. believed A.S.'s report of sexual abuse. HHS and the CASA expressed concerns about D.W.'s long friendship with the mother's husband and how the two remained in contact even as the juvenile case progressed after the sexual abuse was reported. To them, this raised concerns about D.W.'s protective capacity. As did D.W.'s behavior during visits and family therapy. Other evidence suggested D.W. knew the mother's husband was a predator long before the most recent abuse was reported, and D.W. still took no protective action regarding A.S. or his other children.

The pre-adoptive foster family was supportive of A.S. pursuing contact with D.W. if she chose to now or in the future, with the guidance of her therapist. The foster mother explained that she also met her father later in life and she hoped that, if she and her husband adopted A.S., it would be an open adoption so that D.W. would still have as much contact as A.S. desired and the foster parents could keep D.W. updated on A.S.'s life. By all accounts, A.S. was thriving and happy at the foster parents' home, as evidenced by her participation in farm chores and

showing animals at the fair, her openness in therapy, and her increased ability to communicate her wishes and needs. A.S. was also confident the foster parents would help her stay in contact with any siblings or half-siblings after termination. And, for her part, A.S. said she loved the foster family.

The county attorney, HHS, the GAL, and the CASA all requested the court waive reasonable efforts and terminate D.W.'s parental rights. The HHS worker testified D.W. had done nothing significant to support A.S., financially or otherwise, at any point from conception until a few months preceding termination. And the therapist testified that A.S. needed stability. D.W. argued he did not abandon A.S. and the court should not waive reasonable efforts. He also asked that termination be denied or he be granted an additional six months.

After hearing from witnesses and reviewing the underlying files, the juvenile court found D.W. abandoned A.S., negating any duty to make reasonable efforts. Specifically, the court observed:

Since [A.S.] was born, and after she was removed from the custody of her mother, when she needed a parent the most, [D.W.] has chosen time and time again to surrender the parental rights, duties and privileges inherent in the parent-child relationship. [He] has deliberately let others b[ear] the responsibilities of parenting. The court finds [D.W.] intended to abandon [A.S.] and his acts since her birth have demonstrated this intent. [His] pattern of indifference constitutes a rejection of the duties imposed by the parent-child relationship.

The court also found that, since the time D.W. had been notified of paternity, HHS made reasonable efforts despite A.S.'s permanency goal, which had been termination and adoption since September 2022, by offering individual and group therapy for D.W. and A.S., a home study, family centered services, and gas cards.

The court terminated D.W.'s parental rights under Iowa Code section 232.116(1)(b) and (e) (2023). D.W. appeals.

## **II. Standard of Review**

We review termination decisions de novo. *In re W.M.*, 957 N.W.2d 305, 312 (Iowa 2021). “We are not bound by the factual findings of the juvenile court, though we give them respectful consideration, particularly with respect to credibility determinations.” *Id.*

## **III. Discussion**

D.W. makes three challenges on appeal, focusing on reasonable efforts, the statutory elements of termination, and best interests of the child.

### **A. Reasonable Efforts**

D.W. first challenges the juvenile court's finding that HHS was not required to make reasonable efforts because he abandoned A.S. See Iowa Code § 232.102A(4). But he first has another hurdle to cross, which is that our cases hold the State need not make reasonable efforts toward reunification when termination is pursued under section 232.116(1)(b), as was done here. See *In re M.D.*, No. 19-1912, 2020 WL 567320, at \*1 (Iowa Ct. App. Feb. 5, 2020) (“In challenging the statutory grounds for termination, the father maintains DHS failed to make reasonable efforts to reunify him with [the child]. But section 232.116(1)(b) does not have a reasonable-efforts requirement.”) (also collecting cases); *accord In re T.M.*, No. 23-1485, 2023 WL 7391834, at \*1 (Iowa Ct. App. Nov. 8, 2023). D.W. does not acknowledge this case law in any way, and we believe it ends the analysis, given our affirmance on 232.116(1)(b) in Division III.B.



**B. Sufficiency of the Evidence**

D.W.'s second challenge asserts insufficient evidence supported termination under section 232.116(1)(e). He does not challenge termination under the other ground found by the juvenile court, section 232.116(1)(b). We summarily affirm termination under section 232.116(1)(b). See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

**C. Best Interests**

The father's final challenge concerns whether termination was in the best interests of the child. In assessing best interests, we give primary weight "to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." Iowa Code § 232.116(2). We also consider the child's integration into the foster family and "whether the foster family is able and willing to permanently integrate the child" into the family. *Id.* § 232.116(2)(b) D.W. refuses to clearly acknowledge the abuse perpetrated against A.S. by his friend, A.S. is doing very well in her pre-adoptive foster placement, and termination is consistent with A.S.'s thoughtful and reasonable wishes. See *id.* § 232.116(2)(b)(2). We defer to and accept the juvenile court's credibility determinations and resulting fact-findings: D.W. re-traumatized A.S. with his skepticism about the abuse, he was unable to provide her with emotional support, and he failed to act as a father despite knowing he was the biological father for years preceding termination. Forcing A.S. to continue building a relationship with D.W. against her wishes under these circumstances is not in her best interests; termination is.

**AFFIRMED.**