

**IN THE COURT OF APPEALS OF IOWA**

No. 17-1485  
Filed December 20, 2017

**IN THE INTEREST OF A.K., B.R., J.W., A.K., and E.W.,  
Minor Children,**

**A.K., Mother,**  
Appellant,

**S.W., Father,**  
Appellant.

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Appeal from the Iowa District Court for Calhoun County, Adria Kester,  
District Associate Judge.

A mother and father separately appeal a juvenile court decision  
terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

Joseph L. Tofilon of Thatcher, Tofilon & Livingston, P.L.C., Fort Dodge, for  
appellant mother.

Mark J. Rasmussen of Rasmussen Law Office, Jefferson, for appellant  
father.

Thomas J. Miller, Attorney General, and Mary A. Triick, Assistant Attorney  
General, for appellee State.

Martha A. Sibbel of Law Office of Martha Sibbel, P.L.C., Carroll, guardian  
ad litem for minor children.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

**BOWER, Judge.**

A mother and father separately appeal a juvenile court decision terminating their parental rights. We find there is sufficient evidence in the record to support the termination of the parents' rights and we cannot say the State did not engage in reasonable efforts to reunite the parents with the children. We affirm the decision of the juvenile court.

**I. Background Facts & Proceedings**

A.K. is the mother of five children—A.K., born in 2005; A.K., born in 2007; B.R., born in 2008; J.W., born in 2012; and E.W., born in 2015. S.W. is the father of J.W. and E.W. The parents have a history of substance abuse and domestic violence. The family was involved with the Iowa Department of Human Services (DHS) from August 2012 through June 2014, when the case was closed.

DHS became involved with the family again in March 2015 due to concerns about domestic violence by the father and reports the mother was using methamphetamine. On June 5, 2015, the children were adjudicated to be in need of assistance based on Iowa Code section 232.2(6)(c)(2) (2015). A.K., A.K., and B.R. were placed with the maternal grandparents, while J.W. and E.W. resided with their mother at a substance abuse treatment program.

The mother was released from the substance abuse treatment program in August 2015. The next month she went to a bar with the father, in violation of a contract of expectations with DHS and the court. J.W. and E.W. were then removed from the parents' care and placed with the maternal grandparents. The

mother did not participate in outpatient treatment. Neither parent appeared for drug tests.

On May 16, 2016, the State filed a petition seeking termination of the parents' rights. The parents began cooperating with services. After a termination hearing, the juvenile court determined the mother and father should have six additional months to work on reunification.<sup>1</sup> The court stated, "The parents may have limitations on their parenting abilities, but their parenting improvements, newly acquired cooperation with services, and conduct were such that this case should have moved toward, at a minimum, overnight visitation if not a trial home visit." The court also stated, the parents "need to immediately submit to random drug screens, follow up with substance abuse treatment and mental health treatment, as well as address the domestic violence in their relationship."

On October 13, 2016, the father tested positive for methamphetamine. The mother and father continued their relationship, although they did not address the problem of domestic violence. The mother relapsed into drug use on November 25, 2016. The parents were inconsistent in providing drug tests and attending visitation with the children.

After a second termination hearing, the juvenile court entered orders on September 6, 2017, terminating the parents' rights.<sup>2</sup> The court terminated the mother's parental rights to A.K., A.K., B.R., and J.W. pursuant to section 232.116(1)(f) (2016) and E.W. pursuant to section 232.116(1)(h). The father's

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<sup>1</sup> The parental rights of the fathers of A.K. and A.K. were terminated at this time. The record does not show they appealed the juvenile court's ruling.

<sup>2</sup> The parental rights of the father of B.R. were also terminated. He has not appealed.

parental rights were terminated under section 232.116(1)(f) for J.W. and section 232.116(1)(h) for E.W. The court stated, the parents “simply have made little to no progress to achieve reunification over the last six months.” The court found termination was in the children’s best interests, noting the parents had put their relationship with each other ahead of their attempts to reunify with the children. The mother and father each appealed the juvenile court’s ruling.

## **II. Standard of Review**

The scope of review in termination cases is de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Clear and convincing evidence is needed to establish the grounds for termination. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Where there is clear and convincing evidence, there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). The paramount concern in termination proceedings is the best interests of the children. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990).

## **III. Sufficiency of the Evidence**

**A.** The mother claims there is not sufficient evidence in the record to warrant termination of her parental rights. In particular, she claims the State did not prove by clear and convincing evidence the children could not be returned to her care, which is an element of section 232.116(1)(f) and (h). She states she was enrolled in treatment for substance abuse, was engaged in mental health counseling, and there had not been any incidents of domestic violence between the parents for a period of time.

After the first termination hearing, the court gave the mother six additional months to work on reunification. During the six-month period, the mother relapsed in using methamphetamine and continued to drink alcohol. She did not comply with random drug testing. She continued her relationship with the father, although they had not fully addressed their history of domestic violence. Additionally, the mother struggled to supervise the five children during visitation. We find there is clear and convincing evidence in the record to show the children could not be safely returned to the mother's care.

**B.** The father also claims there is not sufficient evidence supporting the juvenile court's decision. He states the children could be returned to his care because his home was safe for them. He points out he had employment and housing.

The father tested positive for methamphetamine use in October, November, and December 2016. There was also evidence he continued to use alcohol. He did not complete a substance abuse treatment program after these relapses. The father struggled to provide authority and direction to the children during visits. Furthermore, the parents had not completely addressed the history of domestic violence in their relationship. We find there is sufficient evidence to support termination of the father's parental rights under section 232.116(1)(f) and (h).

#### **IV. Reasonable Efforts**

The parents claim the State did not engage in reasonable efforts to reunite them with the children. They claim they should have been permitted to have

more visitation with the children. “There is a requirement that reasonable services be offered to preserve the family unit.” *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). While the State has the obligation to make reasonable efforts, a parent has the responsibility to demand services not otherwise offered. *Id.* An objection to the services provided must be made prior to the termination hearing. *In re M.B.*, 595 N.W.2d 815, 818 (Iowa Ct. App. 1999).

The reasonable efforts requirement “includes visitation designed to facilitate reunification while providing adequate protection for the child.” *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). “Visitation between a parent and child is an important ingredient to the goal of reunification.” *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). “However, the nature and extent of visitation is always controlled by the best interests of the child.” *Id.*

After the first termination hearing, DHS attempted to move forward with providing the parents with more visitation but shortly after the court’s order giving the parents six more months to work on reunification, both parents tested positive for methamphetamine. Thereafter, the parents were inconsistent in providing drug tests and attending visitation with the children. There was evidence they continued to use alcohol. The State provided visitation to the parents within its mandate to act in the best interests of the children. We cannot say the State did not engage in reasonable efforts to reunite the parents with the children.

We affirm the decision of the juvenile court.

**AFFIRMED ON BOTH APPEALS.**