

IN THE COURT OF APPEALS OF IOWA

No. 17-1499
Filed November 22, 2017

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

R.S., Mother,
Appellant,

T.S., Father,
Appellant.

Appeal from the Iowa District Court for Delaware County, Thomas J. Straka,
Associate Juvenile Judge.

A mother and father separately appeal the termination of their parental
rights. **AFFIRMED ON BOTH APPEALS.**

Cory R. Gonzales of Law Office of Cory R. Gonzales, Strawberry Point, for
appellant mother.

Matthew W. Boleyn of Reynolds & Kenline, L.L.P., Dubuque, for appellant
father.

Thomas J. Miller, Attorney General, and Ana Dixit, Assistant Attorney
General, for appellee.

Daniel H. Swift of Swift Law Firm, Manchester, guardian ad litem for minor
child.

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

VOGEL, Presiding Judge.

The mother and father of A.S., born April 2015, separately appeal the termination of their parental rights.

I. Background Facts and Proceedings

A.S. came to the attention of the Iowa Department of Human Services (DHS) in July 2016, upon allegations the mother was using illegal substances. She admitted to using methamphetamine but refused to be drug tested. The results of a hair-stat test conducted on both the father and A.S. were positive for methamphetamine. The mother denied A.S.'s safety was compromised by the drug use because the parents had already voluntarily placed A.S. with his paternal grandmother after A.S. tested positive for high levels of lead in his system due to lead paint within the home. He has remained in the grandmother's care since that time and was adjudicated in need of assistance on October 27, 2016, upon the stipulation that the parents had issues with substance abuse.¹

Over the course of the next many months, DHS offered extensive services to both parents. With no sustained progress towards reunification, the State petitioned to have both parent's parental rights terminated. The matter came on for hearing on July 25 and August 23, 2017, after which the mother's and father's parental rights were both terminated under Iowa Code section 232.116(1)(h) and (i) (2017).

¹ A.S. was adjudicated under Iowa Code section 232.2(6)(c)(2) (2016), which provides the child "has suffered or is imminently likely to suffer harmful effects as a result of" "the failure of the child's parent . . . to exercise a reasonable degree of care in supervising the child." The child was also adjudicated under Iowa Code section 232.2(6)(n), which provides the child's "parent's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care."

II. Standard of Review

We review termination proceedings de novo, giving weight to but not being bound by the district court's fact findings. *In re M.W.*, 876 N.W.2d 212, 219 (Iowa 2016). There must be clear and convincing evidence of the statutory grounds for termination. *Id.*

III. The Father's Appeal

The father asserts the State failed to prove that A.S. cannot be returned to his care under Iowa Code section 232.116(1)(h) or within a reasonable period of time under section 232.116(1)(j). *In re A.B.*, 815 N.W.2d 764, 776 (Iowa 2012) ("When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the juvenile court's order on any ground we find supported by the record."). We will address his claims under paragraph h.²

At the August 23 termination hearing, the father claimed he had not used methamphetamine since May and he does not need substance-abuse treatment. However, the facts belie his assertion as he tested positive for methamphetamine on June 7, 2017, as well as earlier in March. He has not been compliant with offered substance-abuse treatment. Moreover, his drug use is coupled with a long

² Paragraph (h) provides termination is warranted if,

The court finds that 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.

history of mental-health issues, for which he also failed to comply with appropriate services offered. As his mother testified, his behavior changes like “a roller coaster” with “good moments” during periods of sobriety followed by “bad moments” when his behavior changes dramatically. Neglecting his mental-health medications, which he did from January to June 2017, also caused additional problems with the father’s behavior, his struggle with addiction, and his ability to parent A.S. The record fully supports the district court’s conclusion A.S. cannot be returned to the father at the present time, and we affirm the termination of the father’s parental rights under Iowa Code section 232.116(1)(h).

The father also claims Iowa Code section 232.116(3) should preclude termination because A.S. is “sad” when his visits are ending.³ However, we agree with the district court’s conclusions there was no evidence presented that A.S. would be disadvantaged by the termination or that maintaining the parental-child relationship would outweigh the benefits the child would receive through the termination. He has been in a stable home with his grandparents, who have continually offered both parents expanded visitation with A.S. and are committed to continuing to do so even after termination.

IV. The Mother’s Appeal

Like the father, the mother asserts the State failed to prove A.S. cannot be returned to her care under Iowa Code section 232.116(1)(h) or within a reasonable period of time under section 232.116(1)(f). Woven into her argument is the

³ Subsection (3) provides: “The court need not terminate the relationship between the parent and child if the court finds any of the following: . . . c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.”

assertion DHS failed to provide adequate services—in the form of transportation—so she could take advantage of substance-abuse treatment and visitation with A.S.

“In considering the sufficiency of evidence to support termination, the court’s focus is on the services provided by the State *and the response by [the parent]*, not on services [the parent] now claims the DHS failed to provide.” *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000) (emphasis added). The mother’s claim of lack of reasonable efforts fails as the district court’s order following the March 14, 2017 dispositional review hearing, stated: “The Court inquired as to the sufficiency of the services, and neither parent indicated they were requesting any additional services at the present time.” In addition, at the termination hearing, the DHS worker testified:

There’s always the lack of transportation that they’ve always talked about. We’ve always said, please let us know. We can—between me and the FSRP or we can help you with transportation, so that has been an issue.

Q. And has—have you ever been contacted to assist with transportation to testing? A. No.

We affirm the district court’s finding the mother was offered reasonable services.

Next, the mother claims she has made good progress in obtaining sobriety and was capable of having A.S. returned to her at the time of the termination hearing. See Iowa Code § 232.116(1)(h)(4). The mother’s substance abuse counselor testified “[the mother] meets criteria for a substance abuse disorder, severe,” and while she was then on the path to recovery, her progress is “slow.” The record indicates the mother missed the last three months of drug testing prior to the first day of the termination hearing, as well as missed three drug tests in the one-month delay between hearing dates. The court noted the mother’s long

history of methamphetamine use, which began when she was sixteen years old, and her toxic relationship with the father, which was built around their mutual drug use. The district court found the child could not be returned to the mother's care at the time of the termination hearing. We agree and affirm the termination of her parental rights under section 232.116(1)(h).

The mother also asserts her bond with A.S. should preclude termination. See Iowa Code § 232.116(3)(c). The record shows there is a bond between the mother and A.S. and that visits have gone well. However, although the grandmother offers "open door" visits, including daily visits with A.S., the mother failed to take advantage of the opportunity to establish a strong relationship with A.S. Even during the time between the two termination hearing dates, the mother failed to increase her visits and found excuses for not doing so. Moreover, the record shows the only stability A.S. has been able to achieve is in the grandparents' home. As the DHS worker testified, the mother's participation "has been up and down":

We're basically at the same place we were back when he was removed. The up and down with the relationship. The inconsistency. Kids need consistency. They need structure. They need stable. And neither [the father] or [the mother] is able to provide that.

We agree with the district court the bond the mother shares with A.S. cannot overcome A.S.'s need for stability through termination.

V. Additional Time

The father and mother both requested an extension of time to work out their issues and achieve a stable environment for A.S.'s return to their care. See Iowa Code § 232.104(2)(b) (providing a court may authorize a six-month extension of

time if it determines “the need for removal of the child from the child’s home will no longer exist at the end of the additional six-month period”). Their requests were denied by the district court which found that even during the one-month delay between the first day of the termination hearing, July 25, and the second day, August 23, the parents’ compliance with services deteriorated. Both missed three drug tests, and neither showed any interest in spending more time with A.S. pursuant to the grandmother’s “open door” visitation policy. A.S.’s guardian ad litem agreed neither parent had “upped their game” during the one-month delay. The caseworker did not support additional time, stating, “[W]e’ve been working with the same issues for the whole time we’ve been involved and actually the same issues with them prior in the other case.”⁴

We agree with the district court’s denial of additional time.

VI. Conclusion

We agree with the district court that adequate efforts to provide reunification services were made by the DHS, the State proved the statutory grounds for terminating the parental rights of both the father and the mother, a six-month extension of time would not change the findings, and there was no evidence of any harmful effects to A.S. that would outweigh the termination of the parental rights.

AFFIRMED ON BOTH APPEALS.

⁴ The mother’s parental rights to two older children had also been terminated.