

**IN THE COURT OF APPEALS OF IOWA**

No. 17-1527  
Filed December 20, 2017

**IN THE INTEREST OF K.P.,  
Minor Child,**

**D.F., Father,**  
Appellant,

**N.P., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Johnson County, Deborah F. Minot,  
District Associate Judge.

Mother and father appeal from an order terminating their parental rights  
pursuant to Iowa Code chapter 232 (2017). **AFFIRMED ON BOTH APPEALS.**

Sara E. Strain Linder of Bray & Klockau, Iowa City, for appellant-father.

Joseph C. Pavelich of Spies, Pavelich & Foley, Iowa City, for appellant-  
mother.

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

Anthony A. Haughton of Linn County Advocate Office, Cedar Rapids,  
guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ.

**MCDONALD, Judge.**

A mother and father separately appeal the termination of their parental rights in their child, K.P. On appeal, the mother contends termination is inappropriate due to the strength of the parent-child bond. The father challenges the sufficiency of the evidence supporting the statutory ground for termination, requests an additional six months to work toward reunification, and argues termination is not in the child's best interest.

## I.

The child at issue almost died while in the care of the mother. The record reflects Najah and Devonte are K.P.'s biological parents. K.P. was born five weeks early and spent the first twelve days of his life in the hospital due to low birth weight, respiratory problems, feeding problems, and other issues resulting from prenatal drug and alcohol exposure. After K.P. was discharged from the hospital, Najah, her paramour Frank, and K.P. briefly lived with Najah's friend Henrietta until they went to stay with a man named Anthony. On the second day of their stay with Anthony, first responders were dispatched to the apartment after receiving a 911 call the baby was coughing up blood. K.P. was transported to the hospital. X-rays revealed air in his abdomen. Tests revealed injuries to his tonsil and soft palate. Doctors determined K.P. had "air filled neck and chest spaces outside of the airway and significant bleeding . . . from an unknown mechanism of injury." One doctor described the infant as having a "stomach full of blood." Emergency surgery revealed K.M. suffered "three parallel sharp cuts found through the soft tissues of the throat, one in the soft palate, one dividing the tonsil partially from its bed and one diving into the posterior pharyngeal wall down deeply in the throat

into the hypopharynx, the lower throat below the tonsils leading to the esophagus.” The injuries were not caused “by any tool used in routine baby care.” They were “consistent with injury from a sharp weapon, such as a knife. It could not have been a single, accidental penetration with three vertical swipes in the throat.” Any one of the injuries “could easily have caused death” by blood loss. The surgeon concluded: “I cannot come up with a plausible instrument of injury; however it is, in my well trained and expert opinion, clearly nonaccidental trauma, and consistent with an intent to kill.” K.P. remained in the pediatric intensive care unit (PICU) for approximately two weeks and was then discharged to foster care. At the time of the injury, K.P. was twenty-five days old.

Who caused the injury to the child remains unresolved. A hospital social worker met with Najah and Frank to explain the child’s injuries. During the discussion with the social worker, Najah said, “Nobody could have hurt him because only [Frank and I] care for [K.P.]. Nothing has ever gone in his mouth except for his bottle and the blue bulb suction when he needed it.” The social worker noted Najah denied that any other individuals had cared for K.P. since his discharge from the NICU. The police executed a search warrant on the home. They found nothing of investigatory significance. First responders reported they did not observe any instrument at the home that could have caused K.P.’s injury. According to our record, no one has been charged with any crime related to the potentially lethal incisions to K.P.’s mouth and throat.

Although criminal action was not taken, protective measures were taken. The Iowa Department of Human Services (IDHS) took prompt action in response to the injury. IDHS removed K.P. from Najah’s care the day after K.P. was taken

to the hospital. K.P. was placed in foster care. IDHS initiated services for Najah and Frank. Najah and Frank were involved with IDHS and Family Safety, Risk, and Permanency (FSRP) services through Four Oaks. Najah informed the service providers the child's father was Devonte, but she called him "unfit," stating he had substance-abuse and mental-health issues and had "tried to kill" her. She informed providers she had a civil domestic abuse no-contact order in place against Devonte.

The matter came on for a removal hearing in March 2016. All parties stipulated to continued removal. At the hearing, the juvenile court learned Frank had visited K.P. in the hospital by falsely claiming to be the child's father. In response, the juvenile court entered a no-contact order, prohibiting Frank from having contact with the child. Devonte was present at the removal hearing, but he did not acknowledge paternity. The court denied Devonte's visitation request until paternity was established. Thereafter, Devonte was arrested for violating the domestic abuse no-contact order when he went to the hospital to visit K.P. and had contact with Najah. Devonte became very agitated in court and was escorted out of the courtroom by several deputies. He was later found in contempt of court and sentenced to serve thirty days in jail.

In April 2016, the parties stipulated to the adjudication of the child as a child in need of assistance pursuant to Iowa Code section 232.2(6)(b) and (c)(2) (2016). Najah was homeless and unemployed. She had not completed a substance-abuse evaluation. She remained involved with Frank although she continued to misrepresent the same. Both IDHS and FSRP workers had asked her if she had

any other information about the precipitating incident with K.P. and she had denied having any additional information. The court authorized visitation with Devonte.

The dispositional hearing was held in May 2016. All parties agreed K.P. should remain in foster care. The court noted it was “highly unlikely” the child would be returned to Najah’s care “until it is known how this child was injured and who is responsible.” The next day, Najah and her foster mother, Cleo, appeared at the police department. They spoke to the officer investigating K.P.’s injuries. They advanced various theories, which are summarized in the officer’s report:

Najah said she, [Frank], [Henrietta], and Henrietta’s three-year-old daughter [J.] arrived at the . . . apartment on [the day in question] at approximately 5:00 p.m. Najah said Henrietta left the apartment after 11:00 p.m. Najah said once Henrietta left, was the first time [K.P.] had ever been left in her and Frank’s care since he came home from the hospital. Najah said up until that point [K.P.] was cared for by Henrietta. Najah said she and Henrietta recently got into a fight and no longer speak to each other. Najah said she thinks whatever happened to [K.P.] had to have happened at Henrietta’s house, because it did not happen at the . . . apartment. Najah said she suspects Henrietta knows what happened to K.P. because she was telling people his throat was cut before she even knew it.

Cleo proceeds to tell me that her son, [Travis], told her he had a conversation with Henrietta at the hospital. Cleo said Travis told her that Henrietta said her daughter [J.] might have caused the injury to [K.P.]. Cleo said Travis told her that Henrietta told him [J.] was left alone in the bedroom with [K.P.] at the . . . apartment on [the day in question]. [K.P.] started crying at this time, and none of the adults leave the living room to go check on him. Henrietta just yells back at [J.] to put his pacifier back into his mouth. Najah states during this time [J.] had a sucker on a stick she was eating. Cleo said she believes [J.] shoved her sucker in [K.P.’s] mouth, causing his injuries. Cleo goes on to say [J.] has been known to stick candy into other kids’ mouths, but adults have always been around to prevent it from happening. Cleo says she has been doing her own investigation into what happened and this is the explanation she came up with.

At this point during the interview Najah now tells me she thinks Frank is responsible for [K.P.’s] injuries. Najah proceeds to say she had a conversation with Frank because he did not appear to be grieving for [K.P.]. Najah said she told Frank that she thinks he might

be the person who hurt [K.P.]. Najah does not provide any evidence of Frank causing [K.P.'s] injury.

The interview wraps up by Cleo stating to Najah and I that [the juvenile court] has made it clear that [it] will be terminating parental rights if [the court] is not told who caused [K.P.'s] injury. Najah says [the juvenile court] wants a name, and we are not gonna have a name. At this point we get up to exit the interview room, and Najah states, "Frank has a scalpel." Najah said Frank has a scalpel that he stole from the hospital, but he stole it after this incident. Najah said that morning [K.P.] was transported to the ER via ambulance Frank stole the scalpel. Najah said they were waiting in a room and Frank took a package out of a drawer. Najah said a scalpel was wrapped up inside the package, and Frank took it. I ask Najah why she never told me about Frank having a scalpel, because it is very important information. Najah tells me because she just now remembered. Najah goes on to tell me Frank showed her the scalpel after [K.P.'s] surgery, and he had put it in the monkey pocket of [K.P.'s] diaper bag. Najah proceeds to tell me she did not know for sure when Frank actually stole the scalpel, because she did not physically see him do it. This statement contradicts what she told me minutes before, when she says she was in a room and he took a package out of a drawer, and wrapped inside it was a scalpel. Najah proceeds to tell me that prior to this incident herself, Frank, and Henrietta went to the emergency department at Mercy Hospital. Najah said while they were at Mercy Frank and Henrietta stole some Novocain, but she did not see either with a scalpel. Najah tells me about a month before [K.P.] was injured Frank had a scalpel and Novocain, and they got into a fight because she did not want him to have it. Najah said she threw the scalpel and Novocain in the trash, and Frank took it back out. Najah proceeds to tell me that [the] first time she saw the scalpel was in the PICU after [K.P.'s] surgery, and she has no idea when he stole it, and how long he has had it. Najah's story about Frank having a scalpel was very inconsistent, and changed multiple times.

Najah tells me if she could give me Frank's scalpel could I take a look at it. I tell her if Frank has a scalpel I would definitely like to take a look at it. I also tell her I do not believe I have probable cause to apply for another search warrant of Frank's residence. Cleo and Najah proceed to discuss between themselves that they are going to go to Frank's residence and search it for the scalpel. I tell them that I do not recommend them doing that, and in no way am I telling them to go search Frank's residence for evidence. This concluded the interview.

Najah and Cleo returned to the police department later that evening with a scalpel. The officer was skeptical of Najah's explanation—that she found the

scalpel behind a suitcase in the closet of Frank's bedroom—because neither emergency personnel nor searching police officers had observed such an instrument, and because neither Najah nor Frank had made any statements to emergency personnel as to what caused K.P.'s injury. Nonetheless, the scalpel was tested for DNA. Two DNA profiles were found on the scalpel, but K.P. was eliminated as the source of either DNA profile.

Najah made little progress in the early stages of the case. She remained involved with Frank. She was homeless and unemployed. She failed to schedule a substance-abuse evaluation for weeks. She was often late for visits. She was arrested for interference with official acts, after which she reported at a family team meeting she had been too drunk to remember what happened. A psychological evaluation conducted in July 2016 remarked Najah was "lethargic and extremely tired" as well as "dysphoric and hopeless." She and Cleo both reported child abuse by Najah's biological mother. However, Najah, for much of this case, was living with her biological mother. Najah elaborated on her allegations against Devonte, which included accusations he had raped her while she was sleeping and admitted to doing so. She claimed she withdrew from community college because he was stalking her. She claimed her relationship with Frank ended after the injuries to K.P.; however, they continued to live together at Henrietta's house until two weeks prior to the evaluation, when they had a physical altercation. She reported a significant history of mental illness. Her cognitive ability was rated average. The evaluation recommended therapy, substance-abuse treatment, support groups, and parenting classes.

By the time of a September 2016 review hearing, Najah had been unsuccessfully discharged from outpatient substance-abuse treatment after she admitted smoking a cigarette with “something” in it, refused to provide a specimen for a drug test, and reported using cocaine and PCP. She remained vehemently opposed to therapy. She was chronically unemployed. She had failed to secure housing of her own. IDHS recommended termination of her parental rights.

In October 2016, Najah was charged with operating while intoxicated and child endangerment after she failed to yield at an intersection and caused an accident with three young children in the car. At 8:00 a.m., her blood alcohol level was over the legal limit. She was ultimately granted a deferred judgment and placed on probation for two years.

In contrast to Najah, Devonte demonstrated some progress. At the disposition hearing, IDHS filed a paternity test report confirming Devonte as K.P.’s father. Devonte began visits and services once paternity was established. He had his first family team meeting on June 15. Devonte also completed a psychological evaluation. The evaluator noted he was cooperative but distracted by his cell phone. His profile was “consistent with that of an individual who is hostile toward and feels alienated from others, is distrustful of others, and has had negative interpersonal experiences.” His cognitive ability was assessed in the borderline-impaired range. Despite his limitations, Devonte made progress in most areas of his case plan.

The first permanency hearing in this matter was held in November 2016. At the hearing it was noted Devonte was making more progress than Najah. After the hearing, she began making accusations he was harassing her at the



McDonald's where they both worked. The State deferred filing a termination petition against Devonte because of his continued progress.

In January 2017, Najah said she was moving in with Cleo and "everything is finally turning around." She obtained a new substance-abuse evaluation and started to attend treatment. She attended visits more regularly.

On January 1, 2017, Devonte was charged with operating while intoxicated. Later in January, he was fired from his job at McDonald's due to a conflict with another employee.

At a second permanency hearing in February 2017, the court noted Najah's failure to comply with requirements consistently and changed the permanency goal to reunification with Devonte. IDHS approved overnight visits with Devonte. According to FSRP reports, Devonte paid attention during parenting, followed through with evaluations, completed substance-abuse treatment, and developed a loving relationship with K.P. He kept his apartment clean, child-proofed it, obtained supplies and meals, and never displayed any anger or harshness with K.P.

By late March, IDHS was trying to plan for a trial home placement with Devonte, but the plan could not move forward because he did not have a job or child care. IDHS paid his April rent so he would not lose housing.

After Najah moved in with Cleo, IDHS approved Cleo to supervise visits, allowing more time between Najah and K.P. Around the same time, providers learned Najah was pregnant. In April 2017, Cleo developed suspicions Najah was using drugs and demanded a drug test. The test was positive for cocaine. Cleo made Najah leave her home. However, neither reported this change. For two weeks, Cleo canceled visits, telling providers Najah was sick.

On May 8, 2017, IDHS received a report Cleo had kicked Najah out of her home and Najah was staying with Devonte. The assigned IDHS worker asked the FSRP worker to do an unannounced drop-in at Devonte's home. When the FSRP worker arrived that morning, she found Najah sleeping in Devonte's bed. Najah later claimed she had been staying with her biological mother—who lives near Devonte, apparently in the same apartment complex—but had left her biological mother's home the previous night because Najah had a migraine, the mother was having a party, and Najah couldn't sleep. Najah denied knowing K.P. was present, although the FSRP worker testified it was typical for K.P. to sleep in a crib in Devonte's bedroom when he was at Devonte's home.

After the May 8 incident, Devonte's visits were moved to fully supervised and IDHS rescinded its supervisory approval for Cleo. The plan for a trial home placement with Devonte was put on hold. Once his visits were moved to fully supervised, his cooperation decreased. He canceled several visits and arrived late or left early at others. Najah's visits with the child decreased after the incident. She had no visits between June 26 and the August 8 termination hearing. She testified:

I'm not wanted around my child, and that's very clear. And I don't have to be, as long as I know he's happy and with his dad and not in a foster home. I want a forever family with his real family. I don't have that bond with my—with [K.P.] like Devonte has. Time, it takes time to build a relationship like that, and I never got that. And it's to a point where it's like he barely recognizes me, like he knows I'm his mom, but he doesn't light up.

Najah testified she was staying with her biological mother after being kicked out of Cleo's home, but she did not report that to IDHS or FSRP and the FSRP worker was never able to locate her there. She was due October 23 but was uncertain

who the father was. When asked about reports Devonte had attended prenatal appointments with her, she said he “gave me a ride on my first one and left”; she denied he was the father. She claimed she only used cocaine once.

Devonte testified at the termination hearing he was employed at a staffing agency, where he had been employed for a month. Before that, he had worked at a restaurant for two weeks. Before that, he had held various jobs through another staffing agency. Those jobs were all held since his termination from McDonald’s approximately six months prior. He was asked if he had any concerns Najah would again allege he raped her or abused her. He said he did not. He testified he trusted her “100%.” He testified it was his opinion Frank, not Najah, had harmed K.P. because he had known Frank longer—they are half-brothers—and therefore knew “his capability.” He also testified he would not leave K.P. with her alone.

The FSRP worker testified she would never leave K.P. alone with Najah because she “would never forget what happened to [K.P.]” She also testified she did not believe K.P. could be safely returned to Devonte because of the May 8 incident. She estimated she might recommend placement with Devonte in three months, if another expansion of visits and a trial home placement were successful.

The IDHS worker recommended termination of parental rights. Her concerns about Najah included: the founded child abuse report and seriousness of K.P.’s injuries; her failure to share information with the police promptly; her failure to follow through with therapy; her ongoing substance abuse despite multiple evaluations and attempts at treatment; the criminal charges stemming from the car accident; her lack of employment; her lack of housing; her drug use; and the May 8 incident. The IDHS worker noted concerns about Devonte’s

employment and lack of child care but said her greatest concern was “his insight and protective capacity.” She did not believe Devonte appreciated the seriousness of what happened to K.P. or the risks Najah presents to K.P. She testified the ongoing relationship between Najah and Devonte was “completely dysfunctional and unhealthy.” She added: “It confuses me that she left him and then was dating his [half-]brother, and that between her and his [half-]brother, someone almost killed his son, yet he doesn’t really seem to have any big concerns about her. I just don’t understand.”

The juvenile court terminated both parents’ parental rights. It concluded “[t]he case against reunification with Najah is overwhelming.” As for Devonte:

The case against reunification with Devonte is more complicated, yet more frustrating. The Court’s patience with him has now been exhausted. After reading the entire record of this case from beginning to end—hundreds and hundreds of pages of reports and orders—the Court finds it stunning that Devonte would invite Najah into his apartment on the night of May 7. He was warned over and over again by everyone involved in this case that he could not allow Najah to be present during his visits. This includes clear and specific orders of the Court, as well as written safety plans developed during his family team meetings. His choice was incredibly reckless and irresponsible. He knowingly put [K.P.’s] safety and their future as father and son at risk. And despite having three full months to reflect upon this decision, his testimony made it very clear to the Court that he would do it again. The Court rejects the argument that this was a “one time only” mistake, that Devonte fell victim to Najah’s manipulation, and that he has learned from this experience. The Court finds that Najah continues to pose an imminent risk to the health and safety of [K.P.], and that Devonte’s choice of pursuing a relationship with her over protecting his son establishes, by overwhelming evidence, that he poses the same risk to [K.P.].

Both parents now appeal.

II.

The court reviews proceedings terminating parental rights *de novo*. See *In re A.M.*, 843 N.W.2d 100, 110 (Iowa 2014). To terminate a parent's rights, the State must first prove a statutory ground authorizing termination of a parent's rights. See Iowa Code § 232.116; *In re M.W.*, 876 N.W.2d 212, 219 (Iowa 2016). Next, the State must prove termination of a parent's rights is in the child's best interest. *M.W.*, 876 N.W.2d at 219–20. Finally, the court decides whether permissive considerations in section 232.116(3) should preclude termination of a parent's rights. *Id.* at 220.

### III.

We first address Najah's appeal. Najah raises but one claim: the strength of her bond with K.P. should preclude termination of her parental rights. See Iowa Code § 232.116(3)(c). We have little difficulty rejecting this claim. The child spent his first twelve days of life in the NICU, then approximately two weeks in the mother's care, and has been removed from her care ever since. On top of that, the reason for removal was that the mother was one of two suspects in what appears to be an intentional act aimed at killing the child. The mother's contact with the child since has been limited. Most, if not all, of her time with the child since has been brief and supervised. Moreover, she herself testified to the lack of a bond between herself and the child. Nothing about this case suggests the two have any bond. The mother's claim fails.

### IV.

Devonte raises three claims. He challenges the sufficiency of the evidence supporting the statutory ground for termination, requests an additional six months

to work toward reunification, and argues termination is not in the child's best interest.

Devonte's parental rights were terminated pursuant to section 232.116(1)(h) (2017), which requires the State to prove:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a [CINA].
- (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.

The father addresses only the fourth element. He notes he obtained a mental-health evaluation and substance-abuse evaluations and maintained stable housing. He argues his employment history is satisfactory given his cognitive abilities and educational background. He also argues he would keep K.P. safe even if Najah were involved in the child's life. Picking up on an argument advanced by the guardian ad litem, he argues at the socioeconomic level he shares with Najah, "one expects others to do bad things" and "one is not surprised or angry" when this happens. His lack of surprise or anger at Najah "does not equate with the inability to be protective for one's child."

We are not persuaded. First, Devonte has presented no evidence about the role socioeconomic status plays in his resigned acceptance of Najah's behavior. Second, we are less concerned with his level of surprise or anger and more concerned with the decisions he has made with respect to Najah. We are disinclined to conclude Devonte's socioeconomic status forced him to ignore the repeated warnings of service providers and the juvenile court or forced him to allow

Najah into his home while K.P. slept. It may well be that Devonte could protect K.P. from Najah; however, there is harm from his lack of judgment in permitting Najah to be around the child in the first place. Devonte has demonstrated a lack of protective capacity over the child. His inability to protect the child from Najah creates an appreciable risk of adjudicatory harm to the child sufficient to authorize the termination of his parental rights.

Devonte next requests an additional six months to work toward reunification. To grant this request, we must find the need for the child's removal will no longer exist at the end of the additional six-month period. See Iowa Code § 232.104(2)(b). We must "enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination" the need for removal will no longer exist at the end the extension. Iowa Code § 232.104(2)(b).

We must also reject this claim. Devonte testified he trusts Najah one hundred percent. This is troubling given Najah's potential complicity in attempts to kill the child, her arrest for operating under the influence with children in the vehicle, and her use of cocaine while pregnant with another child. Najah is a risk of harm to her children. Devonte's continued association with Najah exposes the child to an appreciable risk of adjudicatory harm, and there is no evidence this association would end if Devonte were given more time. He already has violated express orders to not allow Najah contact with the child. Her testimony supports the conclusion that she will continue to press for a family arrangement with Devonte. His testimony supports the conclusion he would allow continued contact.

Devonte last argues termination is not in the child's best interest. We disagree. This case began when someone nearly killed this child. It may well have

been the child's mother, who has never offered a plausible explanation for the incident. Fourteen months later, the child's father had unilaterally absolved the mother of any potential responsibility, to the point where he allowed her to visit him while the child was in his care, jeopardizing his own relationship with the child. His testimony suggested he would do it again. In the meantime, the child has spent that time in foster care. There is a time for patience and there is a time for permanency. Devonte would have us believe this remains the time for patience: for him, for Najah. We believe that time has passed. *See In re C.S.*, 776 N.W.2d 297, 300 (Iowa Ct. App. 2009). This child deserves permanency, and he cannot find it with Devonte at this time. *See In re P.L.*, 778 N.W.2d 33, 41 (2010). To the extent K.P. and Devonte have a bond, the continued instability posed by placement with Devonte means our analysis does not change.

V.

For the above-stated reasons, we affirm the order of the juvenile court terminating the parent's respective rights in the child.

**AFFIRMED ON BOTH APPEALS.**