

**IN THE COURT OF APPEALS OF IOWA**

No. 17-1717  
Filed December 20, 2017

**IN THE INTEREST OF A.H. and L.H.,  
Minor Children,**

**Z.H., Father,**  
Appellant,

**E.B., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Warren County, Mark F. Schlenker,  
District Associate Judge.

A mother and father appeal the termination of their parent rights pursuant  
to Iowa Code chapter 232 (2017). **AFFIRMED ON BOTH APPEALS.**

John C. Heinicke of Kragnes & Associate, P.C., Des Moines, for appellant  
father.

Nancy L. Pietz of Pietz Law Office, Des Moines, for appellant mother.

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

Yvonne C. Naanep, Des Moines, guardian ad litem for minor children.

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

**MCDONALD, Judge.**

Elizabeth and Zachery appeal from the juvenile court's order terminating their rights in their children A.H. (born April 2015) and L.H. (born April 2016) pursuant to Iowa Code chapter 232 (2017). Our review is de novo. See *In re A.M.*, 843 N.W.2d 100, 110 (Iowa 2014); *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The statutory framework authorizing the termination of parental rights is well established, and it need not be repeated in full herein. See *P.L.*, 778 N.W.2d at 39.

The parents challenge the sufficiency of the evidence establishing the grounds authorizing the termination of their parental rights. The juvenile court terminated the parent's respective rights pursuant to Iowa Code section 232.116(1)(h) and (l). Where, as here, "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." *In re A.B.*, 815 N.W.2d 764, 774 (Iowa 2012).

We address the sufficiency of the evidence supporting termination of the parent's respective rights pursuant to section 232.116(1)(h). Pursuant to this provision, as relevant here, the State was required to prove by 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." Iowa Code § 232.116(1)(h)(4). A "child cannot be returned to the custody of the child's parent if the child would remain a child in need of assistance or would be exposed to harm amounting to a new child-in-need-of-assistance adjudication." *In re Z.R.*, No. 17-1004, 2017 WL 4050989, at \*2 (Iowa Ct. App. Sept. 13, 2017). Stated differently,

“[w]e have interpreted this [ground] to require clear and convincing evidence the children would be exposed to an appreciable risk of adjudicatory harm if returned to the parent’s custody *at the time of the termination hearing.*” *In re E.H.*, No. 17-0615, 2017 WL 2684420, at \*1 (Iowa Ct. App. June 21, 2017) (emphasis added).

There is clear and convincing evidence the children could not be returned to the parent’s respective care at the time of the termination hearing. This family has had prior involvement with the Iowa Department of Human Services (IDHS). Several of Elizabeth’s children, including one who is not at issue in this proceeding, tested positive for controlled substances at the time of birth. In the instant case, the family again came to the attention of IDHS when it was reported the family was residing in a home with no running water and sewage backup coming out of the drains, sinks, toilet, and washing machine. The department’s investigation showed the family had lived in these deplorable conditions for twenty-eight days, the children were dirty, and the parents used drugs in the presence of Elizabeth’s older children.

Despite the provision of services, neither Elizabeth nor Zachery addressed the critical issues giving rise to the removal of the children. Both Elizabeth and Zachery entered substance-abuse treatment, and both were unsuccessfully discharged for non-attendance. Both continued to test positive for marijuana. Elizabeth admitted use of methamphetamine, and Zachery continued to abuse alcohol. Neither of the parents addressed their unresolved mental-health needs. Both continued to engage in criminal behavior during the course of this proceeding. Each has been arrested several times during the life of this case. Most recently, they were arrested and charged with possession of drug paraphernalia

immediately prior to the final termination hearing. There continues to be domestic violence in the relationship between the parents. Neither parent completed any treatment related to domestic violence. The case manager testified at the termination hearing, “[W]e’re in the same position that we were in when the case started.” At the time of the termination hearing, both parents confirmed they were not able to assume safe care of the children: Elizabeth testified she needed additional time, and Zachery was incarcerated. For these reasons, we find clear and convincing evidence supports this statutory ground authorizing the termination of parental rights.

Elizabeth challenges the department’s efforts at facilitating reunification with the children. As part of its ultimate proof the child could not be returned to the home, the State must establish it made reasonable efforts to return the child to the child’s home. See Iowa Code § 232.102(9) (providing department of human services must make “every reasonable effort to return the child to the child’s home as quickly as possible consistent with the best interests of the child”). IDHS must “facilitate reunification while protecting the child from the harm responsible for the removal.” *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). We conclude the argument is not preserved for appellate review. Elizabeth did not request different or additional services than those provided by IDHS or ordered by the juvenile court. See *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002) (“If . . . a parent is not satisfied with [I]DHS’ response to a request for other services, the parent must come to the court and present this challenge.”).

Both parents also contend the juvenile court should have granted them additional time. Iowa Code section 232.104(2)(b) allows the juvenile court to defer

permanency for six additional months; however, the juvenile court must articulate why the need for removal will no longer exist at the end of the six-month period. The parent's past performance is a highly reliable indicator of whether this opportunity will be effectively utilized. See *In re T.D.H.*, 344 N.W.2d 268, 271 (Iowa Ct. App. 1983). Here, the parents' past performance convinces us deferred permanency is not appropriate. Neither parent availed themselves of the services offered throughout the life of this case. Neither had completed substance-abuse treatment, mental-health treatment, or domestic-violence training. Neither demonstrated any commitment to learn responsible parenting and assume care of the children. Both parents were arrested and charged with new drug-related offenses immediately prior to the final termination hearing. What's past is prologue. "Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990).

Elizabeth and Zachery both claim that the best interests of their children were not served by termination of their parental rights. In making this determination, we look to the past conduct of the parents to determine if the interests of the children are served by preservation of the parent-child relationship. See *A.B.*, 815 N.W.2d at 778. There is nothing in the record supporting the contention that preservation of the parent-child relationship here is in the best interests of the children. To the contrary, the children were found living in raw sewage in the care of violent drug users. The parents have not demonstrated any real desire—or at least desire sufficient to prompt change—to care and provide for the children. As a general rule, "the needs of a child are promoted by termination

of parental rights' if the grounds for termination of parental rights exist." *In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa Ct. App. 1992) (citation omitted). Such is the case here.

Finally, both parents seek preservation of the parent-child relationship based upon Iowa Code section 232.116(3)(c). This provision provides the juvenile court need not terminate the parent-child relationship if termination of the relationship "would be detrimental to the child . . . due to the closeness of the parent-child relationship." We first note, "[t]he factors weighing against termination in section 232.116(3) are permissive, not mandatory." *In re D.S.*, 806 N.W.2d 458, 474–75 (Iowa Ct. App. 2011). Second, there is not a close relationship between the parents and the children. Both children have been removed from their parents for nearly half of their young lives. Third, any detriment to the children due to the termination of parental rights of Elizabeth and Zachery pales in comparison to the benefits of being placed in a stable and safe home. See *Z.R.*, 2017 WL 4050989, at \*5.

For these reasons, we affirm the termination of the parental rights of Elizabeth and Zachery in L.H. and A.H.

**AFFIRMED ON BOTH APPEALS.**