

**IN THE COURT OF APPEALS OF IOWA**

No. 0-108 / 10-0064  
Filed March 24, 2010

**IN THE INTEREST OF F.S., A.S., and D.A.  
Minor Children,**

**T.R.S., Mother,**  
Appellant,

**D.D.A., Father of D.A.,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Louise M. Jacobs,  
District Associate Judge.

A mother and father appeal from the district court's order terminating their  
parental rights to their children. **AFFIRMED.**

Francis Hurley of Phil Watson, P.C., Des Moines, for appellant mother.

Gary Britson, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, John P. Sarcone, County Attorney, and Corey McClure,  
Assistant County Attorney, for appellee State.

Michelle Saveraid of Youth Law Center, Des Moines, for minor children.

Considered by Vogel, P.J., Eisenhauer, J., and Miller, S.J.

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**VOGEL, P.J.**

Tasha appeals the termination of her parental rights to her three children, A.S., born September 1998, F.S., born May 2001, and D.A., born November 2005.<sup>1</sup> DeAngelo, the father of D.A., also appeals the termination of his parental rights. Tasha asserts the court erred in failing to consider placement with a family member, and termination was not in the children's best interests. DeAngelo asserts there was not clear and convincing evidence to support the district court findings, and termination was not in D.A.'s best interests. We affirm.

On December 30, 2009, Tasha's rights were terminated under Iowa Code sections 232.116(1)(d) and (f) (2009) for A.S. and F.S., and (d) and (h) for D.A., and DeAngelo's rights were terminated to D.A. under sections (d) and (h).<sup>2</sup> If the juvenile court terminates parental rights on more than one statutory ground, we need only find that the evidence supports termination on one of the grounds cited by the juvenile court to affirm. *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000). We review termination of parental rights proceedings de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

The Iowa Department of Human Services (DHS) has been involved with this family since April 2008, after Tasha and DeAngelo were arrested for felony drug charges, and the children were removed from their care. The children were each adjudicated a child in need of assistance (CINA) on June 4, 2008. Tasha moved into the House of Mercy in May 2008 for inpatient drug treatment, and the

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<sup>1</sup> F.S. and A.S.'s putative father's rights were also terminated and he does not appeal.

<sup>2</sup> The petition to terminate parental rights for A.S. correctly stated the applicable Iowa Code section 232.116(1)(f), pertaining to A.S.'s age. While the district court incorrectly cited section 232.116(1)(h), the error does not prejudice Tasha because the correct code section plead is clearly contained within the petition to adequately advise her of the allegations, and the facts remained the same at trial, supporting termination under (f).

children began living with her at the House of Mercy in February 2009. DeAngelo was released from Polk County jail in January 2009, and moved to transitional housing at the Fort Des Moines facility. He was given supervised visits twice per week with D.A. at the House of Mercy. DHS had concerns that Tasha was taking the children to visit DeAngelo unsupervised.

F.S. was again removed from Tasha's care in March 2009, when she was unable to control his challenging behavior and keep him safe from harm. A.S. and D.A. were removed from her care in April 2009, when she was not sufficiently participating in her treatment and unable to appropriately care for them. The children have not been returned to her care since that time, and D.A. has never been returned to DeAngelo's care since the initial removal in April 2008.

The family was offered numerous services to facilitate reunification, including in-home services, substance abuse treatment, parenting skill development, medication management, psychological testing, and she was given bus tokens for transportation; services were also provided to the children. Although both Tasha and DeAngelo would show some intermittent progress, neither parent consistently participated in the services offered, such that they demonstrated their ability to parent the children safely.

### **I. Termination of Tasha's Parental Rights.**

Tasha asserts termination is not in the best interests of the children, but fails to identify any of the factors in Iowa Code section 232.116(2) that would militate against termination. *In re P.L.*, 778 N.W.2d 33, 37, 40 (Iowa 2010) (stating that the court will consider factors in section 232.116(2), such as "the

child's safety," "the best placement for furthering the long-term nurturing and growth of the child," and "the physical, mental, and emotional condition and needs of the child."). She simply states,

Insight [as to her responsibility for the family's problems] is a nebulous concept that resists demonstration in any measurable way and it is far more likely that the Department representative simply tired of working with a mother who is admittedly difficult to work with at times.

The record clearly shows, and the district court found, that Tasha has been unable to provide her children a safe environment, and the district court noted her lack of motivation. The district court found that "while Tasha has made some progress . . . she does not demonstrate a clear understanding of how her drug addiction and drug related activities have put her children at risk." "Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting." *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). Even when the children were temporarily returned to Tasha's care at the House of Mercy, she was unable to tend to their needs, which resulted in a final removal of the children and their return to the same foster home. There is no evidence the circumstances would improve were the children to again be returned to her care.

Tasha also argues grandparent placement should have been considered by the district court as an alternative to termination, as the grandparents were present at the hearing and stipulated that they were willing to take custody of the children. The district court acknowledged and accepted the stipulation, but emphasized the reason for the hearing, stating "I don't want to get diverted from

the real issues in this case, which have to do with the parents and not placement.”

DHS gave the appropriate consideration to relative placement, initially placing the children with relatives, but when that placement was proved to be inadequate, DHS was unable to find another suitable relative placement. Because the children had been in a stable, pre-adoptive foster home for seventeen months prior to trial,<sup>3</sup> and have shown great improvements in their behavior, we find it is in their best interests to maintain this stability by not testing another placement at the termination hearing. Moreover, as the State asserts, even if the children were moved to a relative placement, that would not prevent termination of Tasha’s parental rights under Iowa Code section 232.116(3) as none of those exceptions were demonstrated.<sup>4</sup>

## **II. Termination of DeAngelo’s Parental Rights.**

DeAngelo asserts the district court had insufficient evidence to find D.A. could not be returned to his care. On our de novo review, we find clear and convincing evidence in the record that D.A. cannot be returned home at this time. Iowa Code § 232.116(1)(h). DHS worker Brenna Maher-Coughenour testified that if the children were returned to their parents, they would suffer further adjudicatory harm “based on the parents’ unresolved domestic violence issues and substance abuse and lack of insight into those issues, as well as the ongoing

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<sup>3</sup> The children lived with the pre-adoptive foster family beginning July 30, 2008, interrupted only for the one month when F.S., and two months when A.S. and D.A. were returned to Tasha in February 2009.

<sup>4</sup> After determining whether termination of parental rights is proper, under 232.116(1) and (2) we examine whether any exceptions exist under Iowa Code 232.116(3). We consider whether the child is in the legal custody of a relative, the child is over ten years of age and objects to the termination, or due to the closeness of the parent-child relationship, termination would be detrimental to the child. Iowa Code § 232.116(3).

parenting issues.” Specific to DeAngelo, she testified that “[DeAngelo] shows a lack of insight into his substance abuse by continuing in a relationship with someone with whom he was very codependent and sold and used drugs.” DHS documented the extensive drug history between DeAngelo and Tasha, their continued co-dependent and violent relationship, and DeAngelo’s lack of stable housing. Although DeAngelo was ordered to and did participate in a substance abuse program while he was incarcerated from April 2008 until January 2009, he failed to take advantage of the mental health and domestic violence counseling offered to him by DHS. Moreover, the in-home worker who had supervised visitations reported that both Tasha and DeAngelo “become easily frustrated and shut down” when she worked with them on safe parenting skills. It is apparent from the record and the district court ruling that the safety of the children was the paramount concern and DeAngelo had not been able to demonstrate confidence that D.A. could be returned to his care. *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially) (stating a child’s safety and need for a permanent home are the defining elements in a child’s best interests).

DeAngelo also argues termination of his parental rights is not in D.A.’s best interests. Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of Iowa Code section 232.116(2). *P.L.*, 778 N.W.2d at 37, 40. The record demonstrates that DeAngelo is unable to provide a safe and nurturing home that would support the physical, mental, and emotional needs of D.A. *Id.* Further, D.A., along with the other children, have been in the same foster/pre-adoptive home since July 2008,

and all are doing well in spite of the many problems they developed in the care of their parents. Their best interests dictate their stability not be sacrificed.

We conclude termination of Tasha and DeAngelo's parental rights was in A.S., F.S., and D.A.'s best interests as set forth above, and pursuant to the factors in section 232.116(2).

**AFFIRMED.**