

**IN THE COURT OF APPEALS OF IOWA**

No. 0-143 / 10-0068  
Filed April 8, 2010

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

**M.A.H., Father,  
Appellant,**

**C.C., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

A mother and father appeal from the termination of their parental rights to their children. **AFFIRMED.**

Erin M. Carr of Carr & Wright, P.L.C., Des Moines, for appellant-father.

Laura J. Chipman of Pargulski Law Office, Des Moines, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Jennifer Galloway, Assistant County Attorney, for appellee.

Michelle R. Saveraid, Des Moines, attorney and guardian ad litem for minor children.

Jessica J. Bromley of Carter Law Offices, Des Moines, for intervenors.

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

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

**EISENHAUER, J.**

A mother and father appeal from the termination of their parental rights to their children. They contend the State failed to prove the grounds for termination by clear and convincing evidence and failed to make reasonable efforts to reunite them with their children. Additionally, the father contends the juvenile court erred in failing to grant him additional time for reunification and termination is not in the children's best interest. We review their claims de novo. See *In re N.E.*, 752 N.W.2d 1, 6 (Iowa 2008).

The children came to the attention of the Department of Human Services in February 2009 after D.H. received second-degree burns to his foot while in his mother's care. The mother has never satisfactorily explained how the burns occurred and she failed to obtain medical treatment for him, which led to a child endangerment conviction. The children were placed in the father's care where they remained until a search warrant was executed on the father's residence on April 1, 2009, revealing evidence of drug dealing.

The children were adjudicated in need of assistance on May 12, 2009. At the adjudication hearing, the court halted visitation with the parents as a result of the extreme behavior the children were demonstrating after such visitations. A petition to terminate parental rights was filed in October 2009, with a hearing held the following month. On December 29, 2009, parental rights were terminated. Motions by the maternal aunt and uncle to intervene in the CINA and termination proceedings were denied.

The parents first contend the State failed to prove the grounds for termination by clear and convincing evidence. The juvenile court terminated the mother's parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), (h), (i), and (j) (2009) and the father's parental rights pursuant to sections 232.116(1)(d), (e), (g), (h), (i), and (j). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(h) where there is clear and convincing evidence of the following:

- (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.

There is no dispute the first three elements have been proved. Our inquiry focuses on whether there is clear and convincing evidence the children cannot be safely returned to their parents' custody.

We conclude the State proved the children could not be returned to the mother's care at the time of termination. The mother has an extensive history of substance abuse and mental health issues that have not been adequately addressed. During most of the pendency of these proceedings, she was in jail or a transitional center. At the time of termination, the mother was in a residential correctional facility and therefore was not available to care for the children.

We also conclude there is clear and convincing evidence the children cannot be returned to the father's custody. Like the mother, the father has a substantial history of substance abuse including drug-related arrests. He has not adequately addressed his substance abuse problem and tested positive for PCP just two months before the termination hearing. Despite her young age, S.A.H. showed a familiarity with drug use—including demonstrating intravenous drug use. Neither parent could explain her knowledge, but the fact the child, then three years old, lived with the father from May 2008 until her removal indicates she was exposed to frequent drug use while in his care.

Both parents contend the State failed to make reasonable efforts to reunite them with their children. Their chief complaint is the juvenile court's suspension of visitation in May 2009. The record shows the visitation with the parents was causing harm to the children. As the juvenile court noted in its termination order:

[T]he children demonstrated extreme behaviors following each visit with their parents. They tantrumed for hours, had nightmares, and became aggressive toward themselves and other children. [D.H.] indulged in head banging that left bruises and lumps. These behaviors remedied themselves when contact with their parents ceased.

The evidence indicates this behavior goes well beyond "separation anxiety that is often present in CINA cases."

The mother also argues reasonable efforts were not made because the State failed to consider all family placement possibilities, including placement with a maternal aunt and uncle. The reasonable efforts requirement is not a strict substantive requirement for termination. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa

2000). Instead, the services provided by DHS to reunify parent and child after removal impacts the State's burden of proving the child cannot be safely returned to the care of a parent. *Id.* We conclude the State has met its burden.

The father contends the juvenile court erred in terminating instead of entering a permanency order pursuant to Iowa Code section 232.104(2)(b), which would have granted him more time to reunite with the children. We note that while the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). Once the statutory limits established in section 232.116 have passed, "the rights and needs of the child rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Children should not be forced to endlessly await the maturity of a natural parent. *In re C.B.*, 611 N.W.2d at 494.

Finally, the father contends termination was not in the children's best interest. We disagree. 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). *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). The father's lifestyle exposed the children to drug abuse to such an extent the older child was able to demonstrate intravenous drug use at only three years of age. The extent to which the children were damaged by their parents' abuse and neglect is evident by their behavior following contact with the parents after removal. To separate the children from a foster home they are doing well in to

return them to a parent who has not demonstrated the ability to adequately parent them would be detrimental. We affirm.

**AFFIRMED.**