

**IN THE COURT OF APPEALS OF IOWA**

No. 0-192 / 10-0201  
Filed April 8, 2010

**IN THE INTEREST OF D.R. and D.R.,  
Minor Children,**

**K.A.J., Mother,  
Appellant,**

**R.J.R., Father,  
Appellant.**

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

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

Les M. Blair, III, of Blair & Fitzsimmons, P.C., Dubuque, for appellant-mother.

Steve J. Drahozal of Drahozal & Schilling, Dubuque, for appellant-father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Ralph Potter, County Attorney, and Jean A. Becker, Assistant County Attorney, for appellee.

Sara Stork Meyer, Dubuque, attorney and guardian ad litem 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).

**EISENHAUER, J.**

A mother and father appeal the termination of their parental rights to their children. The mother contends the State failed to prove the ground for termination by clear and convincing evidence. The father contends termination is not in the children's best interest. We review these claims de novo. See *In re N.E.*, 752 N.W.2d 1, 6 (Iowa 2008).

The children were removed from their parents' custody in October 2008 following an incident of domestic violence between the mother and father. They were adjudicated in need of assistance in December 2008. The children were placed in the care of their paternal grandmother until a trial home placement was granted to the mother in July 2009. The trial placement was terminated on August 2, 2009, following an incident in which the mother was charged with two counts of child endangerment as well as assault with injury, assault, interference with official acts, and public intoxication. The children were returned to the paternal grandmother's care.

The mother's parental rights were terminated pursuant to Iowa Code section 232.116(1)(h) (2009). In order to terminate under this section, the State must prove the following evidence by clear and convincing evidence:

- (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.

The mother does not dispute the first three elements have been proved. Instead, she argues the State failed to prove the children could not be returned to her custody.

We conclude there is clear and convincing evidence the children could not be returned to the mother's care at the time of the termination hearing. The mother acknowledged as much, but requested additional time to reunite with the children. On this issue, the juvenile court stated:

The Court does not believe a reasonable extension of time would alleviate the numerous concerns identified for [the mother]. Despite her participation in counseling, [the mother] testified there has been no progress with her depression; she refuses to re-engage in substance abuse treatment or cooperate with drug testing; she is unemployed; she has had inconsistent living arrangements; and continues to maintain contact with her abuser. Accordingly, the Court finds clear and convincing evidence that the children cannot be returned to [the mother]'s care at the present time and that an extension of time would not rectify the stated concerns.

We adopt these findings as our own.

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. There is clear and convincing evidence the children could not safely be returned to the mother's care at the time of termination. An extension of time is not warranted. Accordingly, the mother's parental rights were properly terminated under section 232.116(1)(h).

The father does not dispute the State proved the grounds for termination. Instead, he contends termination is not in the children's best interest. Specifically, he notes the children are in a relative placement, and therefore the court "need not terminate" his parental rights. See Iowa Code § 232.116(1)(3)(a). However, he acknowledges the children were removed from the paternal grandmother's care in October 2009. The termination order continued custody and guardianship of the children with the Department of Human Services and scheduled a hearing on the issue of the children's placement for a later date.

In determining the best interest, this court's primary considerations are "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." *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010) (citing Iowa Code § 232.116(1)(2)). Considering the aforementioned factors, we conclude termination is in the children's best interest. The father has mental health and substance abuse issues that remain unresolved. He failed to cooperate with the services offered him and never progressed beyond supervised visitation with the children. Insight into the children's future if returned to the father's custody can be gained from evidence of his past performance, for that performance may be indicative of

the quality of the future care that parent is capable of providing. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989). Given the gravity of the problems the father suffers from and his resistance to addressing them, the children's safety and physical, mental, and emotional needs necessitate termination.

We affirm the termination of the mother and father's parental rights.

**AFFIRMED.**