

**IN THE COURT OF APPEALS OF IOWA**

No. 0-652 / 10-1183  
Filed September 9, 2010

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

**K.K.K.S., Father,  
Appellant,**

**K.J.S., Mother,  
Appellant.**

---

Appeal from the Iowa District Court for Linn County, Susan Flaherty,  
Associate Juvenile Judge.

A father and mother appeal separately from the order terminating their  
parental rights. **AFFIRMED ON BOTH APPEALS.**

Jennifer L. Steffens of Steffens & Grife, P.C., Marshalltown, for appellant  
father.

Mark D. Fisher of Nidey, Wenzel, Erdahl, Tindal & Fisher, P.L.C., Cedar  
Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Harold Denton, County Attorney, and Kelly J. Kaufman,  
Assistant County Attorney, for appellee State.

Ellen Ramsey-Kacena, Cedar Rapids, for minor child.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

**DOYLE, J.**

A father and mother separately appeal the termination of their parental rights to their child. They contend the State failed to prove certain grounds for termination. Additionally, they argue the district court erred in not granting them additional time for reunification and in finding termination was in the child's best interests. Upon our de novo review, we affirm on both appeals.

***I. Background Facts and Proceedings.***

K.K.K.S. is the father and K.J.S. is the mother of K.S., born in March 2003. Both parents have a history of drug use. The father, born in 1974, started using marijuana at the age of seventeen and methamphetamine at the age of twenty-two. He has used methamphetamine off and on ever since that time. The mother, born in 1971, started using marijuana at the age of twenty-five, and she started using methamphetamine in 2002.

The child came to the attention of the Iowa Department of Human Services (Department) in September 2008 after it was alleged the parents were using methamphetamine, the mother was selling drugs from the home, and the parents allowed the child to roam the neighborhood without supervision. A Department worker met with the parents, and the parents admitted to methamphetamine use. The parents signed a safety plan allowing for the child to be removed from their care and placed with a paternal uncle.

Shortly thereafter, the mother was admitted to the Heart of Iowa, a residential substance abuse treatment program for women and their children, with the child. When the mother and child arrived there, the child had very bad head lice. The child was also behind on immunizations and medical

examinations. However, the mother left the program three days after she was admitted, and the child was then voluntarily placed with the child's paternal grandmother.

On October 3, 2008, the State filed its petition asserting the child to be a child in need of assistance (CINA). A hearing on the petition was held, and the parties stipulated the child was a CINA. The juvenile court then entered its order adjudicating the child a CINA. The court directed the Department to prepare a social history report prior to the dispositional hearing, and it ordered the child remain in the temporary custody of the Department for purposes of family foster care.

Family Safety, Risk, and Permanency services were offered to the parents, including supervised visitation and services, relative placement, random urinalysis testing, and substance abuse evaluations and treatment. The parents were advised if they could stay clean for three consecutive months, visitation with the child could progress to semi-supervised visits. However, in November 2008, the parents tested positive for marijuana use. In December 2008, the parents tested positive for marijuana and methamphetamine use.

In January 2009, the father completed a substance abuse evaluation, which recommended he complete intensive outpatient treatment with weekly individual sessions. The father agreed to the recommendations and began treatment. However, from approximately January 2009 to June 2009, although the father was consistent in providing samples for urinalysis testing, his samples were either diluted or positive for marijuana. During that period, the mother was admitted into inpatient substance abuse treatment two times, and both times the

mother left within a week. The mother was inconsistent in providing samples for urinalysis testing.

In April 2009, police were called to the paternal grandmother's home due to physical altercations between the father and the father's sister. Additionally, it was reported that the paternal grandmother would allow the father unsupervised visitation with the child without the Department's permission. The child was removed from the paternal grandmother's care and placed in foster care.

On June 9, 2009, the child's guardian ad litem (GAL) reported to the court:

It is . . . unfortunate that neither parent has made significant progress regarding their drug addictions. Both parents continue to have issues with drops and follow through with treatment. [The child] cannot be safe without parents who are committed to their sobriety. Time is now of the essence in this case. If the parents are not able to make serious strides forward, we will need to be looking for permanent options at the next hearing.

Thereafter, the juvenile court entered its mandatory review order. The court noted that the permanency goal at that time was still reunification with a parent, and the court stated permanency should be addressed at the next scheduled hearing. The court continued its prior orders, including that the parents cooperate with drug testing and continue with fully-supervised visitation.

In June and July 2009, the father tested positive for marijuana and for methamphetamine. In June through September the mother tested positive for marijuana. The mother was admitted into inpatient substance abuse treatment at the end of July, and she was discharged on August 19, 2009. After her discharge, she admitted to smoking marijuana.

The mother then began attending outpatient substance abuse treatment, and she made progress with her treatment. In October 2009, the mother

reported she planned to file for divorce. Thereafter, the father stopped attending substance abuse treatment groups and relapsed. On November 3, 2009, in preparation for a permanency hearing scheduled for the next day, the child's GAL filed its report to the court, recommending that the parents be given an additional six months for reunification based upon the mother's progress. The Department also recommended the parents be given an additional six months for reunification. The court granted six more months to work on reunification. However, according to a case progress report, the court stated that at the review in three months, if the child was not yet home, or not very close to being home, the court "would direct the Department to achieve another permanent goal."

Despite the extra time given, the parents' progress was short lived. The mother tested positive for marijuana in November and December 2009, and in February 2010. The father tested positive for methamphetamine in December 2009 and in February 2010. In February and March 2010, he also tested positive for marijuana.

On March 3, 2010, the juvenile court entered its order following an in-court review. The court directed the State to file a petition for termination of the parents' parental rights. On March 19, 2010, the mother was arrested and charged with possession of a controlled substance precursor, and she was incarcerated.

In April 2010, the State filed its petition to terminate the parents' parental rights. Thereafter, the GAL filed its report to the court. Although the GAL concurred with the recommendation that the child remain in foster care at that time, the GAL was "not yet ready to make a recommendation on permanency

other than to indicate that it [was] necessary for this child.” The GAL acknowledged that the child had a very strong bond with both parents and agreed the child could not be returned to the parents’ care at the present time. The GAL stated she was unsure if termination of the parents’ parental rights was in the child’s best interests, but noted the child continued to suffer disappointment with the parents.

After the State filed its petition, both parents began to make some progress. The father tested positive for alcohol in April, a violation of his probation, but he otherwise remained substance free. He again participated in treatment and treatment groups, as well as attending NA meetings. The mother also remained drug free after being incarcerated.

A hearing on the State’s petition was held on July 24, 2010. The parents testified and requested additional time for reunification. Alternatively, they requested the court establish a guardianship with the maternal grandparents as guardians of the child.

A service provider, who worked with the parents, testified that when she began working with the parents, they were inconsistent in attending services provided. She agreed in November 2009 that the permanency goal should be extended, as the parents seemed to be making progress at that time. However, she recommended that the parents’ parental rights be terminated and the child be adopted, explaining:

I know that both parents have made a lot of progress throughout this case at various times. I know [the father] is doing fairly well right now. However, both parents are still at fully supervised visits. So to get to a point where [the child] could be transitioned into either home—even if [the father], who is doing

fairly well right now, would continue to do well and stay clean and continue to be employed—would still take several months to transition [the child] back into a parent's home.

She testified that the child was very sad after visits, wanting to go home to a parent. The worker testified that termination and not a guardianship was in the child's best interests, stating:

I believe that [the child] needs the permanency achieved with adoption and a forever family. And if [the child] can't be adopted by a family member, I still think that [the child] needs to be given permanency and given the chance to be in a long-term home where [the child] know [the child] is not moving again.

She admitted the child and the parents have a very strong bond and the child would be hurt by termination of the parents' parental rights.

The maternal grandfather testified that he and his wife are bonded to the child and do not want to lose the child, but they are unsure if they would be willing to be guardians or adoptive parents. He testified that he and his wife have had health issues. He admitted the mother had made progress but was not there yet.

At the hearing, the GAL did not recommend termination of the parents' parental rights, opining it was not in the child's long-term best interests. She stated the child would be devastated if the child was not placed with family, as there was a strong and persistent bond between the child and parents, despite the length of the case. She did recommend that the child have permanency.

At the end of the hearing, the court found that the parents' parental rights should be terminated. The court stated:

I'm looking through the record here and we have been working from the very beginning of this case on substance abuse issues and we have not had even a period of three months by either parents

where I can say, “You have been able to maintain sobriety.” And that has been the goal from day one. I can’t say after almost two years that I can justify giving more time.

Because the other thing that has come through here loud and clear to me is that this child needs permanency. I mean, I think the longer that this goes on with [the child], the harder it is . . . to put together in [the child’s] mind where [the child] belongs, who is going to be raising [the child], what are the important family connections.

. . . .

So termination is, in my mind, in [the child’s] best interests. I understand the argument for guardianship because I agree with everything I have heard here, that this child should somehow maintain family connections. But that being said, I think that there are ways to do that through adoption. Given the child’s age, it is realistic for the Department to find either relative placement for adoption or, if that is just not possible, then a family that will facilitate continued family connections.

. . . .

. . . I hope that [the grandparents] participate in the selection process and perhaps seek out some of the resources that are available to help you work through things and continue to consider whether you can provide that permanent placement for [the child].

The juvenile court then entered a written order terminating the parents’ parental rights pursuant to Iowa Code sections 232.116(1)(f) and (j) (2009).

The parents now appeal.

## ***II. Scope and Standards of Review.***

We review the juvenile court’s decision to terminate parental rights de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). The State must prove grounds for termination by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). In considering whether to terminate, our primary considerations are the children’s safety; their physical, mental, and emotional condition and needs; and the placement that best provides for the long-term nurturing and growth of the children. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37. “Even though the court may determine that termination is appropriate



under section 232.116(2), the court need not terminate a parent's parental rights if any of the circumstances contained in section 232.116(3) exist." *P.L.*, 778 N.W.2d at 37.

### ***III. Discussion.***

The parents contend the State failed to prove certain grounds for termination. Additionally, they argue the district court erred in not granting them additional time for reunification and in finding termination was in the child's best interests. We disagree.

#### ***A. Grounds for Termination.***

As a preliminary matter, we note that both parents contend the State failed to prove, by clear and convincing evidence, that they lacked the ability or willingness to respond to services and that an additional period of rehabilitation would not correct the situation, invoking the elements of Iowa Code section 232.116(1)(g). However, the juvenile court did not find section 232.116(1)(g) as a basis for terminating their parental rights. Rather, the court based its decision upon grounds contained in sections 232.116(1)(f) and (j). After examining each of the parent's substantive arguments in light of the challenged code provisions, we conclude neither parent has challenged the evidence supporting termination under section 232.116(1)(f). Therefore, any challenge of that section is waived. See Iowa R. App. P. 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."). As we may affirm if we find clear and convincing evidence to support any of the grounds cited by the juvenile court, *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999), and the waived ground is effectively unchallenged, our opinion could end here. However, we

elect to proceed to the merits of the single ground the mother has challenged, Iowa Code section 232.116(1)(f).

In order to terminate under section 232.116(1)(f), the State must prove by clear and convincing evidence:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

Upon our de novo review, we find the State has met its burden.

Here, the child was adjudicated a CINA pursuant to section 232.96, and custody was transferred from the child's parents for placement pursuant to section 232.102. Both parents admitted a lengthy history of substance abuse, and their testimony at the termination hearing along with their numerous relapses evidenced their substance abuse problems were severe and chronic. A parent who has such a problem clearly presents a danger to the parent's child. See *State v. Petithory*, 702 N.W.2d 854, 858 (Iowa 2005) (citing *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993)).

Furthermore, the evidence is clear that both parents' prognosis indicates the child will not be able to be returned to the custody of either parent within a reasonable period of time. The parents admitted their long history of substance abuse. Although they were making some progress at the time of termination, they previously made progress in the case only to relapse. The case was

opened in September 2008, and the termination of their parental rights did not occur until July 2010, over twenty months later. During that lengthy period of time, the parents were unable abstain from drug use for even three consecutive months, despite treatment and the offer of services. Moreover, the mother agreed at the termination hearing that she was not ready to have the child placed with her. Upon our de novo review, we conclude the State proved by clear and convincing evidence the section 232.116(1)(f) grounds for termination of the parents' parental rights.

***B. Additional Time.***

The parents also contend the juvenile court erred in terminating their parental rights instead of granting them additional time to reunite with the child. 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). The legislature incorporated a twelve-month limitation for children adjudicated CINA aged four and above. Iowa Code § 232.116(1)(f)(3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

By the time of the termination hearing, the child had been out of the parents' custody for well over twelve months. Although the parents seemed to

have made some late improvements in their parenting ability, the statutory twelve-month period expired with little evidence that they could provide the necessary stability to safely parent the child. “A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting.” *C.B.*, 611 N.W.2d at 494. “When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). We conclude the juvenile court did not err in refusing to grant the parents additional time for reunification.

***C. Best Interests.***

Finally, the parents contend termination of their parental rights is not in the child’s best interests. Although this is a difficult case in some respects, we disagree.

As noted above, our primary considerations in determining whether to terminate a parent’s parental rights 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.” Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37. However, the juvenile court need not terminate the parent-child relationship if there is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship. Iowa Code § 232.116(3)(c). Nevertheless, the exception in section 232.116(3)(c) is permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38; *J.L.W.*, 570 N.W.2d at 781. The court

uses its best judgment in applying the factors contained in the statute. *P.L.*, 778 N.W.2d at 40.

Upon our de novo review, we conclude termination of the parents' parental rights is in the best interests of the child, and the exception set forth in Iowa Code section 232.116(3)(c) does not preclude termination of the parents' parental rights under the facts of this case. The record demonstrates that the parents are not able to provide a safe and nurturing home for the child. Although the testimony at the termination hearing evidenced that the child would be devastated if the parent-child relationship were destroyed, the parents' conduct has left us little choice. The overwhelming evidence at the hearing indicated the child is in desperate need of permanency, and the parents have not maintained sobriety for any sufficient period of time to hope that they could be an option for this child. This child deserves permanency. See *J.E.*, 723 N.W.2d at 802 (Cady, J., concurring specially). At some point, the rights and needs of the child rise above the rights and needs of the parent. *J.L.W.*, 570 N.W.2d at 781. We, like the juvenile court, are hopeful that adoption with a family member or a family that will allow the child to maintain some family connections is a possibility for this child. We therefore conclude termination was in the child's best interests as set forth under the factors in section 232.116(2), and the exception set forth in Iowa Code section 232.116(3)(c) does not preclude termination of the parents' parental rights under the facts of this case.

#### ***IV. Conclusion.***

Upon our de novo review, we conclude the State proved by clear and convincing evidence the section 232.116(1)(f) grounds for termination of the

parents' parental rights. Based upon the parents' history of substance abuse and inability to maintain sobriety throughout the case, we conclude the juvenile court did not err in refusing to grant the parents additional time for reunification. Finally, although we find this to be a tough case, we conclude termination was in the child's best interests as set forth under the factors in section 232.116(2). Accordingly, we affirm the juvenile court's order terminating the parents' parental rights.

**AFFIRMED.**