

**IN THE COURT OF APPEALS OF IOWA**

No. 0-864 / 10-1634  
Filed December 22, 2010

**IN THE INTEREST OF A.E.,  
Minor Child,**

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

**C.R.E., Father,**  
Appellant.

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

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

Robin Miller, Marion, for appellant mother.

Delmer Werner, Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, Harold Denton, County Attorney, and Rebecca Belcher,  
Assistant County Attorney, for appellee State.

Richard Mitvalsky, Cedar Rapids, for intervenor.

Brandy Lundy, Cedar Rapids, for minor child.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

**DANILSON, J.**

A mother and father appeal from the order terminating their parental rights to their two-year-old daughter, A.E. Both parents argue the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the child's best interests. Given the father's criminal history, lack of contact with the child, and minimal participation in these proceedings, we affirm termination of his parental rights. We further affirm termination of the mother's parental rights, as there is no evidence the mother is willing or able to make the changes necessary to become a safe and stable parent for the child.

**I. Background Facts and Proceedings.**

This family came to the attention of the Iowa Department of Human Services (DHS) in September 2008, when the mother gave birth to the child in Wisconsin. At the time, the mother was seventeen-years-old and had been adjudicated to be a child in need of assistance (CINA) in Iowa as a result of her drug use, mental health and behavioral issues, along with her parents' issues of substance abuse and lack of supervision. In January 2008, the mother had been ordered to be placed in a residential treatment program, but ran from her placement in a temporary shelter. The mother remained on the run until she was discovered in Wisconsin at the time of the child's birth.

DHS arranged for the mother's return to Iowa and placement in temporary shelter care. The child was adjudicated CINA and was placed in family foster care in Iowa. At a hearing on September 18, 2008, the mother agreed A.E. should remain in foster care while she remained in temporary shelter care. In October 2008, DHS located a foster family home that was willing to accept both

the mother and A.E., a placement that allowed the mother to provide primary care for A.E.

The mother and father have had an off-and-on relationship. During the times they were together as a couple, their relationship was volatile and unstable. The father requested paternity testing be completed when the mother identified him as A.E.'s father. The father, an adult, lives in Iowa with his mother, Terri (the father leaves Terri's home in spurts, and lives in his car or in hotels during these times). The father has a son from a previous relationship who was adopted by Terri. Terri has indicated she would also like to adopt this child. Although employed, the father does not pay Terri for rent or other household expenses. He has a criminal history, including acts of violence and substance abuse. He was in prison in Illinois and was paroled in Iowa in 2007. He was discharged from parole in August 2008. DHS offered services to the father, and he began to receive weekly supervised visits with the child upon the mother and child's return to Iowa.

In the foster care family placement, the mother obtained part-time employment and made plans to complete her GED. In April 2009, under the supervision of DHS and an independent living program, the mother moved into an apartment of her own, and DHS approved a trial home placement for the child in her care. The mother acknowledged that she regularly communicated with the father, but denied that she allowed him to have contact with the child.

At this same time, the father notified DHS he would no longer attend his supervised visitation. In June 2009, the father was charged with possession of

drug paraphernalia and driving with a suspended license. In July 2010, he was charged with public intoxication and again with possession of drug paraphernalia.

The mother's situation also deteriorated. By the permanency hearing on July 15, 2009, the mother had quit her job, had not made a consistent effort toward obtaining her GED, and was at risk of losing her housing. Despite those issues, the court approved the child's placement with the mother and the efforts toward reunification. The court also continued the requirement that any visitation with the father be supervised by a service provider.

On July 19, 2009, the mother accepted the father's invitation to go boating. The mother brought the child, despite being aware the father was only to have supervised contact with the child. The police received a call from a bystander concerned with the operation of the boat and arrested the father for operating the boat while intoxicated. This was the father's second OWI charge.<sup>1</sup> DHS became aware of the incident the following week and ended the trial home placement.<sup>2</sup> The child was returned to family foster care, where she has remained. The incident also resulted in a founded child abuse report naming the mother and father as perpetrators of denial of critical care.

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<sup>1</sup> The father's first OWI occurred in March 2008. The mother was pregnant with the child at the time and was a passenger in the vehicle.

<sup>2</sup> The child was not placed with relatives due to concerns of the family's caseworker that the mother, father, and grandparents failed to report the incident to DHS. As the caseworker reported to the court in July 2008:

The Department recommends that [the child] continues to remain in family foster care as relative placement would not be appropriate or safe for the child. . . . This worker believes that [the grandparents] would not be able to set firm boundaries with the mother and the father in order to keep the child safe. The grandparents continue to enable their children's behaviors and make excuses for their behaviors.

The mother continued to be noncompliant with the independent living program requirements. She seldom stayed at her apartment, preferring instead to stay with friends and family members. After a dispositional review hearing in September 2009, the court approved a plan to help the mother reunite with the child, but required the mother to make significant progress within the next review period. A week later, the mother sent a suicidal text message to the child's foster mother. The foster mother and a caseworker went to the mother's apartment and persuaded her to go to the hospital for an evaluation. The doctor recommended that she be admitted to the psychiatric unit, but the mother ran from the hospital.

That same day, the father appeared at his mother Terri's home under the influence of marijuana and/or alcohol. When he would not leave, Terri called the police. The father threatened to blow up his own mother's home, threatened to commit suicide, and reported he had taken an overdose of prescription medication. He was belligerent and physically aggressive when police officers arrived and attempted to take him into custody. Eventually, the father was taken to the hospital and placed under a psychiatric hold.

After this incident, the mother discontinued communication with DHS or service providers. She stopped visitation with the child and did not pay rent on her apartment. The foster mother reported the mother had taken a trip with a friend and was stranded in Kentucky. The mother returned to Iowa in late November 2009.

The State filed its petition to terminate parental rights on December 2, 2009. The mother resumed visitation with the child the following week, but it was

apparent to caseworkers that the mother's absence had damaged her bond with the child, who was then just over one year old. Otherwise, the mother's situation had remained primarily the same—she did not have stable housing or employment; she was not credible in regard to her contact with the father; she had not addressed her mental health issues; and she had not submitted to drug testing as required.

By the time the termination petition was filed in December 2009, the father had not had any contact with the child since July 2009, and any other involvement on his part throughout the proceedings had been minimal. However, Terri maintained regular visitation with the child throughout the proceedings until January 2010, when she moved to Kentucky. Terri and her husband (the father's stepfather) received permission through the interstate compact process to be an adoptive placement for the child, which would allow the child to maintain a relationship with her half-sibling who was adopted by Terri in 2006.

Following a hearing taking place on January 7 and March 16, 2010, the court entered its order terminating the father's parental rights pursuant to Iowa Code section 232.116(1)(b), (e), and (h), and the mother's parental rights pursuant to section 232.116(1)(h). The parents now appeal.

## **II. Standard of Review.**

We review termination proceedings *de novo*. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Although we are not bound by them, we give weight to the district court's findings of fact, especially when considering the credibility of witnesses. Iowa R. App. P. 6.904(3)(g); *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). The parent-child relationship is constitutionally protected.

*Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978). The State has the burden of proving the grounds for termination by clear and convincing evidence. *In re P.L.*, 778 N.W.2d 33, 34, 39 (Iowa 2010); *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

### **III. Grounds for Termination.**

The father contends clear and convincing evidence does not support termination under Iowa Code sections 232.116(1)(b), (e), and (h). The mother contends clear and convincing evidence does not support termination under section 232.116(1)(h). We may affirm the termination if facts support the termination of a parent's rights under any of the sections cited by the juvenile court. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We focus our analysis in this appeal on section 232.116(1)(h). Termination is appropriate under that section where the State has proved the following:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated CINA.
- (3) The child has been removed from the physical custody of the parent for at least six of the last twelve months.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents at the present time.

Iowa Code § 232.116(1)(h). There is no dispute the first three elements have been proved as to both parents. Our inquiry therefore focuses on whether there is clear and convincing evidence the child cannot be returned to the care of either parent at the present time. See *id.*

*Father.* The father argues that “[t]here was basically no substantial evidence that [he] could not take care of the child at the present time.” He contends that “had he been given more opportunities to be treated for his

substance abuse issues and had the Court done more testing it would have learned that he was not addicted to drugs or alcohol.”<sup>3</sup>

The father has been offered extensive remedial, family support, visitation, and substance abuse treatment services since September 2008. Despite the offer of these services, the father’s involvement in these proceedings has been minimal. His participation in weekly supervised visitation with the child was not consistent. In April 2009, he notified DHS that he would no longer attend his supervised visitation. In July 2009, DHS learned he had been around the child, despite court orders that he was not to have unsupervised contact with the child. There is no evidence that he has had contact with the child since that time.

Further, the father failed to provide his social history information, attend family team meetings, participate in substance abuse treatment, submit to drug testing, provide financial support for the child, or request that custody of the child be placed with him. The father has stated during these proceedings that he continues to use marijuana. The father did not appear at the March, July, and October 2009 review hearings. He also did not appear at the termination hearings in January and March 2010, when the court noted that “his current whereabouts are unknown” to DHS and service providers. We agree with the juvenile court that the record contains clear and convincing evidence the child

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<sup>3</sup> To the extent that this contention is essentially an argument that reasonable efforts were not made for reunification, we conclude the issue has been waived. These proceedings began in September 2008. The father has had contact with DHS and the court on at least several occasions since then, and has been represented by an attorney who has appeared at review hearings. The father fails to indicate that he requested or otherwise challenged the adequacy of services prior to the termination hearing. A parent’s challenge to services by the State should be made when they are offered, not when termination of parental rights is sought after services have failed to remedy a parent’s deficiencies. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005).



cannot be placed in the father's care, and affirm the termination of the father's parental rights.

*Mother.* The mother contends there was no evidence that she "was not caring for the child properly or that she had placed the child at risk of harm." She further argues that "she had a safe, stable home she just chose not to live in it," and this fact "was not evidence [she] could not care for the child."

These proceedings were initiated in September 2008, when the child was born in Wisconsin after the mother had spent most of her pregnancy on the run from DHS and service providers. The mother was allowed a trial home placement in April 2009, but the child was removed in July 2009 as a result of a founded child abuse report. The report named the mother and father as perpetrators of denial of critical care, after an incident where the father was operating a boat while intoxicated, with the mother and child as passengers. The mother admitted that she was aware the father was drinking and that the father was not to have unsupervised contact with the child. Despite concerns about the mother's decisions and progress, in September 2009, the court approved a plan to help the mother reunite with the child. At the same time, the court indicated that the mother must make significant progress within the next review period to prevent initiation of termination proceedings.

The mother contends she has made efforts to change her lifestyle and become a safe and stable option for placement of the child, but the evidence in the record indicates otherwise. Shortly after the September 2009 review hearing, doctors recommended admittance to the psychiatric unit following a suicidal text message the mother sent to the child's foster mother. The mother was

hospitalized, but before she was discharged the mother ran from the hospital. The mother discontinued visitation with the child and communication with DHS and service providers from September to December 2009. She was stranded in Kentucky during part of this time. She had weekly supervised visits with the child beginning in mid-December 2009, but her bond with the child had been fractured.

As the juvenile court aptly noted:

[The mother's] participation in services has been inconsistent. She participates in the services that allow her to have ongoing contact with the child, but has made no consistent effort to participate in the services that would assist her in addressing the underlying issues which result in the child's ongoing placement in foster family care. The same immaturity, unresolved mental health issues and history of family dysfunction that prevented the mother from being able to safely care for her daughter at the outset of the CINA proceedings continue today virtually unchanged and, unfortunately, the offer of appropriate services has not resulted in the necessary change. The mother's decision to leave Iowa, with permanency issues looming, to remain absent for nearly two months, to fail to communicate with DHS, and, most importantly, to have her visitation with her daughter interrupted as a result, is a clear example of the way that the mother's immaturity and mental health/emotional issues negatively impacts her ability to provide a safe, stable home for her daughter. Perhaps with additional time, the mother will mature and show the stability necessary to parent a young child. Unfortunately, additional time would come at the expense of the child's need for permanency and security.

We agree with the juvenile court that the child cannot be returned to the mother's care at the present time or anytime soon. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (noting evidence of a parent's past performance may be indicative of the quality of the future care that parent is capable of providing). The mother does not have an unlimited time to correct her deficiencies. See *In re H.L.B.R.*, 567 N.W.2d 838, 845 (Iowa Ct. App. 1997). Clear and convincing evidence supports termination of the mother's parental rights.

#### **IV. Best Interests.**

Both parents contend termination is not in the child'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. In determining best interests, 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." *Id.* Taking these factors into account, we conclude the child's best interests require termination of the father and mother's parental rights. The child is an adoptable age, and is in need of permanency and security. Neither parent is able to provide for the child's long-term nurturing and growth. It would be a detriment to the child's physical, mental, and emotional condition to maintain these parent-child relationships.

Termination of parental rights is in the children's best interests, see Iowa Code § 232.116(2), and no factor weighing against termination in section 232.116(3) requires a different conclusion. The possibility the child may be placed in a relative placement with Terri (as an intervenor in this action) does not outweigh the child's need for permanency that termination can achieve. Further, any bonding between mother and the child has been disrupted, and undoubtedly lessened, by the mother's two-month absence in the midst of these proceedings. We therefore affirm.

**AFFIRMED ON BOTH APPEALS.**