

**IN THE COURT OF APPEALS OF IOWA**

No. 1-069 / 10-1837  
Filed February 23, 2011

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

**M.A.P., Mother,  
Appellant,**

**D.M.R., Father,  
Appellant.**

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Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, District Associate Judge.

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

Joseph C. Pavelich, Iowa City, for appellant mother.

Noelle Murray of Stein, Moore, Egerton & Weideman, L.L.P., Iowa City, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Janet M. Lyness, County Attorney, and Emily Voss, Assistant County Attorney, for appellee State.

Sarah J. Majerus, Iowa City, for minor child.

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

**DOYLE, J.**

A mother and father appeal the termination of their parental rights to their child. Both parents contend the State failed to prove the grounds for termination. Additionally, the mother argues termination of her parental rights was not in the child's best interests. Upon our de novo review, we affirm on both appeals.

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

The father is married but has been separated from his spouse for many years. The father has two other biological children, not at issue in this case, to whom he voluntarily terminated his parental rights many years ago. Additionally, the father has a history of substance abuse.

Beginning in approximately 2005, the father developed several mental health conditions. He has since been diagnosed with agoraphobia, as well as a panic disorder and social phobias. Although medication has been prescribed, the father does not take any medication.

The father's panic disorder involves his belief that he must have fast access to the University of Iowa Hospitals and Clinics at all times. The father's panic attacks are especially triggered by bad weather. When he fears he would be unable to get to the hospital because of bad weather or traffic, he will drive to the hospital and sit in its parking lot before inclement weather begins or before traffic builds on the street on which he lives. Prior to his relationship with the mother, he spent two and a half months living in his van in the hospital's parking lot because of a panic attack. If he is not already at the hospital, the father has a daily routine that requires him to go across the street from his apartment before the rush hour to avoid traffic so he will be able to access the hospital quickly from

a nearby bike path on his scooter. Although the father can carry out his routines by himself, he frequently requires assistance from others.

The mother also has been diagnosed in the past with an anxiety disorder and social phobias, as well as posttraumatic stress disorder. The mother has three other biological children, not at issue here. The mother's parental rights were terminated to two of those children, based upon the mother's then substance abuse, mental health issues, legal troubles, housing issues, and an overall lack of stability. Following her release from federal prison after a drug conviction, she voluntarily terminated the rights to her third child, who was ultimately adopted by the mother's brother. The brother has allowed the mother to maintain contact with that child in an aunt capacity.

The parents began dating in approximately 2008. Both parents have become each other's primary support system. Both parents receive social security disability income based upon their mental health diagnoses. The mother initially lived with the father, and she regularly assists him when he is having mental health issues, including helping him cross the street or bringing him food and water when he parks himself in the hospital parking lot.

After the mother became pregnant with R.A.R., the father developed an anxiety about being separated from the mother. The mother was generally not able to leave the father's side when the father was awake from winter 2008 until May 2009.

R.A.R. was born in April 2009. The father was not present for the child's birth because he feared the hospital's sixth floor was too far away from the hospital's exit. The mother received multiple calls from the father following the

birth, and because of those distractions, she spent very little time with the child. The mother left the hospital the day after the child's birth against medical advice, to attend to the father's needs, and the child was left at the hospital. The mother then returned to the hospital and was successfully discharged with the child. The mother's departure from the hospital without the child was reported to the Iowa Department of Human Services (Department), and a child in need of assistance (CINA) assessment was opened by the Department.

In May 2009, the father reported to the Department that the child was not safe in the parents' apartment, after the parents had a fight and the mother left the apartment with the child. The father stated that the mother was losing her mind and that he did not want to care for the child. The child was then removed from the parents' care and placed in family foster care.

The State filed a petition asserting the child was a CINA, and a hearing on the petition was held. Although the father did not personally appear, both parents stipulated to the child being adjudicated as a CINA. Thereafter, the court entered its order adjudicating the child a CINA and continuing the child in family foster care. Services were offered to both parents, including mental health services, parenting services, transportation services, housing services, the WIC program, the Family Investment Program, Title XIX, and food stamps.

The mother made progress during the case. She did not abuse substances. She obtained her G.E.D. She began attending therapy. She completed a thirty-day job training program, and although she had not obtained employment, she planned to work during the summer. By the time of the termination hearing, the mother had secured an apartment in a transitional

boarding house for persons with serious mental illnesses, sharing common areas and amenities with other tenants of the home. She had regular visitation with the child, missing few visits.

However, throughout the pendency of the case, the Department consistently maintained that the mother should sever her relationship with the father to demonstrate she was willing to put the child's needs ahead of the father's needs. Despite her other progress, she chose to continue the relationship with the father. She did not believe the father's mental health conditions to be a danger to the child, and she refused to end the relationship without any guarantee that her rights to the child would not be terminated.

The father generally did not participate in the case. He did not attend any family team meetings, though it was offered that the meetings be held at his apartment. He did not attend any court hearings. He had very limited contact with the child during the case. The father began having visitation with the child at the end of November 2009, with the mother present, about two to three times a week. The service provider reported that the mother did most of the caring for the child during the visit. The father did not attend visits held at the mall or the doctor's office. Although the visitation had progressed to semi-supervised in January 2010, the father reported to the Department that the visits were not safe for the child, and he requested the mother do visits away from him. The mother at one point reported that the father had threatened to harm the child, although the mother withdrew her report. The father did not have any further visits during the case after January 2010. Thereafter, the State filed a petition to terminate the parents' parental rights.

Hearings on the State's petition were held on May 25 and July 19, 2010. The father did not appear. On October 29, 2010, the juvenile court entered its order terminating both parents' parental rights pursuant to Iowa Code section 232.116(1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home) (2009). Additionally, the mother's parental rights were terminated pursuant to section 232.116(1)(g) (child CINA, parent's rights to another child were terminated, parent does not respond to services), and the father's parental rights were terminated pursuant to section 232.116(1)(b) (abandonment). The parents now appeal.

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

We review termination orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We are not bound by the juvenile court's factual findings, but we give weight to them, especially those that involve witness credibility. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

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

Both parents contend the State failed to prove the grounds for termination. Additionally, the mother argues that termination of her parental rights was not in the child's best interests. We disagree.

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

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(h) where there is 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.

There is no dispute the first three elements of this section have been proved. However, the parents contend there is insufficient evidence to show the child cannot be returned to the mother's care at the present time. Upon our de novo review, we find the State has met its burden.

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 six-month limitation for children adjudicated a CINA aged three and younger. Iowa Code § 232.116(1)(h)(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.

Here, the father did not participate in services in this case, and he had very minimal visitation with the child. While the father now maintains that his mental health conditions do not pose a danger to the child, the father has twice self-reported that he was a danger to the child, causing the child to be removed from the parents' care and changing visitation back to fully-supervised visits. The

father was not even able to attend the termination hearing due to his mental health conditions, evidencing that he is unable to put the child's needs before his own. Moreover, the father acknowledges that the child could not be returned to his care at the time of the termination hearing. Accordingly, we find the State has proved by clear and convincing evidence the child could not be safely returned to the father's care at the time of the hearing.

Additionally, although a much closer case, we agree with the juvenile court that the State has proved by clear and convincing evidence the child could not be safely returned to the mother's care at the time of the hearing. By the time of the termination hearing, the child had been out of the parents' custody for over six months. Although the mother had made many improvements in her parenting ability and life for which the mother is to be commended, the statutory six-month period expired concerning the child with little evidence that she could provide the necessary stability to parent the child safely. The juvenile court found:

[The mother] has been unable to be independent from [the father]. Knowing that [the father's] involvement in this case hampered her progress towards reunification, [the mother] was unable to put [the child's] needs ahead of [the father's]. [The mother] had consistently stated that she wants [the father] to continue to be involved in [the child's] life. [The mother] does not view [the father] as a danger to [the child]. She lacks any insight into the potential risk [the father] presents to [the child]. [The mother] seems fixated on establishing a family with [the father]. When asked if she would want [the child] returned to her care if the court ordered that [the child] have no contact with [the father], [the mother] responded, "probably not, no."

....

Based upon the lack of appropriate permanent housing, [the mother's] limited financial resources and inability to be fully employed, and [the mother's] insistence on maintaining a relationship with [the father],...[the child] cannot be safely returned to [the mother's] care now, or at any time in the foreseeable future.



Upon our de novo review of the record, we agree with the juvenile court's assessment. We therefore find the State proved the grounds for termination under section 232.116(1)(h).

***B. Best Interests.***

If a statutory ground for termination is determined to exist, the court may terminate a parent's parental rights. *P.L.*, 788 N.W.2d at 37. In considering whether to terminate, the court must then apply the best-interest framework established in section 232.116(2). *Id.* In determining the best interests of a child, the 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 agree with the juvenile court that the child's best interests require termination of the mother's parental rights. While we do not doubt the mother's love for the child, "[i]t is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *Id.* at 41. The record reveals the child cannot be returned to the mother at this time, and the child should not be forced to wait for permanency. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("[P]atience with parents can soon translate into intolerable hardship for their children."). "At some point, 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). The child should not be forced to endlessly suffer the

parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993). Given the mother's refusal to separate from the father, who poses a danger to the child, and put the child's needs first, we agree with the juvenile court that termination was in the child's best interests.

***IV. Conclusion.***

Because we find there was clear and convincing evidence the child could not be safely returned to the parents' care at the time of the hearing, we agree with the juvenile court that the State proved the grounds for termination under section 232.116(1)(h). We further find termination of the mother's parental rights was in the child's best interests. Accordingly, we affirm the decision of the juvenile court terminating the parents' parental rights.

**AFFIRMED ON BOTH APPEALS.**