

**IN THE COURT OF APPEALS OF IOWA**

No. 1-1016 / 11-1871  
Filed February 1, 2012

**IN THE INTEREST OF J.B.,  
Minor Child,**

**W.B., Father,**  
Appellant,

**K.B., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A mother and father separately appeal the district court's ruling terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

Timothy K. Wink of Schweitzer & Wink, Columbus Junction, for appellant father.

Sara Strain Linder of Tindal Law Office, P.L.C., Washington, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Alan Ostergren, County Attorney, and Korie L. Shippee, Assistant County Attorney, for appellee State.

Joan M. Black, Iowa City, attorney and guardian ad litem for minor child.

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

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**VOGEL, P.J.**

Weston and Kelly separately appeal the district court's order terminating their parental rights to J.B., born 2004. The district court terminated Weston and Kelly's parental rights under Iowa Code section 232.116(1)(f) (child four or older, adjudicated CINA, removed from physical custody of parents at least twelve of last eighteen months, child cannot be returned to custody of parents at present time) and (g) (adjudicated CINA, court has terminated parental rights with respect to another child who is member of same family, parent continues to lack the ability or willingness to respond to services that would correct the situation, additional period of rehabilitation would not correct the situation) (2011). We affirm.

Our review of termination of parental rights proceedings is de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Where parental rights are terminated on more than one statutory ground, we need only find grounds under one section to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

Kelly asserts the State failed to prove by clear and convincing evidence the grounds for termination under Iowa Code section 232.116(1)(f) and (g), and that termination is not in J.B.'s best interests. Weston asserts that the State failed to prove by clear and convincing evidence the grounds for termination under Iowa Code section 232.116(1)(g), that the Iowa Department of Human Services (DHS) had not utilized reasonable efforts to return J.B. to the home, and that termination is not in J.B.'s best interests.

This family came to the attention of DHS in July 2008, due to allegations of denial of critical care, including J.B. being locked in his room for long periods

of time, while not being provided food and being forced to urinate in the bedroom, deplorable home conditions, and domestic violence. On October 15, 2008, J.B. was adjudicated a child in need of assistance.<sup>1</sup> Since that time, this case has been subject to several hearings, district court orders, and two appeals to our court based on (1) procedural grounds and (2) modification of a permanency order.<sup>2</sup>

The largest obstacle facing both Weston and Kelly has been their lack of willingness to respond to services that would correct the situation that led to J.B.'s removal. Therefore, we address each parent's appeal with the district court's findings under Iowa Code § 232.116(1)(g)(3). For the past three years, DHS has been working with the family toward the goal of reunification. Since 2008, Weston and Kelly have together or separately been offered numerous services, including individual and couples counseling, anger management, mental health evaluations, mental health treatment, medication management, housing assistance, transportation, parenting skills, and supervised visits. DHS also made referrals to various community agencies that might be able to provide further assistance to the family, including the Veterans' Administration (for Weston) and county services.

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<sup>1</sup> J.B. has four siblings. The district court terminated parental rights to his younger brothers, S.B. and A.B., on September 2, 2011. Parental rights to his sister, H.B., were terminated by prior order of the court. The court previously placed his half-sister, K.G., in the custody of her biological father.

<sup>2</sup> On April 27, 2011, the Iowa Court of Appeals reversed the district court on procedural grounds, based on the district court's reopening the record and reconsidering its denial of termination following a motion by the State. *In re J.B.*, No. 11-0232 (Iowa Ct. App. Apr. 27, 2011). On August 10, 2011, the Iowa Court of Appeals affirmed the modification of a permanency order that ceased visitation between J.B. and his parents. *In re J.B.*, No. 11-0953 (Iowa Ct. App. Aug. 10, 2011).

Weston and Kelly, however, have often put their own needs and desires ahead of J.B.'s and have been unable to respond to his needs. Weston and Kelly's commitment to achieving reunification is questionable based on their missing scheduled visitations due to scheduling other things during the visits, as well as expecting DHS to work around Weston and Kelly's schedule. Jackie Davis, a care coordinator at Family Resources, testified at the termination hearing that due to concerns for the safety of the workers, there always had to be two workers present at visits, which created additional scheduling difficulties. DHS social worker Mindy Eckert also testified regarding Weston and Kelly's response to services, explaining:

We've been providing services for three years. We've been providing intensive services. We have looked outside the box. The parents don't recognize that there are any problems. They blame everyone else and believe that the others are to blame for where they are and that they don't have their children. It's hard to move forward and make changes when you don't see there is a problem. There has been no change. I looked back to the original family—or one of the first family team meetings in October of '08 what the goals were there. Very similar to what the goals are at the last family team meeting we had. The parents have not been able to make changes. They have not been able to stabilize themselves.

At the termination hearing, Weston stated that DHS did not provide adequate assistance and placed much of the blame on DHS social worker Eckert and care coordinator Davis. Davis acknowledged that although there were hard feelings between herself, Weston, and Kelly at times,

[Weston and Kelly] more argued with each other or argued about another worker. They did not—they would argue with me, but not as much as they argued with each other or talked about or blamed other people in the case.

When asked whether visits would have gone better with a different worker, Davis replied, “I do not believe so, because they—they would like someone for a brief amount of time until they start offering ideas for parenting or correcting how they are parenting, and then they gain hard feelings towards that worker.”

Based on the record before us, we conclude that grounds for termination were proved for both parents under Iowa Code section 232.116(1)(g) because there is clear and convincing evidence that both Weston and Kelly continue to lack the ability to respond to services that would correct the situation, and an additional period of rehabilitation would not correct the situation. We further find Weston’s argument regarding the State’s failure to make reasonable efforts for reunification must fail, as it was not properly preserved for our appellate review. See *In re C.H.*, 652 N.W.2d 144, 148 (Iowa 2002) (stating that as to reasonable efforts, “if a parent fails to request other services at the proper time, the parent waives the issue and may not later challenge it at the termination proceeding” and further stating “[i]f a parent has a complaint regarding services, the parent must make such challenge at the removal, when the case permanency plan is entered, or at later review hearings”).

Weston and Kelly also separately assert termination of their parental rights is not in J.B.’s best interests. In assessing the best interests of the child, the court gives primary consideration “to the child’s safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.” Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). J.B. is in the care of foster parents and he is doing very well in this placement. School is also going

well for J.B. in the academic, social, and behavioral realms. Upon termination, J.B. is interested in living with his paternal grandfather in North Dakota, who is ready and willing for J.B. to come to his home.<sup>3</sup> In the last three years, neither Weston nor Kelly have demonstrated stability in their life, nor a consistent willingness to put J.B.'s needs first. *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) (“A child’s safety and the need for a permanent home are now the primary concerns when determining a child’s best interests.”). Therefore, the district court was correct in concluding termination of both Weston and Kelly’s parental rights was in J.B.’s best interests, under Iowa Code section 232.116(2), and none of the reasons not to terminate under Iowa Code section 232.116(3) apply.

**AFFIRMED ON BOTH APPEALS.**

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<sup>3</sup> An Interstate Compact on the Placement of Children home study was performed and approved in North Dakota on October 1, 2010.