

**IN THE COURT OF APPEALS OF IOWA**

No. 1-139 / 11-0073  
Filed March 30, 2011

**IN THE INTEREST OF J.M. and K.M.,  
Minor Children,**

**N.L.M., Mother,  
Appellant,**

**D.E.M., Father,  
Appellant,**

**J.M. and K.M., Minor Children,  
Appellants.**

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Appeal from the Iowa District Court for Jasper County, Thomas W. Mott,  
District Associate Judge.

A father, mother, and their two children appeal separately from the order  
terminating the parents' parental rights. **AFFIRMED ON ALL APPEALS.**

Meegan M. Keller, Altoona, for appellant father.

Joanie L. Grife of Steffens & Grife, P.C., Marshalltown, for appellant  
mother.

Patrick McMullen of Kaplan, Frese & Nine, L.L.P., for appellant children.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Attorney  
General, Michael K. Jacobsen, County Attorney, and James W. Cleverly,  
Assistant County Attorney, for appellee State.

Kathryn Walker, Newton, guardian ad litem.

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

**DOYLE, J.**

A father, mother, and their two children appeal separately from the order terminating the parents' parental rights. Upon our de novo review, we affirm on all appeals.

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

D.M., the father, and N.M., the mother, are husband and wife. They are the parents of two girls, the children at issue in this case: K.M., born in October 1999, and J.M., born in October 2001. N.M. was sexually abused as a child by her father, and she received extensive therapy at that time to help her cope with the abuse.

N.M. is also the mother of T.B., born in August 1996, and another child, of whom A.B. is the father. T.B. initially lived with A.B. and his wife. In 2006, T.B. went to live with N.M. after the Iowa Department of Human Services (Department) determined several reports of physical abuse against T.B. by A.B. and his wife were founded. Sometime after T.B. was placed in the mother's custody, she left T.B. in the care of the mother's father (T.B.'s grandfather), and T.B. reported she had been sexually abused by her grandfather. The Department began an assessment, and the report was ultimately founded by the Department. The Department worked with the mother concerning the abuse, and a safety plan was put in place. The mother appeared to be making appropriate decisions to ensure no further abuse occurred. The Department allowed the children to stay in the mother's custody.

On July 12, 2008, the mother walked in on her husband and her eleven-year-old daughter T.B. T.B. was naked, and D.M. was lying over her. The mother immediately gathered her children and left the home. After talking to a relative, the mother went to speak with law enforcement officials to report the incident. T.B. reported that D.M. had penetrated her vagina digitally and that it had happened more than ten times since March 2007. T.B. also reported that D.M. had kissed her breast during that day's incident. A sexual assault examination was performed on T.B., and D.M.'s saliva was found on the child's breast.

D.M. was arrested and jailed. The mother was told she and the children should have no contact with D.M. until the Department could further investigate. The children were allowed to return home and remain in the mother's custody. At that time, the mother was a stay-at-home mother, and D.M. had financially supported the family.

On July 22, 2008, while D.M. was in jail, the mother wrote him a letter. The letter stated that their daughters missed D.M., and the mother offered to meet D.M. somewhere with the girls so they could see D.M. after his release from jail. The mother also asked D.M. to contact her so she could figure out what to do concerning their house and various bills that were due.

The Department learned of the letter and also later discovered the mother had taken J.M. and K.M. to see the father after his release. The Department told the mother she could have no contact with D.M. or the children would have to be removed. The mother did not agree that she should not have any contact with D.M. The mother also stated she was no longer sure she believed D.M. had

abused T.B. and she was unsure what she actually saw when she walked in on D.M. and T.B. The mother further stated she wanted to talk to D.M. and hear his side of the story.

The State then filed an application to have the children temporarily removed from the parents' care, asserting the children's safety could not be assured in the mother's care due to the mother's contact with the father and her changed position concerning the sexual abuse of T.B. The children were subsequently placed in foster care. The mother continued to live with D.M.

On August 4, 2008, the State filed its petitions asserting K.M. and J.M. to be children in need of assistance (CINA). The parties stipulated to the adjudication, and the juvenile court thereafter adjudicated the children CINA. The children were placed in the custody of a relative.

A dispositional hearing was held in September 2008. The parties stipulated and agreed to certain recommendations by the Department, including that both parents would participate in individual therapy. In November 2008, the mother began seeing a licensed therapist for individual therapy.

The mother progressed to semi-supervised visitation with the children by February 2009. However, the visitation was moved back to fully-supervised following a review hearing in June of 2009. The court found in its June 2009 order that the case had not progressed since adjudication the prior year. The court explained:

Besides choosing to doubt her daughter [T.B.] about the sexual abuse by her husband, [D.M.], [the mother] has not cooperated with individuals trying to render rehabilitative efforts, nor with [the children's foster relative] and the children's social worker. The . . . worker who provides services in the [family's] home complained

that [D.M.] twice lost his temper and yelled at her in front of the children and made her feel threatened. [The mother] acted profane, angry, and demanding with her. The worker asked to be relieved from the case. . . .

The relationship between [the parents] and [the foster relative] has become strained. [The foster relative] had to set limits on [the mother's] calls and text messages. She had to consult a lawyer for a temporary restraining order against too much contact from [the mother]. This has complicated logistics for [the mother's] visits.

[The girls' therapist] reported . . . that she met both girls for weekly treatment since last September [2008]. . . . [The therapist] felt they were progressing well in therapy. Once their visits with [the mother] went to unsupervised visits; however, the girls came to their sessions visibly anxious. They began having difficulty keeping their focus during therapy. . . . From [the children's] statements and from their observed behavior, [the therapist] sees indications that [the mother] blurred the proper boundaries of conversation during the weekend and overnight visits and suspects [the mother] coached [the children] not to talk to [the therapist]. . . .

. . . .  
[The mother] depends on [D.M.], both financially and emotionally. She chose to reside with him over reunification with [the children]. She has all but shunned [T.B.] so she can stay with [D.M.]. Her effort to exonerate [D.M.] on his sexual abuse of [T.B.] shows she lacks ability to protect her children. As long as she will not protect, or cannot protect them, all the efforts to help communicate with them seem peripheral to serious problems of abuse and neglect.

On October 9, 2009, D.M. was found guilty of indecent contact with a child relating to the July 2008 incident with T.B. In December 2009, D.M. was sentenced to serve not more than two years in prison. As part of his sentence, the no-contact order between D.M. and the children was extended to remain in effect for five years.

In February 2010, a permanency hearing was held. The mother's therapist testified by deposition that the mother had become less dependent on D.M. after he went to prison. The mother obtained a job, found a new place to live, and was making new friends. However, the therapist testified the mother's

therapy had mostly focused on helping the mother manage the stress involved in her life; the therapist did not believe the mother was ready to discuss her history of sexual abuse and the sexual abuse of her child. The therapist noted a pattern of sexual abuse in the mother's life, and she acknowledged she did not know if the mother could protect her children from sexual abuse.

The in-home service provider who had been working with the mother since July 2009 testified she believed the children's visits with the mother could progress to semi-supervised and that it was a possibility the children could be returned to the mother's care in the near future. However, she testified the children's therapist had reported the mother, who attended the sessions with the children, would not allow the therapist to discuss sexual abuse or anything along those lines with the children. She testified the mother needed to allow the girls to discuss whatever needed to be discussed in therapy for the case to progress. The Department's worker and the in-home worker both testified the children had told them they wished to return home. Nevertheless, the Department and the children's guardian ad litem (GAL) recommended the parents' parental rights be terminated.

Following the hearing, the court entered its permanency order, finding:

The pattern of incestuous child sexual abuse by the older males in [the mother's] family must come to a stop now. [The mother] has not stopped it; she has instead resisted doing what might be done and must . . . be done to stop it. She shows no indication she will stop it in the future, and she thereby shows she would allow the exposure of her children to a continuation of the pattern as if it were inevitable.

The court concluded:

The children will not be able to return to their mother's home within six months, or for any foreseeable extended time, because their father sexually abused his stepdaughter, the girls' older half-sister, but the girls' mother, against all logic and normal maternal instinct, defends him; in so doing blames the girl victim for her own sexual abuse.

The court noted the parents did "not request additional services beyond those extensively provided and offered services which have not sufficed so far." The court then directed the State to file a petition to terminate the parents' parental rights. The court also instructed that the Department could discontinue reasonable efforts and services toward the formal goal of reunification. In April 2010, the Department restricted all visitation for the mother, and the mother had no further contact with the children after that time.

On June 10, 2010, the State filed its petition to terminate the parents' parental rights.<sup>1</sup> In October 2010, a separate attorney was appointed to represent the children because the children were not in agreement with the recommendations of the GAL.

Hearing on the petition was held December 9, 2010. At that time, the father had been released from prison and appeared for hearing, though he did not testify. The mother testified she had not seen the father until the day of the hearing. She testified she believed the children could be returned to her care at that time and she could protect them from sexual abuse. However, she testified she still did not believe D.M. had sexually abused T.B., stating that T.B. had always been trouble. She further testified she would remain married to D.M. but

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<sup>1</sup> The mother appealed the juvenile court's permanency order. On June 9, 2010, the Iowa Supreme Court entered an order determining the appeal to be a request for interlocutory appeal because the juvenile court's permanency order was not a final order. The court then denied the mother's interlocutory appeal.

live separately from him if the children were returned to her care and that she would keep the children from D.M. The mother testified she was aware D.M. had not successfully completed the sex offender treatment program in prison because he denied sexually assaulting T.B.

The Department's worker who began working with the children in June 2010 testified the girls, who were then placed in separate foster families, were doing well with those families. The worker testified the foster families were prospective adoptive families for the children. However, the worker acknowledged the children repeatedly stated they wished to return home. The children's GAL and the Department's worker recommended termination of the parents' parental rights.

On December 30, 2010, the juvenile court entered its order terminating the parents' parental rights pursuant to Iowa Code sections 232.116(1)(d) and (f) (2009). The court explained:

[D.M.] sexually abused the girls' half-sister when that girl was eleven years of age, about the age [K.M.] is and [J.M.] soon will be. [The mother] will not protect them from sexual predation by [D.M.], nor apparently from sexual predation by anyone. She exposed the girls' half-sister to the same man, her father, who sexually abused [the mother] herself. She did so by leaving that girl alone with him in his home, and she denies the obvious sexual abuse her husband [D.M.] perpetrated on [T.B.]. Regardless whether her father or her husband has personally sexually abused [J.M.] or [K.M.] yet, those two have demonstrated their propensity to do so, and there is no evidence they scruple to distinguish between girls related to them by consanguinity and girls not related by consanguinity. And apart from those two individuals in [the mother's] life, there are many other men who could enter her life in the future. In short, the argument that the sexual predators in her life have not molested these particular girls yet fails to persuade the court that they would not be exposed to serious risk of sexual predation of the court decided against termination of parental rights.



The father, mother, and children 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.**

The mother and children contend termination of the mother's parental rights was not in the children's best interests.<sup>2</sup> Additionally, both parents assert the juvenile court erred in finding reasonable efforts for reunification had been made by the State. Finally, both parents argue the State failed to prove the grounds for termination under section 232.116(1)(f). Upon our de novo review, we disagree.

### **A. Reasonable Efforts.**

We first address each parent's challenge that the juvenile court erred in finding the State made reasonable efforts to reunite the children with the mother and the father. "Reasonable efforts" are defined as:

the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family's home. . . . If returning the child to the family's home is not appropriate or not possible, reasonable efforts shall include

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<sup>2</sup> The father also contends the court erred in determining it was in the children's best interests to terminate the mother's parental rights. Because he does not have standing to so argue, we will not address his claim. See *In re D.G.*, 704 N.W.2d 454, 459-60 (Iowa Ct. App. 2005) (stating that one parent cannot assert facts or legal positions pertaining to the other parent as the court makes a separate adjudication as to each parent).

the efforts made in a timely manner to finalize a permanency plan for the child.

Iowa Code § 232.102(10)(a). A child's health and safety shall be the paramount concern in making reasonable efforts. *Id.*

The State, through the Department, is required to "make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child." *Id.* § 232.102(7). Recognizing there are cases where it may be futile to offer services to parents, the Iowa juvenile code was amended in 1998 to permit the juvenile court to waive reasonable efforts when aggravated circumstances exist. *Id.* § 232.102(12). The State has the burden of proving by clear and convincing evidence the existence of aggravated circumstances justifying waiver of reasonable efforts to preserve and unify the family. *Id.*

Nevertheless, "[w]hile the State has the obligation to provide reasonable reunification services, the [parent] ha[s] the obligation to demand other, different, or additional services *prior to the termination hearing.*" *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999) (emphasis added). When a parent alleging inadequate services fails to demand services other than those provided, the issue of whether services were adequate is not preserved for appellate review. *Id.*; *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). Here, there is no evidence either parent ever requested additional services other than those provided. We therefore find neither parent has preserved error on this issue.

However, even assuming, *arguendo*, that either parent had properly preserved this issue for our review, we would still find both parents were provided

more than adequate services to promote reunification with their children. The reasonable efforts requirement is not a strict substantive requirement for termination. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Instead, the services provided by the Department to reunify parent and children after removal impact the State's burden of proving the child cannot be safely returned to the care of a parent. *Id.* The record here shows that since the case began over two years ago the Department offered or provided both parents numerous services to reunify the children with the mother and the father. We conclude the State has met its burden.

***B. Grounds for Termination.***

Additionally, the mother appealed the termination of her parental rights under section 232.116(1)(f), asserting the State failed to prove there was clear and convincing evidence the children could not be returned to the mother's custody at the time of the termination hearing.<sup>3</sup> Neither parent challenges termination of his or her parental rights under section 232.116(1)(d), the second ground found by the juvenile court in support of the termination of their parental rights, and we may thus affirm on that ground. "When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm." *S.R.*, 600 N.W.2d at 64. Both parents' failure to raise an issue regarding

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<sup>3</sup> The father also contends there is insufficient evidence to show the children cannot be returned to the mother's care at this time. Because he has no standing to so argue, we will not consider his claim. See *In re D.G.*, 704 N.W.2d at 459-60. Additionally, the father does not assert the children could be returned to his care. In any event, upon our review of the record, we find the State proved by clear and convincing evidence the children could not safely be returned to the father's care at this time.

section 232.116(1)(d) means they have waived that issue on appeal. See Iowa R. App. P. 6.903(2)(g)(3) (2009) (“Failure to cite authority in support of an issue may be deemed waiver of that issue.”). However, we elect to proceed to the merits of the challenged ground.

Termination is appropriate under section 232.116(1)(f) where there is clear and convincing evidence:

- (1) The child is four years of age or older.
- (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 twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child’s parents as provided in section 232.102.

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

It is often said in our termination cases that the law requires a “full measure of patience with troubled parents who attempt to remedy a lack of parenting skills.” *C.B.*, 611 N.W.2d at 494. But that statement is tempered with the reality that such patience has been built into the statutory scheme of chapter 232. *Id.* The legislature incorporated a twelve-month limitation for children adjudicated CINA aged four and older. 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 section 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.

Additionally, we agree with the juvenile court that the State has proved by clear and convincing evidence the children could not be safely returned to the mother’s care at the present time. By the time of the termination hearing, the children had been out of both parent’s custody for over two years. Although the mother had made some improvements in her life to become more independent from D.M. for which she is to be commended, the statutory twelve-month period expired with little evidence that she could provide the necessary supervision and protection to safely parent the children.

We recognize, as did the juvenile court, that these two children have fortunately not been abused. However, “[t]he future can be gleaned from evidence of the parents’ past performance and motivations.” *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). Here, the mother’s older child, T.B., was at least twice sexually abused while in the mother’s care. The first known incident occurred after the mother allowed T.B. to be left in her grandfather’s care, the very same man who molested the mother as a child. The second known incident, although T.B. later reported other incidents, was discovered when the mother walked in on the act being committed by D.M. Although initially she took steps to protect her children from D.M., she completely reversed her position and abandoned her support of T.B., even in light of the fact her husband’s saliva was found on then eleven-year-old T.B.’s breast and that he was ultimately convicted

of indecent contact with T.B. At the time of the termination hearing, despite the receipt of numerous services including individual therapy, the mother continued to turn a blind eye to the obvious and denied T.B. had been abused by D.M. Moreover, the mother abandoned T.B. and planned to continue her marriage to D.M. despite his abuse of T.B. Upon our de novo review of the record, we agree with the juvenile court that the State proved the grounds for termination as to both parents under section 232.116(1)(f).

**C. Best Interests.**

Additionally, the mother and children argue the juvenile court erred in finding termination of the mother's parental rights was in the children's best interests.<sup>4</sup> We disagree.

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.* The legislature highlighted as primary considerations: 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 children and the children's for her,

It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section

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<sup>4</sup> The father makes the same argument but has no standing to do so. We will not consider his claim. *In re D.G.*, 704 N.W.2d at 459-60.

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 that the children cannot be returned to the mother at this time, and the children 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), *overruled on other grounds by P.L.*, 778 N.W.2d at 33. 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). The children are now nine and eleven years old and in need of protection. Given the mother’s continuation of her relationship with D.M., who poses a danger to the children, and her denial of his sexual abuse against T.B., we agree with the juvenile court that termination was in the children’s best interests.

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

Upon our de novo review, although we conclude both parents failed to preserve error on the reasonable efforts issue, we find, in any event, the State met its burden in making reasonable efforts to reunite the children with both the mother and the father. Additionally, we find there was clear and convincing evidence the children could not be safely returned to the mother’s care at the time of the hearing, and therefore agree with the juvenile court that the State proved the grounds for termination under section 232.116(1)(f). Finally, we find termination of the mother’s parental rights was in the children’s best interests.

Accordingly, we affirm the decision of the juvenile court terminating the mother and the father's parental rights.

**AFFIRMED ON ALL APPEALS.**