

**IN THE COURT OF APPEALS OF IOWA**

No. 1-242 / 11-0268  
Filed May 11, 2011

**IN THE INTEREST OF I.H., F.G.H., M.J.H., A.J.H.,  
I.S.H., C.N.H., N.L.H., S.H., and S.H.,  
Minor Children**

**C.M.H., Mother,**  
Appellant,

**J.H., Father,**  
Appellant.

---

Appeal from the Iowa District Court for Harrison County, Mark J. Eveloff,  
District Associate Judge.

A mother and father appeal the termination of their parental rights.

**AFFIRMED.**

Jack J. White, Missouri Valley, for appellant mother.

Joel T. Niebaum, Missouri Valley, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Jennifer Mumm, County Attorney, and Judson Frisk,  
Assistant County Attorney, for appellee.

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

**TABOR, J.**

A mother and father separately appeal the juvenile court's order terminating their respective parental rights to nine children, who range in age from one to fifteen years. The parents argue that terminating their rights is not in the children's best interest because adoption by their foster families will result in separation of the siblings. Because the State presented clear and convincing evidence that the parents cannot provide a healthy environment for their sons and daughters, we find termination is in the children's best interests and affirm.

**I. Background Facts and Proceedings**

The Iowa Department of Human Services (DHS) first became involved with this family in September 2007, when the Council Bluffs Police Department took protective custody of the seven oldest children, who were then placed in foster care. A DHS report indicated the father and seven children were living in one hotel room; the mother had been gone for at least two days. The report further indicated that the couple's two-month-old twins "were found to be on apnea monitors, but were out of life sustaining medication for four days." The medication ensured the boys' hearts beat at a normal pace and did not stop. The report further detailed that the hotel room was "cluttered with clothing, food debris, and broken cigarettes mixed in with toys." On November 14, 2007, the juvenile court adjudicated these seven children as children in need of assistance (CINA).

An investigation revealed that the parents had been evicted from a home in Omaha, where they had lived for two years. The relatives reported the

parents and children had been in and out of their homes for years, the parents failed to maintain sanitary conditions when they stayed in their homes, and the parents frequently fought. The DHS report also indicated that the State of Nebraska and the Iowa DHS had received several reports on this family before the children's removal in September 2007.

The DHS further stated that "[s]ervices were provided [to the family] from September 2007 to March 2009 when maximum benefit was reached." It detailed the services rendered during those nineteen months as follows:

[S]ervices for visitation; foster care placement; drug evaluations; drug screens; mental health evaluations; AEA [Area Education Agency] evaluations for the children; mental health or remedial services for [several of the children]; recommended mental health or anger assistance for [another child]; and several community services were also offered to this family.

The family secured housing in Missouri Valley and the children started returning home in May 2008. An eighth child was born in July 2008. And, by September 2008, all of the children were placed back with the parents. In March 2009, the DHS caseworker advised the juvenile court to terminate jurisdiction because the family achieved the basic need-goals that had been set. The parents had their ninth child in December 2009.

On April 29, 2010, the Missouri Valley Police Department conducted a welfare check on the family because two of the children were missing from school for one full week. Officers took the children into protective custody due to the unsanitary and unhealthy living conditions in the home. The DHS report indicated all nine children were home alone, living in "deplorable conditions."

That same day, DHS case worker Kristy Hildreth came to the police station to meet with four of the children; she noted that the children were “extremely filthy”—with matted hair and bug bites. She reviewed an incident report and photographs that the police had taken of the family home. The house did not have functioning electrical power or running water. All of the rooms were filled with debris. Only one bedroom had sheets and they were filthy. The floors were littered with dirty, broken toys and torn-up feces-filled diapers. The officers found clogged toilets and feces smeared on doors, doorways, and a baby crib. Extension cords and scissors were easily accessible to the young children. The kitchen floor was strewn with rotting food, tin cans, beer bottles, garbage, dishes, silverware, and dirty clothes. Dishes caked with decayed food sat on the stove, sink, and kitchen counters. Foster mothers for several of the children reported to Hildreth that the children had extreme cases of head lice and decayed teeth; the youngest had a blistering diaper rash.

On May 6, 2010, the State filed a CINA petition. Following a June 22, 2010, hearing, the juvenile court approved the CINA adjudication pursuant to Iowa Code section 232.2(6)(b) and (c)(2). The court ordered that the children remain in family foster care and that the parents be allowed visitation at DHS discretion. The court further ordered that the family participate in child welfare services, and that the parents complete psychological evaluations and submit to random drug screens.

After the CINA adjudication, information relating to the parents' verbal and physical altercations, and drug usage came to light. During a family team meeting in June, the father stated that the mother was abusive toward him. He said they had physical altercations in the home about twice a week, verbal arguments daily, and that the children were present during the fights.<sup>1</sup>

In June 2010, both parents tested positive for drugs. The father was positive for methamphetamines; the mother tested positive for methamphetamines, cocaine, and benzoylecgonine. After the police removed the children from the parents' care, the father was charged with methamphetamine possession in Douglas County, Nebraska. He reported to a DHS worker that he was arrested for stealing a bottle of Tylenol and possessed methamphetamines and a pipe. The father is currently participating in drug court in Omaha, Nebraska.

A DHS worker recounted that the mother "has not shown a lot of initiative to complete the requested evaluations." The worker believed that "[the mother] is not ready to take responsibility for this situation as she has continued to not be truthful regarding her personal usage history." Although the mother told the DHS she started her chemical-dependency evaluation on December 8, she did not contact a DHS worker to provide the information on upcoming evaluations or to give DHS a chance to speak to the therapist. Moreover, the father "talked about drinking and [the mother] blamed it on [the father's] mom who comes

---

<sup>1</sup> A DHS report indicated that on July 11, 2009, "there was a report of domestic violence between [the father] and [the mother]. [The mother] had indicated [the father] choked her over an argument over money. [The father] was arrested and later [the mother] denied he had choked her but was restraining her."

home from work and asks [the mother] to have a drink with her.” In addition, the report indicated that the mother “is still adamant that the hair follicle test that led to positive results for methamphetamine, cocaine and benzoylecgonine was from living with people that were using illegal substance in an apartment.”

The juvenile court held a termination-of-parental-rights hearing on January 20, 2011, and entered an order terminating both parents’ rights on February 4, 2011. The court concluded the State presented clear and convincing evidence that parental rights should be terminated under Iowa Code section 232.116(1)(d),<sup>2</sup> (e),<sup>3</sup> and (h),<sup>4</sup> and that termination was in the children’s

---

<sup>2</sup> Iowa Code section 232.116(1)(d) provides that the court may order the termination of parental rights if the court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

<sup>3</sup> Iowa Code section 232.116(1)(e) provides that the court may order the termination of parental rights if the court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child’s parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. . . . This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child’s life.

<sup>4</sup> Iowa Code section 232.116(1)(h) provides that the court may order the termination of parental rights if the court finds that all of the following have occurred:

(1) The child is three years of age or younger.

best interests. The court highlighted the “the children’s need for permanency” in their lives and concluded “this would be met by being adopted by their current foster families.” The court further observed that the children were doing well in their placements and that it “appear[ed] that all would be adopted by their current placements.”

In a report to the juvenile court, dated March 16, 2011, the DHS explained the parent’s current status as follows:

[The mother] has not secured housing. She reported working part time, but would not share with this worker where she was working. [The mother] failed to follow through with the treatment plan set by the chemical dependency evaluation. [She] has failed to submit to random drug testing after November 2010. [She] has also failed to receiv[e] assistance for her mental health. To the knowledge of this worker, [she] has not followed through with the identified provider.

[The father] has remained in the day reporting center [of Nebraska’s drug court] since December 1, 2010. He is taking classes and working towards release from the center and drug court in Douglas County, Nebraska. [He] has struggled at times during his stay at the facility and he was placed in the jail for a period of time to receive medical and mental health assistance that is not offered at the DRC. Due to the struggles that [the father] has had, the drug court Judge has not released him.

Both the mother and father appeal the termination of their parental rights.

---

(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 at least six consecutive moths 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.

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

We review the juvenile court's decision to terminate parental rights de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010); *In re Z.H.*, 740 N.W.2d 648, 650 (Iowa Ct. App. 2007). We give weight to the juvenile court's factual findings, especially those regarding witness credibility, but we are not bound by them. *In re L.M.W.*, 518 N.W.2d 804, 805 (Iowa Ct. App. 1994).

## **III. Merits**

The mother argues the juvenile court inappropriately relied on the prior removal of the children when deciding to terminate her parental rights. She asserts those proceedings are "irrelevant to the termination proceedings, as those cases were closed with the children being in the custody of the parents." She also contends termination is not warranted because she has completed a substance-abuse evaluation, has complied with the recommended outpatient treatment, and has "apparently passed [random drug screens] successfully, as no claim is made by the Juvenile Court that said testing has shown substance abuse usage." She offers that "the housing requirements for home placement of these nine children has been obviously difficult and taxing for" her due to "space needs, location limitations, . . . [her] limited income, and the expense associated with appropriate housing for her family." She also urges us to reverse the termination because separating the children into different adoptive homes "will be harmful to their welfare."

The father argues that terminating his parental rights and permitting the foster families to adopt the children will result in "the permanent separation of



the siblings into various homes and family units, which will be detrimental to the long-term nurturing of the children and to their mental and emotional needs,” and general welfare.

The State bears the burden of proving grounds for termination under section 232.116(1) by clear and convincing evidence. *Z.H.*, 740 N.W.2d at 650–51. Our principle consideration in termination proceedings is the children’s best interests—their safety; long-term nurturing; and physical, mental, and emotional conditions and needs. Iowa Code § 232.116(2). However, even if the State demonstrates termination is appropriate, the court need not terminate if any of the circumstances listed in section 232.116(3) exist. *P.L.*, 778 N.W.2d at 37. When the juvenile court terminates parental rights on more than one statutory ground, we only need to find that the evidence supports termination on one of the grounds cited by the juvenile court to affirm. *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2002).

The mother challenges the first statutory requirement: that the State provide clear and convincing evidence that termination is warranted. The mother and father both raise a claim involving the second statutory inquiry: the best interests of the children. The third statutory provision is not at issue.

#### **A. Prior Proceeding**

The State asserts the mother failed to preserve error on her contention that the juvenile court improperly relied on the prior removal of the children when deciding to terminate parental rights. The State notes the mother did not object to the juvenile court taking judicial notice of the prior juvenile

proceedings. It further asserts that even if error was preserved, case-history records are relevant in termination cases.

When the juvenile court took judicial notice of the prior proceedings, neither parent voiced an objection. “It is incumbent upon the objecting party to lodge specific objections so the trial court is not left to speculate whether the evidence is in fact subject to some infirmity.” *State v. Mulvany*, 603 N.W.2d 630, 632 (Iowa Ct. App. 1999). And, “[e]very ground of exception that is not particularly specified is considered abandoned.” *Id.* These preservation rules are grounded in fairness and considerations of judicial economy, which “dictate that we not consider a contention on appeal which the trial court never had the opportunity to consider.” *Id.* The mother failed to preserve error on this issue and we decline to reach the merits.<sup>5</sup> See *In re D.A.W.*, 552 N.W.2d 901, 903 (Iowa Ct. App. 1996).

### **B. Substance Abuse and Difficulty Obtaining Housing**

The State points out that the “mother does not address the code provisions pursuant to which her parental rights were terminated. Instead, she argues that she complied with a substance abuse evaluation and she had difficulty finding housing for her nine children.” The State contends the mother waived any argument relating to the grounds for termination.

With respect to the merits, the State argues that the juvenile court properly terminated the mother’s parental rights “pursuant to Iowa Code

---

<sup>5</sup> Even if the issue were preserved, we would reach the same outcome in this case. See *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993) (opining that “[c]ase history records are entitled to much probative force when a parent’s record is being examined”).

sections 232.116(1)(d), (e), and (h) even though she complied with a substance abuse evaluation and she had difficulty finding appropriate housing.”

Although we have doubts whether the mother preserved her complaints concerning the statutory grounds for termination, we nevertheless reject her claims on the merits. Her argument focuses only on her substance abuse and financial strains. Notably, she fails to address the concerns that led to the children’s removal and CINA adjudication: the lack of a stable home and the unhealthy living conditions created by the parents when they did have shelter. After reviewing the record, we conclude the State presented clear and convincing evidence for termination based upon the unstable and unhealthy living conditions to which the children were routinely exposed when in their parents’ care.

The evidence demonstrates that the mother cannot provide adequate housing for the children. She readily concedes that she has had difficulty finding a residence to accommodate her nine children. As a March 16, 2011 DHS report indicates, she has not secured housing since the children were removed and her evasive and uncooperative attitude toward the DHS makes it unclear if she has secured a job, which would help abate her financial concerns and assist in procuring suitable housing. The evidence demonstrates that she persists in a relatively nomadic lifestyle in the sense that she has been unable to find a permanent home for herself, let alone her nine children.

The report also contradicts the mother’s assertions that she has complied with the recommended substance-abuse program:

[The mother] failed to follow through with the treatment plan set by the chemical dependency evaluation. [She] has failed to submit to random drug testing after November 2010. [She] has also failed to receiv[e] assistance for her mental health. To the knowledge of this worker, [she] has not followed through with the identified provider.

The evidence demonstrates a chronic pattern of living in extremely unsanitary conditions that are unsafe and unhealthy for the children. A brief reprieve in the circumstances that led to removal and adjudication as CINA will not preclude termination when the parents allow their household to fall into the same, if not worse, condition a second time. The mother has not demonstrated she can provide a safe, healthy environment for her children.

A DHS report summed up the parents' failure to improve on the deficiencies that caused their children to be removed twice, stating:

The significant circumstances that brought the . . . family to the attention of the Iowa Department of Human Services is a series of chronic issues. The parents have struggled to maintain sobriety over the years. They have struggled to maintain sanitary and appropriate housing for their large family. They have also struggled financially to support their family and have relied on the goodness of charity to provide for their children. [The mother] and [father] do not seem to have the ability to realize their responsibility in the current matter or for any past issues whether the Department was involved or not. The parents have at times appeared to be cooperative, but they both significantly lack in being honest with the Department or other professionals who have tried to work with the family.

It is unfortunate that this current matter has been open for over six months and [the father] and [mother] have not made any significant progress toward reunification efforts.

Because the mother has not been able to attain housing or maintain a safe environment for her children despite the receipt of services, we conclude the State satisfied its burden. Our court has often said: "Children simply

cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable.” *In re. T.J.O.*, 527 N.W.2d 417, 422 (Iowa Ct. App. 1994) (citation omitted). Those sentiments ring true for these nine children.

### **C. Separating Siblings**

Both the mother and father argue that termination is not in their children’s best interests because it will result in separating the siblings. The State counters that the children’s needs are best met by their current foster families and that the DHS has tried to place the children in the same general vicinity so they can maintain contact with one another.

The children’s best interest is our principal concern when determining whether to terminate parental rights; we consider the children’s safety and long-term nurturing, as well as their physical, mental, and emotional conditions and needs. Iowa Code § 232.116(2). Although the goal of the child welfare system is to keep brothers and sisters together whenever possible, “the paramount concern in these cases must be the child’s best interests.” *T.J.O.*, 527 N.W.2d at 420. The record shows that the children are doing well in their current placements and that the parents had considerable difficulty in providing a wholesome environment for all nine children. Given this contrast, the children’s needs are best served by terminating parental rights.

A parent’s past conduct is predictive of future conduct and the quality of care a child is likely to receive under that parent’s supervision. *N.F.*, 579 N.W.2d at 341. The mother’s history of bouncing from one residence to

another, her inability to establish a home while the children were out of her care, and her chronic history of subjecting the children to unhealthy living conditions persuades us that the children are likely to find themselves living either nomadic lifestyles or in unsafe conditions if they are returned to their mother's care. Neither is in their best interests.

These children need a permanent home that offers a healthy, supportive environment. They have lived in horrid conditions and have been abruptly removed from their home twice by law enforcement officers. They have lived in different homes and with different families over the course of the past few years. They were returned home only to face the same squalor that prompted the first removal. A DHS report indicated that the "children are [now] in four placements. Each placement is planning to adopt the children in their home." It explained that the foster homes are in close proximity to one another and that the families "plan on continuing sibling visitations and contacts, even when DHS is out of the picture."

Because the parents have not been able to attain housing or maintain a safe environment for their children and because the children need permanency, we conclude termination is in their best interests. As we have so often repeated in our termination cases: "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." See *In re D.A.*, 506 N.W.2d 478, 479 (Iowa Ct. App. 1993) (citation omitted).

**AFFIRMED.**