

**IN THE COURT OF APPEALS OF IOWA**

No. 1-370 / 11-0343

Filed June 15, 2011

**IN THE INTEREST OF O.C. and I.C.,  
Minor Children,**

**R.M.B., Mother,**  
Appellant,

**J.F.C., Father,**  
Appellant.

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Appeal from the Iowa District Court for Bremer County, Peter B. Newell,  
District Associate Judge.

A mother and a father separately appeal from a juvenile court order  
terminating their parental rights to two children. **AFFIRMED ON BOTH  
APPEALS.**

Ethan D. Epley, Denver, for appellant mother.

Brett H. Schilling of Schilling Law Office, P.C., Waterloo, for appellant  
father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, and Kasey Earl Wadding, County Attorney, for appellee.

Kelly Smith of Kelly J. Smith, P.C., Waterloo, attorney and guardian ad  
litem for minor children.

Considered by Vogel, P.J., Vaitheswaran, J., and Miller, S.J.\*

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

**MILLER, S.J.**

Regina is the mother, and Joseph the father, of O.C. and I.C. (“the children”) who were born in January 2009 and March 2010 respectively. The children were twenty-four and eleven months of age respectively at the time of a February 2011 termination of parental rights hearing. Regina and Joseph separately appeal from a February 18, 2011 juvenile court order terminating their parental rights to the children. We affirm on both appeals.

The children, then sixteen months of age and two months of age, were removed from Regina’s physical custody and placed in the temporary legal custody of the Iowa Department of Human Services (DHS) for foster care or other suitable care on May 25, 2010. The children’s removal was occasioned in part by Regina’s chronic instability and failure or refusal to provide consistent care for them. At the time of removal O.C. had lived with six or more different caretakers and I.C. had lived with three different caretakers. Regina would at times leave one or both of the children in the care of others for extended times and with little or no explanation for doing so. Even when she was present with the children, Regina would leave most of their care in the hands of the person or persons with whom they were living. Shortly before their removal Regina had taken the children from Bremer County to Des Moines in an attempt to stay with Regina’s previous foster mother, who refused to let them stay with her. In the early morning hours a relative of Joseph’s went to Des Moines to retrieve the children and Regina.

At the time of the children's removal Joseph had been in jail facing charges including sexual abuse and possession of marijuana from October 21, 2009 to December 7, 2009, when he was released on pre-trial release. He had been re-incarcerated on March 12, 2010, for violating pre-trial release conditions, and thereafter he remained in jail until sentenced to prison on January 18, 2011 upon convictions for, among other things, lascivious acts with a child. The sentences imposed on January 18 included a term of no more than ten years on the lascivious acts conviction.

On June 2, 2010, the State filed a petition alleging the children were children in need of assistance (CINA). Following a June 4, 2010 temporary removal hearing the juvenile court continued the children in the temporary legal custody of the DHS for placement with a suitable relative and ordered that Regina and Joseph participate in services to address mental health issues, anger management, relationship issues, parenting, and child safety and well-being. The court specifically ordered that Regina participate in a mental health evaluation and follow any recommendations, participate in parenting classes, be subject to random drug testing, refrain from using alcohol or mood-altering substances, obtain employment, and obtain housing, and that Regina, Joseph, and the children participate in a family-centered psychological evaluation.

In May 2010 Regina had told her previous foster mother that she would not submit to a drug test, as she had been using prescription drugs and marijuana and would be unable to pass a test. In late June 2010 Regina did participate in a substance abuse evaluation. She denied any consumption of

alcohol within the previous year and denied having ever used any controlled substance. A urinalysis was negative. Based on Regina's self-reporting, no treatment was recommended.

On July 2, 2010, the children were adjudicated CINA pursuant to Iowa Code section 232.2(6)(c)(1) (2009). The adjudication was based on a history of domestic violence between Joseph and Regina; Joseph's current, extended incarceration and unavailability; Regina failing to provide consistent care for the children; and chronic instability in the lives of the children. The juvenile court continued in effect its previous orders concerning custody and services, and Regina obtaining employment and housing.

In a late August 2010 disposition order, the juvenile court continued its previous orders as to custody, services, and Regina obtaining employment and housing. It noted a DHS report that Regina had told her previous foster mother in August that Regina intended to throw O.C. off a bridge and did not care what happened to O.C. The court noted that when Regina had taken the children to her previous foster mother's home in Des Moines on May 22, 2010, Regina had arrived with an individual who had previously stolen the foster mother's car and credit cards, and that the children had not been fed and their diapers had not been changed for an extended time.

By the time of a January 7, 2010 permanency hearing, Joseph had been sentenced to incarceration for dependent adult abuse. Regina had been missing visits with the children. The DHS reported that Regina had lied about attending parenting classes. The DHS recommended initiation of proceedings to terminate

parental rights. The juvenile court continued its previous orders as to custody and as to Regina's participation in services and obtaining employment and housing. It ordered that Joseph contact the DHS upon his release.

On January 7, 2011, the State filed a petition seeking termination of parental rights. Following a hearing the juvenile court ordered Regina's and Joseph's parental rights to both children terminated pursuant to Iowa Code section 232.116(1)(h) (2011) (child three or younger; adjudicated CINA; removed from parents' physical custody six of last twelve months, or last six months with any trial period at home less than thirty days; cannot be returned to custody of a parent as provided in section 232.102 at present time). The court also terminated Joseph's parental rights to the children pursuant to section 232.116(1)(j). Regina and Joseph separately appeal.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

*In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Regina first asserts the juvenile court erred in determining the children could not be returned to her custody. This implicates the fourth element of section 232.116(1)(h). That element is proved when the evidence shows the child cannot be returned to the parent without remaining a CINA. *In re R.R.K.*, 554 N.W.2d 274, 277 (Iowa Ct. App. 1995). The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one

that supported the child's removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

A September 30, 2010 psychological evaluation report concerning Regina, who had just recently reached her nineteenth birthday, diagnosed her as suffering from a reactive attachment disorder, an attention-deficit/hyperactivity disorder, a moderate conduct disorder, an adjustment disorder with depressed mood, and a personality disorder with narcissistic, anti-social, and borderline personality features. The evaluating psychologist recommended that custody of the children not be returned Regina until and unless she had participated in and benefitted from mental health therapy and had demonstrated a minimum of six months of employment and housing stability. The psychologist recommended that Regina participate in individual psychotherapy, and opined that without such therapy it was unlikely she would be capable of becoming an effective parent for her children.

Prior to the children's removal, the DHS recommended that Regina work with a Families Together program. That program involved working on relationship issues, communication, anger management issues, parenting, budgeting, and child development. Regina initially participated in the program but shortly discontinued her participation. Following the children's adjudication as CINA, it was recommended that Regina participate in the Early Access program for children and parents. Regina refused. The DHS recommended that she participate in the Healthy Families program. Regina refused.

In September 2010 Regina tested positive for marijuana. In December 2010 she posted pictures on her Facebook page that appear to show her consuming alcohol. Regina has not participated in any substance abuse treatment.

Despite Regina's multiple mental and emotional problems, she denies any need for treatment and has not dealt with those issues. Regina claimed at the termination hearing that she had been employed for two to three months, and had obtained housing with a friend three months earlier. However, although ongoing orders required that she acquire employment and stable housing, Regina had failed to provide any evidence to the DHS or service providers that she had done so. The juvenile court found Regina's claims of employment to be of "dubious credibility."

Regina has refused all services offered by the DHS, services that are necessary in order for her to be able to parent the children safely and appropriately. We conclude that the State has proved by clear and convincing evidence the fourth element of section 232.116(1)(h), that at the time of the termination hearing the children could not be returned to Regina's custody without remaining subject to the imminent threat of abuse or neglect that would cause them to remain CINA.

Joseph first asserts the juvenile court erred in finding the State had proved the grounds for termination pursuant to section 232.116(1)(h). He also asserts it erred in finding the State had proved the grounds for termination pursuant to

section 232.116(1)(j). His argument concerning the first of those two provision focuses, as Regina's did, on the fourth element.

For two reasons we reject Joseph's argument concerning section 232.116(1)(h). First, he argues only that the State did not prove the children could not be returned to Regina, an argument we have already rejected.<sup>1</sup> Second, on January 18, 2011, Joseph was sentenced to a term of no more than ten years imprisonment on a conviction for lascivious acts with a child, and was incarcerated at the time of the termination hearing. It is readily apparent the children could not be returned to him at the time of the termination hearing.

Having found grounds for termination of Joseph's parental rights pursuant to section 232.116(1)(h), we need not address his assertion concerning section 232.116(1)(j). See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (holding that when the juvenile court terminates on more than one statutory ground, we need only find grounds to terminate under one of the sections relied on by the juvenile court to affirm).

Regina asserts the State failed to provide her time to complete recommended services prior to termination of her parental rights. She has many, serious issues that need to be largely resolved in order for her to be able to parent the children safely and appropriately. Regina has to a large extent refused to participate in the services that have been offered and made available to help her deal with those issues. The services were available from mid-2010 to

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<sup>1</sup> *Joseph* may not assert the juvenile court erred in finding statutory grounds for terminating *Regina's* parental rights to the children. See, e.g., *In re D.G.*, 704 N.W.2d 454, 459-60 (Iowa Ct. App. 2005) (holding that a parent must advance that parent's own facts and reasons in a termination proceeding).



the February 2011 termination hearing. The State did not fail to provide adequate time. Rather, Regina failed to take advantage of the offered and available services.

Regina asserts the juvenile court erred in determining that termination of parental rights would be in the best interest of the children. She argues she has demonstrated she is capable of providing a stable home environment for the children. However, she has a history of failing to provide for the children's care. Regina has not clearly shown any stability in employment and housing. She has many unaddressed and unresolved issues. Regina has refused to participate in and benefit from the services that have been offered, were available, and are necessary in order for her to be able to provide a stable home environment and safe and appropriate care for the children. We reject her argument that she has demonstrated a capability to provide a stable environment for the children.

Regina claims a bond with the children. See Iowa Code § 232.116(3)(c) (providing the court need not terminate the parent-child relationship if it finds there is clear and convincing evidence termination would be detrimental to the child due to the closeness of the parent-child relationship). The DHS case manager testified that although each child appeared to be bonded to the other, neither appeared to be bonded to either parent. This opinion is fully supported by the facts. Prior to removal, Regina had largely left O.C.'s care to others. I.C. was removed from Regina at two months of age. Even at that age he had already been in the care of three other persons. Since removal, Regina's visitations with the children have never progressed beyond supervised

visitations. She has missed many scheduled visitations. There is not clear and convincing evidence that termination would be detrimental to the children because of a close parent-child relationship between Regina and them.

Joseph also asserts the juvenile court erred in determining termination of parental rights would be in the children's best interest. For two reasons we reject his assertion. First, he argues only that the court erred in determining the children could not be returned to the mother, an argument we have already rejected, and an argument that does not go to the issue of best interests. Second, to the extent his assertion might arguably be seen as relating to his relationship with the children, the evidence shows he has been missing from them for the great majority of their lives and in fact has no close relationship with either of them.

Giving primary consideration to the children's safety, to the best placement for furthering their long-term nurturing and growth, and to their physical, mental, and emotional condition and needs, see Iowa Code section 232.116(2), we agree with the juvenile court that termination of parental rights is in their best interest. We also find that none of the statutory exceptions set out in section 232.116(3) should serve to preclude the otherwise appropriate termination of parental rights.

**AFFIRMED ON BOTH APPEALS.**