

IN THE COURT OF APPEALS OF IOWA

No. 1-471 / 11-0578

Filed June 29, 2011

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

**R.M.H., Mother,
Appellant,**

**R.H.H., Father,
Appellant.**

Appeal from the Iowa District Court for Cerro Gordo County, Gregg Rosenblatt, District Associate Judge.

A mother and father appeal separately from a district court's order terminating their parental rights to their child. **AFFIRMED.**

Richard N. Tompkins Jr. of Tompkins Law Office, Mason City, for appellant mother.

Dylan J. Thomas, Mason City, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes and Kathrine S. Miller-Todd, Assistant Attorneys General, Carlyle Dalen, County Attorney, and Nichole M. Benes, Assistant County Attorney, for appellee State.

Mark A. Young of Young Law Office, Mason City, attorney and guardian ad litem for minor child.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

EISENHAUER, P.J.

A mother and father appeal the termination of their parental rights to their child. The father contends the State failed to make reasonable efforts to reunify him with the child. He also contends his motion for new trial should have been granted. The mother contends the State failed to prove the grounds for termination by clear and convincing evidence and the juvenile court erred in terminating her parental rights due to her close bond with the child. Both parents contend termination is not in the child's best interests.

We review termination of parental rights cases de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Our scope of review of a ruling on a motion for a new trial depends on the grounds asserted in the motion. *Roling v. Daily*, 596 N.W.2d 72, 76 (Iowa 1999). If the motion is based on a discretionary ground, we review it for an abuse of discretion. *Id.* But if the motion is based on a legal question, our review is on error. *Id.*

The child at issue, born in August 2007, first came to the attention of the Iowa Department of Human Services (DHS) in August 2008 based on allegations the mother was caring for the child while intoxicated and was abusing prescription medication. The child was adjudicated in need of assistance (CINA) and was in foster care for a month and a half. The case was closed in June 2009. The child was again removed from the parents' care in November 2009 and again adjudicated CINA. The child tested positive for methamphetamine. The child has been in foster care since the removal. Both parents have lengthy substance abuse histories and were unable to demonstrate sobriety for any significant period during the course of these proceedings.

The mother's parental rights were terminated pursuant to Iowa Code section 232.116(1)(h) (2009). In order to terminate under this ground, the State must prove by clear and convincing evidence the child is three years of age or younger, has been adjudicated in need of assistance, has been removed from the home for at least six of the past twelve months, and cannot safely be returned to the custody of the parents. Iowa Code § 232.116(1)(h). The mother only disputes the strength of the evidence showing the child cannot be returned to her care.

We conclude clear and convincing evidence shows the child cannot be safely returned to the mother's care. The mother had been receiving services to treat her substance abuse for over two years before the termination hearing was held. The evidence indicates the mother continues to consume alcoholic beverages. She was hospitalized in April 2010 for alcohol detoxification and then failed to complete in-patient treatment. She was again hospitalized for alcohol detoxification after relapsing in July 2010, with a blood alcohol concentration of .306. She either failed to provide a urine sample or provided a diluted urine sample for analysis the last six scheduled times before the November 2010 termination hearing. The mother cannot safely parent the child while abusing alcohol. As a result, we affirm termination of the mother's parental right pursuant to section 232.116(1)(h).

Both parents contend termination is not in the child's best interests. In determining best interests, we must consider 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. *P.L.*, 778

N.W.2d at 37. The evidence shows the parents' issues with substance abuse and their inability to successfully address these issues jeopardizes the child's health, safety, and welfare. The child has been exposed to methamphetamine while in the parents' care, testing positive for methamphetamine in December 2008 and November 2009. In April 2010, the child was on an unsupervised overnight visit with the mother, who was discovered to be intoxicated. The father knew the mother had been drinking, but elected to leave the child alone with her.

The future can be gleaned by the parents' past performance. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). At some point, the rights and needs of the child rise above the rights and needs of the parent. See *In re C.S.*, 776 N.W.2d 297, 300 (Iowa Ct. App. 2009). We agree termination is in the child's best interests.

We also agree the provision of section 232.116(3)(c), which states parental rights need not be terminated where "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship," is inapplicable. With regard to this exception, the juvenile court found that although there was evidence of the child's attachments to the parents,

the benefits of termination of parental rights outweigh any detrimental effects that termination would have on [the child] at this time, due to her need for permanency, the extended placement in her current foster home, and [the child]'s need for consistent safety,

stability, and permanent placement free of disruptions as she matures.

This finding is supported by the evidence and we adopt it as our own.

The father contends the State failed to make reasonable efforts to reunify him with the child. Iowa Code section 232.102(7) requires DHS to make reasonable efforts to return a child to their parent. Services are to be offered to improve parenting skills. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). A challenge to the sufficiency of such services should be raised when the services are offered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). Furthermore, the reasonable efforts requirement is not a strict substantive requirement for termination. *C.B.*, 611 N.W.2d at 493. Instead, the services provided by DHS to reunify parent and child after removal impacts the State's burden of proving the child cannot be safely returned to the care of a parent. *Id.*

The father argues the State should have allowed him additional visitation with the child. Assuming the father preserved error on this issue, we are unable to find additional visitation would have changed the outcome of the case. The main issue leading to termination was the parents' substance abuse. Additional visitation would not have addressed this issue.

Finally, the father contends the juvenile court erred in denying his motion for new trial. He argues new trial was warranted to show the drug test results between the November 15, 2010 termination hearing and the court's January 6, 2011 termination order. The trial court held a hearing on the motion. The father essentially asked the court to reopen the record to present new evidence. The father was allowed to testify about what had happened since the close of the trial

and the court reaffirmed its ruling terminating parental rights. We find no abuse of discretion.

The juvenile court order terminating the mother's and father's parental rights is affirmed.

AFFIRMED.