

**IN THE COURT OF APPEALS OF IOWA**

No. 1-643 / 11-0843  
Filed August 10, 2011

**IN THE INTEREST OF R.E.-V.,  
Minor Child,**

**T.V., Mother,**  
Appellant,

**J.V., Father,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

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

**AFFIRMED.**

John C. Heinicke of Kragnes & Associates, P.C., Des Moines, for appellant-mother

Patrick W. O'Bryan, Des Moines, for appellant-father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee.

Nicole Garbis Nolan, Youth Law Center, Des Moines, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

**POTTERFIELD, J.**

A mother, Tonia, and father, Jeremiah, separately appeal from the termination of their parental rights to their son, R.E.-V. Because the statutory grounds for termination have been met, termination is in the child's best interests, and no factor persuasively weighs against termination, we affirm.

**I. Background facts and proceedings.**

In November 2008, R.E.-V. was born to Tonia while she was married to another man, but he is the biological child of Jeremiah. Tonia has had her parental rights to four children terminated previously.<sup>1</sup> She has a long history of substance abuse, medical, and mental health problems.

R. was removed from Tonia and her then-husband's care when he was just days old. R. was placed in foster care with two of his half-siblings. He was adjudicated a child in need of assistance (CINA) in December 2008 because of the parents' neglect due to criminal, mental health, and substance abuse issues. The CINA adjudication was confirmed in January 2009 and R. remained in foster care.

Services were offered to Tonia and—after paternity testing—to Jeremiah. The case permanency plan adopted at the dispositional hearing required the following changes to allow the child to safely return home: “Tonia will live an alcohol and substance free lifestyle”; “Jeremiah will live an alcohol and substance free lifestyle”; and “Tonia will address her mental health needs and take

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<sup>1</sup> Tonia's rights to two children were terminated in 2002 due to her continued drug abuse. Her rights to two other children were terminated in 2007 due to continued marijuana and methamphetamine use, unresolved mental health issues, and instability.

medication as prescribed.” R. remained in the care of the same foster care family after a review hearing was held in March 2009 and the permanency hearing in May 18, 2009.

At the permanency hearing, Jeremiah stated he had substance abuse problems in the past, having used “[m]ethamphetamine, marijuana, hallucinogens, everything under the sun.” He stated he had not used any substances for two and a half years. “My bills are paid. My house is clean. I’ve completely changed my life. I’m a completely different person.” Jeremiah stated he was working full time as a professional mover, he travels “extensively for work,” and was making “very good money.” Jeremiah also stated he and Tonia lived together; she was not using any illegal substances; and she was addressing her mental health issues. Permanency issues were continued as the State indicated it intended to file a petition to terminate parental rights.

A June 29, 2009 termination hearing was scheduled, but continued due to a medical emergency of the mother. It was again continued to August 12, 2009. The paternal grandmother and step-grandfather moved to intervene, which was later granted.

On August 14, 2009, the court issued a ruling pursuant to Iowa Code section 232.104(2)(b) (2009)<sup>2</sup> in which the issue of permanency was continued.

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<sup>2</sup> Iowa Code section 232.104(2) provides:

After a permanency hearing the court shall do one of the following . . .

(b) Enter an order pursuant to section 232.102 to continue placement of the child for an additional six months at which time the court shall hold a hearing to consider modification of its permanency order. An order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for

The court found it was reasonably likely that the need for removal would no longer exist as of December 3, 2009, if the parents could demonstrate the following:

1. The ability to continually meet [R.'s] special medical needs. That includes maintaining the continuity of treatments and thoughtful consultation with health professionals, [R.'s] caregivers, the [Department of Human Services] DHS and [guardian ad litem] GAL.
2. Continued progress in their individual paths to living a recovery lifestyle.
3. [Tonia] will maintain her medication and the management of her medications and commit to long-term, regular therapy.
4. Each parent will be absolutely honest with providers, the Court, and forthcoming with information.
5. Each parent will do written relapse plans, including safety plans for [R.] detailing what will happen if either and/or both relapse.
6. The couple will do written planning demonstrating that they have thought through what will happen if they separate and/or [Jeremiah] is unable to work and/or [Tonia] is unable to care for [R.]

On December 3, 2009, after a hearing at which it was shown each parent had submitted written plans,<sup>3</sup> and had made sufficient progress that it appeared the child could be safely returned, the juvenile court found its aid was still required, but placed legal custody of the child with his biological parents and closed the termination file. At the hearing the court described the circumstances “like a miracle kind of case.” The court stated, “It’s been a long, hard road for the parents. They have worked hard.” And the court noted:

I need to reiterate, under the long-term kind of abuse problems that have existed in your family, I believe it is likely that

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the determination that the need for removal of the child from the child’s home will no longer exist at the end of the additional six-month period.

<sup>3</sup> In the event of relapse, both parents indicated R. would be taken care of by a “safe” person and each would seek substance abuse treatment. In the event of a breakup of the relationship, Jeremiah agreed that Tonia and R. would “stay at the house” and he would “continue to pay the bills so [R.] will continue to have a home.”

there will be a relapse. If that relapse is handled in a way that [R.] is protected, I do not believe the court would have any grounds to remove R. again from your care. But that means it is critical that you do exactly what you have outlined here.

If you do not, I think there is more than enough reason to remove [R.] from your care, and that what's called reasonable efforts that could be waived at that point, and that would mean we go directly to termination of your parental rights.

A review hearing was held in March 2010 and another was scheduled for August 24, 2010 (as the presiding judge was not available for the scheduled September date).

Unfortunately, circumstances in the family deteriorated. On August 6 the GAL sought an order modifying the permanency ruling. The GAL informed the court that the child had been left in the care of the former foster family for two days by Tonia. The motion alleged that R. had been taken frequently to be cared for by his former foster parents, had been exposed by his parents to known drug users, the family home was volatile, the mother's mental and physical health was poor, and the child was often dirty and his medical needs were not being met. The court did allow the child to remain in the care of the foster family and scheduled a hearing on the motion to modify.

Jeremiah and Tonia got married August 20, 2010.

At the hearing on the request to modify the permanency order, it became clear that neither parent had followed the relapse plans. And contrary to the safety plan in the event of a breakup, Jeremiah had ordered Tonia to leave the family home. On August 24, 2010, the court entered an order confirming the modification of placement based on findings of "volatility, homelessness, parents'

substance abuse and likelihood of continued violence.”<sup>4</sup> The court ordered that R. remain in the foster home where Tonia had taken him.

On August 26, 2010, the court filed additional handwritten findings, including the following:

At the time the court ordered [R.] to be returned to his parents’ care, each parent presented a safety plan. An issue as to whether [R.] could be returned to his parents’ custody was whether his mother would be able to protect [R.] when she was totally dependent for financial support on [Jeremiah]. Several times this summer [Tonia] made the decision to leave [Jeremiah]. She placed [R.] in a safe place with his previous foster family. She identified she could not continue to endure [Jeremiah]’s controlling behaviors though acknowledged he had a right to be upset about having to work so much.

From February to August [Jeremiah] was only home about 14 nights—he had limited contact with [R.]

The court then noted Tonia had been kicked out of the house by Jeremiah in June and again in August. The court’s findings continued:

[Jeremiah] did not allow [Tonia and the child] to remain in his home as his “safety plan” in December represented to the court.

It was critical to this judge that [Jeremiah] commit to providing for his wife + son if the couple had problems + as of August he no longer did so.

He has not participated in services actively since reunification—so the couple could while the court was still involved, work to solve their issues.

[Tonia], though working hard on parenting, has had continued health issues and not moved toward any self-sufficiency—she is still totally dependent on others.

So after months of services, things in the house had become unstable to the point of endangering [R.]’s stability and safety.

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<sup>4</sup> Sometime in early August 2010, after Tonia left R. with the foster family, Tonia and Jeremiah had an argument during which Jeremiah threw a fan at the wall, which bounced back and hit Tonia. Both parents had consumed alcohol. Jeremiah sat on Tonia and threw her telephone away. The police were called and Jeremiah was arrested for false imprisonment and obstructing an emergency call. On September 22, the State filed a notice of intent not to prosecute as “victim wants the charges dismissed.”

A review hearing was held on October 26, 2010, at which Jeremiah and Tonia each asked for a modification order returning R. to their custody. The court continued the hearing and rescheduled the review to be heard in conjunction with a renewed petition to terminate parental rights, which was filed December 2, 2010.

On December 22, 2010, and January 6, 2011, the review/motion to modify/termination hearing was held. Jeremiah was asked what his understanding was of why R. was removed from their care in August. He stated R. was "kidnapped" and taken for no reason. When the GAL asked him,

Q. Okay. Did you not hear at the time that the judge confirmed the order that one of the biggest reasons for the removal was your promise to her at the time that she did not terminate your rights the first time, that if there was ever a problem, that you would leave the home and not kick Tonia and R. out and that you, in fact, then did kick Tonia and R. out? Do you not remember her telling you that? A. That is not what happened. I did not kick her out.

Q. So Tonia was lying? A. No, and she never once said that. . . . It was a miscommunication between me and her. I was 2,000 miles away.

Jeremiah stated the foster family had made false accusations.

Jeremiah testified he had completed the relapse prevention program at MECCA Services, as had Tonia. He stated he had done all that DHS had required of him. He also stated he was working as much as possible and thus was unable to attend all the visits. He felt he was in a bind: if he did not work, he would be criticized; and when he did work he was criticized.

Jeremiah also stated Tonia was “perfectly fine” parenting R. despite the many medications she was taking.<sup>5</sup> He acknowledged that his long hours and days on the road “would cause [Tonia] a little bit more stress having to take care of our kid all by herself.”

He and Tonia both minimized the August incident that led to Jeremiah being arrested. They stated they had gone to a bar<sup>6</sup> to hear a band and argued about whose fault it was that R. was removed from their care. That argument continued as they went home. At home, each poured a (non-alcoholic) drink on the other. Jeremiah sat on Tonia’s lap to “get her to talk about it.”

Both parents indicated they were in counseling with their pastor. Jeremiah was asked, “Have you discussed at all with your counselor . . . that you’re controlling and abusive?” He responded,

Sure have. And if you follow the Bible, his exact words are the man is the king of the castle. So when I mentioned that I didn’t want [R.] to go to [foster mother], he stated that we should have discussed it and figured out a different path instead of just sending him there against my will.

Tonia’s take on the counseling is similar:

We learned that Jeremiah is the king, which would be Jesus, and I am the church, and we have to come together as one when we got married. And we need to—instead of one person making the decision, we need to both make a decision together, and we’ve

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<sup>5</sup> Tonia regularly takes eight medications—Depakote (“for bipolar”), Lexapro (depression) Abilify (depression), Lorazepam (anxiety), Gabapentin (for “nerve endings”); Tizanidine (“muscle relaxer”), morphine, and oxycodone (for pain). DHS expressed concerns about the level of opiates in her system as she had a history of substance abuse. Tonia testified she was under the supervision of her doctor, who monitored her levels. She stated her ability to parent was unaffected by the medications.

<sup>6</sup> Both stated they each had half a drink while at the bar.



learned how to deal with stressors. . . . We're learning about anger issues.

Tonia stated she has no overriding health issues that precluded her taking care of R. She stated her medications were under control and she did not believe her depression, anxiety, or bi-polar condition affected R. or her ability to care for him.

At the time of the December 2010 and January 2011 hearings the parents were receiving three supervised visits weekly with R. Julie Polz, the worker who provided supervised visits and in-home services stated that R. was exhibiting aggressive behaviors (pinching and biting) following visits. She did not recommend unsupervised visits or returning R. to the parents. "I just think there are too many unknowns and potential risks to move to that." Polz expressed concerns about the relationship between Tonia and Jeremiah in light of the August incident. She also had concerns about the level of opiates Tonia takes. Polz opined the child was "really struggling with not having permanency and the confusion of it all, and it's getting to him." She acknowledged there was a strong bond between parents and child. She also acknowledged Tonia was financially dependent on Jeremiah; dependent on others for transportation to do errands; and often used others' assistance when caring for R. and Jeremiah was on the road. She stated Jeremiah had made some progress and "slight improvement, she opined he "has a lot of anger and resentment towards things, and that really keeps him from trying to see what the next thing to do is. I think it really holds him back."

On May 18, 2011, the court issued its ruling. The court found in part:

The fall of 2010 seemed to be a repeat of what now was obviously a pattern that had not been so evident in the fall of 2009. The couple perfunctorily engaged in services, but failed to address the serious underlying issues. By the termination of rights hearing [Jeremiah] had finally completed a relapse prevention class. The couple was working with [Tonia's] pastor on their relationship issues.

There was however, absolutely no evidence that the couple was building a support system that would support them remaining sober over the long haul. As detailed in the social worker's termination of parental rights' report which the Court adopts as additional Findings of Fact in its entirety, neither [Jeremiah] nor [Tonia] accepted the need to follow the recommendations that could support long term recovery; create a support system for [Tonia] in managing her bi-polar disorder; and deal with the serious relationship issues that the couple continued to gloss over that seriously affect both [R.]'s emotional and physical well-being if left unresolved.

The bottom line as summed up by the social worker is "[Jeremiah] is unable to identify that [Tonia] does not have the ability to provide [R.] with a safe and secure home independently." When she has been challenged—he has blamed her. It is not her fault that she cannot provide full-time care for R. as her physical and mental health conditions are serious. It was her decision to marry [Jeremiah] however, and he has consistently taken the position that he would not make lifestyle changes himself, to assist her in the daily care of [R.] It is unknown, given his own issues, whether [he] could, if he chose, take care of a young child on his own. He has never regularly met with the FSRP worker even after [R.] was moved to foster care a second time. He did not consistently attend visitation, even though at his request, times were changed to accommodate his schedule.

The one positive: by the time of the termination of rights hearing, [Tonia] had obtained a diagnosis which probably explained one of her physical conditions. However, she also had been placed on significant prescribed opiates. Given [Tonia's] long term addiction and physical issues, this creates new issues that had not been addressed by the time of the hearing.

. . . .

The Court agrees with the conclusion of the FSRP worker. The second year was almost a replay of the first. The Court saw nothing in the parents' reactions to [R.'s] second entry into foster care that would produce any different result if [R.] were again returned to their care. At best the problems would be glossed over for a time, probably until [Jeremiah] chose to go back on the road when weather permitted. There was no evidence that changes had

occurred that would prevent another crisis. [R.] would then be moved again. He has settled into his foster home. He moved shortly after the modification order to a foster home known to him, but without the history of the family who had adopted two of [Tonia's] children. He has had continued contact with his half siblings, however.

R. is now two and one half years old and permanency can best be achieved by termination of the parents' rights so that he can be adopted.

After a lengthy discussion of possible exceptions to termination, the court found that "even though R. has bonds with his biological family, given all the dynamics within the family and his ability to bond with others, the Court Finds that it should not exercise its discretion to not terminate parental rights." The court further found it in the child's best interests to terminate his parents' rights, "so that he can be adopted by others who can meet his daily needs and provide him with a stable permanent home."

Both parents appeal. The father argues only that termination was not proper due to the strong bond between father and son. The mother contends the grounds for termination have not been met; and the court erred in failing to consider the best interests of the child and in finding the factors weighing against termination (here, the bond between parent and child) did not preclude termination.

## **II. Scope and standard of review.**

We review all termination decisions de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the district court's findings of fact, especially as to the credibility of witnesses, but are not bound by them. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). "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.” *Id.*; see Iowa Code § 232.116. “Clear and convincing evidence” means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. See *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983).

**III. Statutory grounds under Iowa Code section 232.116(1) have been proved by clear and convincing evidence.**

The court terminated Tonia’s rights pursuant to Iowa Code section 232.116(1)(d), (g), and (i) (2011).<sup>7</sup> Jeremiah’s rights were terminated pursuant to

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<sup>7</sup> The pertinent provisions of section 232.116(1) provide that “[e]xcept as provided in subsection 3, the court may order the termination” of parental rights on “any of the following grounds”:

d. 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.

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g. 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 court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family or a court of competent jurisdiction in another state has entered an order involuntarily terminating parental rights with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

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section 232.116(1)(d) and (i).<sup>8</sup> Where the court terminates parental rights on more than one statutory ground, we will affirm if at least one ground had been proved by clear and convincing evidence. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

There is clear and convincing evidence to support termination of each of Tonia's rights under section 232.116(1)(d). Tonia of course concedes her parental rights to her other children previously were terminated. See Iowa Code § 232.116(1)(d)(1). She does, however, contest there has been a sufficient showing of the second factor: "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." *Id.* § 232.116(1)(d)(2).

Upon our de novo review, we agree with the juvenile court that despite years of services, R. cannot be returned to Tonia without the risk of adjudicatory harm. Tonia continues to address mental health, substance abuse, and physical health issues—all of which affect her ability to care for the child. While Tonia insists that her depression, bi-polar disorder, and pain do not affect her parenting

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i. The court finds that all of the following have occurred:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

<sup>8</sup> Because the father does not dispute the existence of statutory grounds for termination, we do not discuss them as to the father. See *P.L.*, 778 N.W.2d at 40.

abilities, she also needed and took advantage of substantial assistance from others when R. was in her custody. There was evidence that R. spent several days a week and most weekends in the care of others because Jeremiah was on the road and unavailable to assist Tonia for extended periods of time. Visits continue to be fully supervised and there is insufficient history of her ability to care for the child independently while using the numerous prescription medications under which she operates. Tonia and Jeremiah clearly minimize and excuse Jeremiah's violence toward Tonia in August. Additionally, both failed to follow through on their own relapse plans. These unaddressed issues present a risk of harm to R. should he be returned to their care.

**IV. The district court did consider the factors of section 232.116(2).**

The mother summarily states the juvenile "clearly erred in terminating parental rights to the child as it failed to consider his best interest" citing section 232.11(2) and *P.L.*, 778 N.W.2d at 40.

While the district court may not have quoted section 232.116(2), we are convinced that the relevant factors were considered. The juvenile court addressed R.'s bond with the foster family as

committed and growing. They have known [R.] most of his life. He was placed with them because they were his daycare providers in the past. They are aware of the tensions that exist between the biological parents and R.'s first foster parents. However, they were easily able to integrate [R.] into their family and provide [him] the structure and consistency he needs.

They maintain regular contact with his half-siblings and are willing and able to adopt him.

The district court found termination to be in R.'s best interest.

Considering the factors enumerated section 232.116(2)(a), (b), and (c), Tonia's ability to provide the needs of the child is compromised by her mental condition; the child has been placed in foster family care and has become integrated into the foster family; and the foster family has indicated they are able and willing to permanently integrate the child into the foster family. Upon our de novo review, and "giv[ing] 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," we agree with the district court that termination is in the child's best interests. Iowa Code § 232.116(2).

**V. Termination is not precluded by the closeness of the parent-child relationship.**

Both parents argue that the district court should have exercised its discretion and found that the closeness of the parent-child bond precluded termination here. See *id.* § 232.116(3)(c) (noting the court "need not terminate" if "[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"). While all agree there is a bond between mother and child and father and child, the court found—and the record supports—that the child is also bonded with many others. This child is in need of permanency, having spent most of his young life out of the care of his parents. We, like the district court, agree that permanency can best be achieved by termination of parental rights.

**AFFIRMED.**