

**IN THE COURT OF APPEALS OF IOWA**

No. 1-652 / 11-0998  
Filed September 8, 2011

**IN THE INTEREST OF J.M.,  
Minor Child,**

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

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

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

A mother and father each appeal from the juvenile court's order terminating their parental rights. **AFFIRMED.**

Bryan P. Webber of Carr & Wright, P.L.C., Des Moines, for appellant father.

Nancy A.S. Trotter, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman and Kathrine S. Miller-Todd, Assistant Attorneys General, John P. Sarcone, County Attorney, and Kevin J. Brownell, Assistant County Attorney, for appellee State.

M. Kathryn Miller of Juvenile Public Defender Office, Des Moines, attorney and guardian ad litem for minor child.

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

**POTTERFIELD, J.****I. Background Facts and Proceedings**

This family came to the attention of the Iowa Department of Human Services (DHS) in July 2009 when J.M.'s older brother attempted to suffocate her with a pillow. J.M. was five years old at the time, and her eight-year-old brother had a history of aggressive behavior toward her. The parents had a history of DHS involvement for several incidents of denial of critical care. The family had been involved with DHS on a voluntary basis from August 2008 to February 2009, though care providers reported the parents made little progress during that time. Following the July 2009 incident, J.M.'s older brother moved to Four Oaks, a behavioral health facility, for residential treatment. He returned to the family home for occasional visits. J.M. remained in the care of her parents. She is the only child involved on appeal.

On July 31, 2009, the State filed a child-in-need-of-assistance (CINA) petition asserting the child's parents, Dan and Marsha, were unable to maintain control and safety in the family home. On September 8, 2009, J.M. was adjudicated CINA pursuant to Iowa Code section 232.2(6)(c)(2) and (n) (2009). J.M. continued in the custody of her parents.

The family received a multitude of services. J.M. continued to see Marcia Bradley, a therapist she had been seeing since November 2008. The family received family safety, risk, and permanency services from Natalie Leverette, an in-home counselor. Marsha and Dan became involved in individual therapy and couples therapy. Both parents completed parenting classes and regularly attended support groups. Dan attended anger management classes.

Marsha continued to seek treatment for her various physical ailments, including fibromyalgia, diabetes, and high-blood pressure, all of which she managed with medication. Marsha also had several mental health diagnoses including bipolar disorder, post-traumatic stress disorder, and borderline personality disorder. Dan had been diagnosed with depression and was treated by a therapist.

As the case progressed through 2009 and into 2010, care providers continued to express concern over whether the parents could make the changes necessary to adequately meet J.M.'s needs. In her initial assessment dated September 25, 2009, Stephanie Overton, the DHS caseworker assigned to this family, noted, "Dan and Marsha need to continue to meet their therapeutic needs as well as those needs of the children." Marsha and Dan were also directed to address the needs of their home, which was described as "full of clutter and animals." In a report dated March 25, 2010, Leverette noted, "The family appears to be doing very well . . . . Although there are still concerns with the ability for Dan and Marsha to appropriately parent the children and provide adequate supervision, the family appears to be managing well." J.M. remained in her parents' home and continued to see therapist Bradley.

In a family case plan dated April 15, 2010, a DHS caseworker noted,

Bradley indicated . . . significant concerns remain regarding [J.M.]'s prognosis for success within the family home. There is ongoing concern that Dan and Marsha have not been consistent in providing the structure necessary for [J.M.] to maintain the skills developed through participation in services.

The caseworker further noted that Marsha Glenn, a counselor providing remedial services to the family, indicated J.M.'s school had reported several concerns

including: poor hygiene, maladaptive behavior such as wetting accidents and sucking her fingers or hand, and inappropriate interactions with her parents, including grabbing her mother's breasts. According to the caseworker's report, this counselor "echoe[d] the concern of . . . Bradley regarding the parent's perceived lack of follow through when providers are not present." The caseworker noted improvements in the state of the family home, but indicated additional effort needed to be made.

A family team meeting on May 27, 2010, became heated when care providers expressed concern that Dan and Marsha did not understand the need for changes in their parenting and home to provide an appropriate environment for J.M. Marsha escalated the tension, expressing anger at Dan for calling her names in front of the children. Overton testified that at this meeting, care providers realized Dan and Marsha's relationship was extremely unstable. Overton noted, "[I]t became very clear that [Marsha] was not appropriate to have J.M. return to her care that day."

During the course of this meeting, the parents also described a recent verbal altercation between them that took place outside their apartment while J.M. and her older brother, who was home on a visit, were left alone inside. The safety plan provided that J.M. and her older brother not be left unsupervised for fear the brother might again try to harm J.M. For these reasons, the team decided to remove J.M. from her parent's care. J.M. was removed that same day, transferred to DHS custody, and placed with a foster family.

Marsha and Dan received one hour of supervised visitation per week. Leverette, who supervised the visits, consistently reported the interactions were

appropriate. All care providers noted that Marsha and Dan were cooperative and receptive to advice. After J.M. was removed, Marsha and Dan discussed ending their relationship, but ultimately decided to remain together.

Marsha and Dan repeatedly requested increased visitation time with J.M. After a request for increased visitation was made at a family team meeting on September 27, 2010, J.M.'s therapist stated she did not believe increased visits were in the child's best interests. Bradley reported J.M. had a history of being a very anxious child and expressing extreme concern about her mother's well-being. Bradley reported J.M.'s anxiety levels were down and her social skills were improving since placement with her foster family. Marsha's therapist agreed with Bradley's recommendation, suggesting "that consistency continue for Marsha before family interactions are increased." The team agreed that consistency had always been an issue with the family. Glenn, the counselor providing remedial services to the family, agreed that J.M. had anxiety and fears about the family home. The notes from that family team meeting reflect that Overton and Leverette agreed to discuss the possibility of increasing the length of J.M.'s weekly visits with her parents.

Weekly visits continued without incident, and J.M.'s visits with her therapist were reduced. However, at a November 15, 2010 family team meeting, the team noted J.M. was exhibiting regressive behaviors, including tantrums, sucking her thumb, and having wetting accidents. Bradley explained that J.M. had a great level of stress and worried about her mother's health more than a seven year old should. Marsha and Dan again requested increased visitation with J.M. Bradley explained that visits increased distress and insecurity in J.M.

Bradley stated she did not feel reunification was in J.M.'s best interests because Dan and Marsha could not "take [J.M.] any further therapeutically." Bradley stated J.M. needed a sense of closure and discussed the possibility of ending visits. Overton explained it was difficult for her to increase visits when J.M.'s therapist was recommending they stop contact. Overton's notes from this meeting reflect that Dan became very upset and left the meeting when care providers suggested Dan and Marsha were not equipped to handle the deficiencies in J.M.'s development.

On November 16, 2010, Marsha and Dan filed a joint application for hearing on visitation and services. The application alleged the limited visitation schedule was "not designed to promote reunification between the child and her parents and is thus not a reasonable effort towards the same."

After a December 6, 2010 hearing, the court filed an order stating, "After State offered documentary evidence and testimony all afternoon . . . the permanency hearing originally scheduled for December 6, 2010, is hereby continued to . . . January 19 & 21, 2011 . . ." The order noted the hearing would coincide with the termination of parental rights hearing and directed the State to file a petition for termination of parental rights. Dan was not present at the December 6 hearing because he had an altercation with courthouse security and was kicked out of the building. His attorney was present on his behalf.

In a report to the court dated January 7, 2011, Overton wrote, "Dan and Marsha have struggled to understand that their issues with parenting have caused the deficiencies in [J.M.]'s development." She further stated, "Dan and Marsha were very slow to show any change in their acknowledging of their

parenting deficits and [Bradley] states that continued contact between J.M. and her parents is to her detriment.” Accordingly, Overton recommended terminating Marsha and Dan’s parental rights.

At the hearing on the State’s petition for termination of parental rights, filed January 3, 2011, Bradley testified Dan and Marsha seemed to be cooperative and accepting of her advice, but they failed to follow through and make necessary changes. She described J.M.’s unhealthy sense of responsibility for caring for her mother and the progress J.M. had made in therapy and with her foster family. Bradley recounted J.M.’s narrative of fear in her home, a sense of insecurity, and the effects on J.M.’s development. She stated J.M. was in need of consistency, routine, and safety, which her parents still did not appreciate and were not capable of providing.

Care providers testified they were unclear whether Marsha and Dan intended to continue their relationship. As recently as December 2010, Marsha expressed she and Dan did not believe their relationship would continue long-term, but they had decided to remain together for the time being due to financial concerns.

Dan testified he recognized expressing his anger in front the children was a problem. He acknowledged he did not handle the situation appropriately at the December 6 hearing when he was expelled from the courthouse. He recognized that J.M. should not be alone with her older brother and stated it would not happen again. He stated he intended to stay together with Marsha “at this time.”

Marsha articulated that she had accepted accountability for leaving J.M. alone with her brother and had formulated a plan to prevent a repeat incident.

She acknowledged J.M. needed permanency and expressed frustration over not getting more time with J.M.

After a three-day hearing ending February 4, 2011, the juvenile court terminated Marsha and Dan's parental rights pursuant to Iowa Code section 232.116(1)(d) (2011). Each parent appeals, asserting: (1) the juvenile court erred in concluding the State had proved the requirements of section 232.116(1)(d) by clear and convincing evidence and (2) termination was not in J.M.'s best interests given her bond with each parent.

## **II. Statutory Grounds for Termination**

Section 232.116(1)(d) provides for termination when a child has been adjudicated to be in need of assistance based on certain findings<sup>1</sup> and, subsequent to the 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."

### **A. Receipt of Services**

Each parent asserts he or she did not receive services to correct the circumstances that led to adjudication. Specifically, each parent asserts DHS gave excessive deference to Bradley, who had not been involved in services with the parents for over seven months at the time of the termination hearing and who testified that as early as September 2010, she wanted to cease visits between J.M. and her parents. Each parent asserts that because of DHS's undue reliance

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<sup>1</sup> Neither party disputes the juvenile court's finding that J.M.'s adjudication CINA fulfilled this requirement.



on Bradley's opinion, DHS refused to consider increasing visitation and was not making reasonable efforts toward reunification.

Our de novo review of the record leads us to conclude this family received services aimed at reunification. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (“[T]he proper standard of review for all termination decisions should be de novo.”). Bradley testified that although she did not believe Marsha and Dan could make the changes needed to reunify with J.M., she would have changed her mind had they demonstrated changes in their lives. Overton agreed with Bradley's assessment that Dan and Marsha had not “internalized and made the true changes that they needed to in order to be able to reunify with [J.M.]” Overton testified she believed Bradley was making visitation recommendations based on J.M.'s best interests and was not “trying to stifle the reunification process.” DHS and the court were constrained in their decisions about increased parenting time by Bradley's professional opinion that increased contact would be detrimental to the child. But Bradley was not the only skeptic among the mental health professionals involved in the case. Overton testified that Marsha's therapist, Jeffrey Kramer, shared Bradley's opinion to the extent he “continued to be concerned about . . . follow-through” as it had been an issue throughout DHS's involvement with the family.

Further, DHS offered numerous services to the parents, including individual therapy, couples therapy, parenting classes, multiple support groups, and anger management classes. These services, in addition to weekly supervised visits with J.M., were all aimed at reunification. The record shows care providers acknowledged Dan and Marsha's successes, especially their

efforts in improving the condition of their apartment, but concluded that ultimately, in spite of the services received, they had not made the changes necessary to achieve reunification. The record demonstrates DHS provided extensive services to support reunification.

### **B. Circumstances Leading to Adjudication**

Marsha also asserts the circumstances that led to the adjudication were resolved. We find the record supports the juvenile court's finding that the circumstances leading to adjudication continued to exist at the time of the hearing on the petition for termination of parental rights.

Overton testified she believed there would be issues with the parents' abilities to appropriately supervise J.M. if she were returned immediately. Though she acknowledged Marsha and Dan had greatly improved the condition of their home, she expressed concern regarding the parents' abilities to "manage their own issues in addition to those of [J.M.] to keep [her] safe." Overton noted that DHS had been working with Dan and Marsha for the last two years, and the parents had been slow to make changes. Further, of the changes that were made, most were not made until after J.M. was removed, suggesting to Overton that the parents were only able to make the improvements because they were free from the stress of parenting.

Leverette testified the parents had made no progress since J.M.'s removal in regards to resolving their relationship issues. She also testified that, based on Dan's actions at the courthouse on December 6, she would infer that he had not made progress in regards to his anger issues.

Dan's parents each testified that Dan could parent J.M., but each expressed concern about the family dynamics between Marsha and Dan. Dan's father testified that if J.M. were to be returned to Marsha and Dan's home, he would have concerns regarding the parents' interactions between one another. Dan's mother testified if Dan and Marsha were allowed unsupervised contact, she would be worried "if they would get in a fight."

Though J.M.'s brother was removed from the home, the record shows her parents remained unable to meet her needs, in part because of their own serious mental and physical health issues. Despite completing anger management class three times, Dan still exhibited signs that he could not control his anger. Though Marsha testified at the termination hearing that her health had improved greatly, she still dealt with many health issues on a daily basis, something she admitted concerned J.M. J.M.'s extreme anxiety over her mother's health was detrimental to her and, according to Bradley, caused J.M. to exhibit unhealthy behaviors. Further, the parents continued a relationship that was extremely unstable and at times rendered them unable to provide proper supervision of J.M.

These parents have been involved with DHS multiple times regarding their inability to provide critical care to their children. They have been offered and have received numerous services; however, we agree with the opinions of care providers who have worked extensively with the family that the circumstances leading to J.M.'s CINA adjudication continued to exist at the time of the termination hearing. See *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995) ("[W]hen a parent is incapable of changing to allow the child to return home, termination is necessary.").

### III. Best Interests of the Child and Section 232.116(3)

Each parent also argues a termination of parental rights is not in J.M.'s best interests, given each parent's bond with J.M.

First, we conclude a termination of each parent's parental rights is in J.M.'s best interests. Marsha's ability to provide for J.M. is affected by her ongoing mental health issues. See Iowa Code § 232.116(2)(a). J.M. has become integrated into and bonded with her foster family. See Iowa Code § 232.116(2)(b). J.M.'s foster parents have provided her with a stable environment and have expressed an interest in adopting her. See *id.* Marsha acknowledged that J.M. desperately needs permanency, and we conclude that is something neither Marsha nor Dan can provide for her at this time for the reasons discussed above. Using the framework provided in section 232.116(2), we find termination of parental rights best provides for J.M.'s safety, long-term growth, and physical, mental, and emotional needs. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.").

We also conclude the juvenile court did not abuse its discretion in terminating the parental relationships in spite of J.M.'s recognized bond with each parent. Iowa Code section 232.116(3) provides termination is not required when there 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." The factors set forth in 232.116(3) have been interpreted as permissive, rather than mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by In re P.L.*, 778 N.W.2d 33, 39 (Iowa

2010). Though Leverette testified J.M. had a loving, bonded relationship with each parent, there was significant testimony, including testimony by Marsha, that J.M.'s bond with Marsha was accompanied by an intense level of distress and worry. J.M.'s success in her foster family demonstrates she can excel outside of the care of either Dan or Marsha. For the reasons stated above, we do not believe that a termination of Marsha's and Dan's parental rights would be detrimental to J.M.

**AFFIRMED.**