

**IN THE COURT OF APPEALS OF IOWA**

No. 1-979 / 11-1820  
Filed January 19, 2012

**IN THE INTEREST OF B.W.,  
Minor Child,**

**J.W., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Louise Jacobs,  
District Associate Judge.

A mother appeals the district court's ruling terminating her parental rights.

**AFFIRMED.**

Elizabeth Kellner-Nelson of Kellner-Nelson Law Firm, P.C., West Des  
Moines, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Annette Taylor, Assistant  
County Attorney, for appellee State.

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

Considered by Vogel, P.J., Eisenhauer, J., and Sackett, S.J.\*

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

**VOGEL, P.J.**

Johnna appeals the termination of her parental rights to B.W., born January 2008. On September 8, 2011, the district court terminated Johnna's parental rights under Iowa Code section 232.116(1)(b) (child abandoned or deserted), (d) (adjudicated CINA for neglect, circumstances continue despite services), (e) (adjudicated CINA, removed from parents for at least six consecutive months, parent has not maintained significant and meaningful contact with child), (h) (child three or under, adjudicated CINA, removed from parent's custody at least six of last twelve months or for six consecutive months and trial period at home less than thirty days, child cannot be returned home at present time), (i) (child adjudicated CINA for neglect, neglect posed significant risk to life of child, offer or receipt of services would not correct conditions that led to abuse in reasonable amount of time), and (l) (adjudicated CINA, parent has a severe, chronic substance abuse problem and presents danger to self and others, child cannot be returned to parent's custody within a reasonable period of time) (2011).<sup>1</sup> We agree with the district court's conclusion that clear and convincing evidence supports termination, and affirm.

**I. Background Facts and Proceedings**

During a traffic stop in December 2010, police discovered a drug pipe belonging to Johnna while B.W. was in the vehicle. Johnna was charged with possession of drug paraphernalia. The family was referred to the Iowa Department of Human Services (DHS), as it was alleged that Johnna may have

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<sup>1</sup> The parental rights of B.W.'s father were also terminated under Iowa Code section 232.116(1)(b), (d), (e), (h), and (i). He does not appeal.

been using methamphetamine. DHS concluded the “Denial of Critical Care” report was founded. On February 8, 2011, Johnna signed a voluntary placement agreement to have B.W. placed in foster care, due to the child’s behavior and Johnna’s inability to care for him at the time. Johnna admitted to using methamphetamine two weeks prior to B.W.’s placement. On February 21, 2011, a hair stat test of Johnna’s hair came back positive for methamphetamine at a level approximately seven times higher than the cutoff level.<sup>2</sup> DHS noted that these results “would indicate that Johnna uses more frequently than she had admitted to workers.”

B.W. was adjudicated a child in need of assistance on March 29, 2011, under Iowa Code section 232.2(6)(c)(2) and (n). In April 2011, DHS recognized that Johnna had not been fully cooperative with Family Safety, Risk, and Permanency (FSRP) services, nor was she “fully engaging” in the services provided by DHS, which included attending substance abuse treatment, submitting drug screens, attending therapy for herself and B.W., and attending all supervised visits. On April 7, 2011, a hair stat test from B.W. came back positive for methamphetamine. The allegation of “Presence of Illegal Drugs, in a Child’s Body,” was founded.

From July 9, 2011 to July 20, 2011, Johnna was incarcerated for forgery, theft in the fourth degree and criminal mischief in the fifth degree. On September 6, 2011, Johnna was incarcerated for violating the terms of her probation.

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<sup>2</sup> The cutoff level for methamphetamine is 500 pg/mg; Johnna’s hair stat test came back positive for methamphetamine at a level of 3569 pg/mg.

Johnna was still incarcerated at the time of the termination hearing, held on October 25, 2011. She appeals from the written order filed October 28, 2011.

## **II. Standard of Review**

Our review of termination of parental rights proceedings is de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Although we are not bound by the district court's findings of fact, we do give them weight, particularly in assessing the credibility of witnesses. *Id.* An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. *Id.* "Evidence is 'clear and convincing' when there are no 'serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.'" See *id.* (quoting *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000)). Where parental rights are terminated on more than one statutory ground, we only need to find grounds under one section to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

## **III. Analysis**

Johnna challenges whether there was clear and convincing evidence to support termination under Iowa Code section 232.116(1)(b), (d), (e), (i) and (j). She does not dispute that the elements of 232.116(1)(h) have been met but maintains the district court should have granted her an additional six months to demonstrate she could effectively parent B.W.

Following B.W.'s removal, DHS requested Johnna have two supervised visits per week. These visits were reduced to once a week when Johnna was not consistently participating in the twice weekly sessions. In a July 25, 2011 report

prepared by Children and Families of Iowa, it was noted: “Overall, this case continues to progress forward though it remains very concerning as to the lack of involvement on the parent’s part in regards to reunification efforts and her overall wellbeing.” Moreover, DHS entered an exhibit at the termination hearing showing that from March through September 2011, Johnna was offered thirty-nine supervised visitations, with visitation occurring only seventeen times—less than one-half of what was offered.

At the termination hearing Johnna testified as to the contact she maintained with B.W. When asked why she was missing so many visits with B.W. Johnna replied, “Because I was high.” She also admitted that since B.W.’s removal in February, she has not been able to comply with the requests made by DHS.

Not only have Johnna’s visits with B.W. been meager, but she has also neglected to take steps to remedy the circumstances that led to B.W.’s removal, despite the offer of services. Iowa Code § 232.116(1)(d)(2). Johnna underwent a substance abuse evaluation on August 29, 2011, where substance abuse counselor Gabrielle Twohey recommended Johnna attend residential inpatient treatment, followed by residing in a half-way house without the child. Twohey encouraged Johnna to go to a treatment facility in Mount Pleasant, as she believed Johnna would be placed much faster than at the Fort Dodge treatment facility. Johnna, however, requested to be placed at the Fort Dodge facility because her boyfriend was going to be in treatment there. Although she admitted this was “probably not” a good decision, Johnna’s decision to forgo an

opportunity to get into treatment sooner illustrates that her recovery, and reunification with B.W., were placed second to Johnna's personal desires. We affirm the district court's termination of parental rights under Iowa Code section 232.116(1)(d), as Johnna has failed to remedy the circumstances that led to B.W.'s removal, despite the offer of services.

We also find that Johnna conceded and the State proved the statutory grounds of Iowa Code section 232.116(1)(h) by clear and convincing evidence. Further, we agree with the district court that an additional six months would not remedy Johnna's parenting deficiencies and substance abuse problems such that she could safely and effectively parent B.W. Having affirmed the district court under 232.116(1)(d) and (h), we need not address the other statutory provisions relied on by the district court supporting termination.<sup>3</sup>

**AFFIRMED.**

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<sup>3</sup> Although not specifically raised by Johnna, we also conclude that termination is appropriate under the factors set forth in section 232.116(2) and that none of the factors listed in Iowa Code section 232.116(3), which could preclude termination, apply.