

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1049 / 12-1888  
Filed December 12, 2012

**IN THE INTEREST OF J.A., M.N.A.,  
and M.L.A.,  
Minor Children,**

**C.R.C., Mother,  
Appellant.**

**A.L.M. JR, Father of J.A. and M.N.A.,  
Appellant.**

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Appeal from the Iowa District Court for Woodbury County, Mary L. Timko,  
Associate Juvenile Judge.

The mother and the putative father of two children separately appeal from  
the termination of their parental rights. **AFFIRMED ON BOTH APPEALS.**

Judy L. Freking, LeMars, for appellant mother.

Brian E. Buckmeier of Buckmeier & Danne Lawyers, P.C., Sioux City, for  
appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Patrick Jennings, County Attorney, and Dewey P. Sloan,  
Assistant County Attorney, for appellee.

Joseph Kertels of Juvenile Law Center, Sioux City, attorney and guardian  
ad litem for minor children.

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

**DANILSON, J.**

Cameo, the mother of the three children at issue here; and Andres, the mother's paramour and the putative father of the younger two children; appeal from the termination of their parental rights. Because statutory grounds for termination exist, termination is in the best interests of these children, and no mitigating factor weighs against termination, we affirm the parental rights of Cameo and Andres.

**I. Background.**

Cameo has had six children: the oldest (P.J.) was adopted by Cameo's mother; the second child died as a result of the mother's neglect; the mother's rights to her third child were involuntarily terminated in 2003; the fourth child, Marvin, was born in 2003, and has twice previously been adjudicated a child in need of assistance (CINA) due to Cameo's drug abuse, neglect, and instability; the fifth child, Mercedes, born in 2007, has previously been under juvenile court jurisdiction—that jurisdiction was dismissed on September 2, 2008; and the sixth child, Jasmine, was born in 2009. These termination proceedings concern Marvin, Mercedes, and Jasmine.

The juvenile court described the current court involvement with the family as having begun in October 2011 when police officers responded to a disturbance at the residence of Cameo's mother, Beverly. Cameo, Andres, the three children, Cameo's brother, and Cameo's sister (P.J., Cameo's biological daughter) were residing in this home while Beverly was hospitalized.

The home was found to be infested with flies, it appeared that cats had been urinating on the steps, the ammonia smell was very

intense, there were numerous items on the floor, including old food and a dirty plate and there was garbage throughout the residence. Both Jasmine and Mercedes were filthy and they were in clothes that appeared to have not been washed for quite some time. The [responding] police officers described the conditions as unsanitary and indicated a report would be made to housing authorities. It was also reported that Marvin had been locked outside the home with no shirt on. Cameo and Andres were sleeping and not supervising the children. During the investigation, Cameo did admit that they have been living in poverty conditions, but that she was working on cleaning up their property and house. Cameo further admitted that the family has moved approximately 13 times in the previous 10 months due to their inability to pay bills or inadequate housing.

On October 11, 2011, Cameo reported that Marvin had chased her around the front yard with a shovel attempting to hit her, struck his four-year-old sister with a steel pipe leaving a small bruise on her back and strangled his two-year-old sister. Marvin was hospitalized for further evaluations and for the protection of the family.

On October 18, 2011, Cameo reported she was entering inpatient substance abuse treatment due to her recent use of methamphetamine. She left the inpatient facility without completing treatment.

A CINA petition was filed on November 2, 2011, due to Marvin's unresolved mental health issues, Cameo's use of methamphetamine, unhealthy living conditions of the family home, possible homelessness as the family was likely to be evicted, and parental instability. Both Cameo and Andres submitted to drug testing and both tested positive for amphetamine/methamphetamine. The adjudicatory hearing was scheduled for December 2, 2011.

On November 29, 2011, [local] police officers were called to the family residence due to Cameo reportedly being in a drug-induced state, not knowing her name, age, or her children, behaving erratically, and sometimes violently. Cameo was

“tweaking” on methamphetamine with her 13-year-old sister, [P.J.]. The conditions of the residence were also reported to be unhealthy despite just recently moving in. At the time the police and fire fighters arrived, a Hispanic male ran from the apartment and did not return until after police had Cameo under control. Cameo was taken to St. Luke’s emergency room and the children were taken to [Beverly’s home. Due to Beverly being in poor health, Cameo’s sister retrieved the children. Cameo later admitted to using methamphetamine. Andres also has a history of using methamphetamine. On November 30, 2011, an ex parte removal order was executed removing Jasmine and Mercedes from parental custody. Marvin was [still hospitalized].

The ex parte removal was confirmed following a December 2, 2011. The adjudicatory hearing was continued, however, and the children were adjudicated CINA on April 5, 2012.

Cameo has a long history of substance abuse and numerous interventions by the juvenile court with services having been offered. She has participated in various drug treatment programs, but continues to fail to grasp the significance of her substance abuse or its effects on herself or her children.

Andres, too, has a long history of substance abuse and has been offered and received services since 2006 to address issues of substance abuse, appropriate housing, and employment. As the juvenile court observed, “He learned nothing then and has learned nothing now that has amounted to any significant changes in his lifestyle.” We need not recount these histories as it would serve no useful purpose.

The juvenile court terminated Cameo’s parental rights pursuant to Iowa Code section 232.116(1)(d), (e), (g), (h) (as to Jasmine only), (i), and (l) (2011);

Andres' rights to Mercedes and Jasmine were terminated pursuant to section 232.116(1)(d), (e), (h) (as to Jasmine only), (i), and (j).<sup>1</sup> Both parents appeal.

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<sup>1</sup> In pertinent part, Iowa Code section 232.116(1) allows the court to terminate parental rights if:

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 . . . 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.

e. 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 child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. . . .

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 . . . .

(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.

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

(1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

## II. Scope of review.

We conduct a de novo review of termination of parental rights proceedings. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). "When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the juvenile court's order on any ground we find supported by the record." *Id.* at 707.

## III. Discussion.

### A. Statutory grounds for termination exist.

#### 1. *The putative father's appeal.*<sup>2</sup> Andres argues the juvenile court

*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 . . . 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.

. . . .

*l.* 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 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

<sup>2</sup> This record indicates Cameo was reportedly married to Marvin's father, who is believed to be living in El Salvador. There is no record the marriage was dissolved. Cameo testified that she and Andres have lived together for eight years and Andres is the father of Mercedes and Jasmine.

violated his constitutional right to parent his children by ordering the termination of his parental rights. To the extent this claim intends to assert something more than the sufficiency of the evidence to support termination, it is not properly before us because it was not raised in the district court. “Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.” *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003).

As for the sufficiency of the evidence to support the termination of his parental rights to Mercedes and Jasmine, Andres contends he has not abandoned them (apparently referring to Iowa Code section 232.116 (1)(e)), he has “always tried to care for his kids and loves them. He has cooperated with services and has remained employed throughout the time herein.”

The father does not challenge the termination of his parental rights pursuant to Iowa Code section 232.116(1)(f) and we affirm on that ground. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (noting we need not address whether statutory grounds exist if parent does not challenge them). As found by the juvenile court:

Andres has failed to follow through with substance abuse treatment. He completed a substance abuse evaluation at Jackson Recovery, but was not honest about his usage. He stated he had only used methamphetamine two times and did not feel it was a problem. This is clearly not the case since Andres’ hair stat test result was off the charts. He scored over 10,000 units.

Andres has made little to no effort or progress toward addressing his chronic and untreated substance abuse, appropriate housing for his family, sufficient employment to support his family or legal issues which prohibit his ability to obtain his driver’s license, sufficient employment or adequate housing. Andres has been offered/received services to address these issues since at least 2006.

2. *The mother's appeal.* On appeal, Cameo also argues that termination of her parental rights is a constitutional violation. This issue is not properly raised and we do not address it. *K.C.*, 660 N.W.2d at 38. She also contends there is not clear and convincing evidence that the circumstances that led to the CINA adjudication continue to exist. Cameo states that the children were removed from their mother's care as a result of drug use and instability, and claims that "[b]oth these issues have been corrected." We do not share the mother's overly-optimistic characterization of her very limited progress in the past few months.

Cameo testified it was her goal to "become stable." But nothing in this record suggests she has reached that goal at present. At the time of the August 23, 2012 termination hearing, Cameo and Andres had only lived in their current residence for two weeks and at the previous residence for five months. The current residence had no electricity. Cameo testified she worked for cash cleaning rental properties and was hoping to find full-time work.

Her struggle with drug addiction has been ongoing since at least 2000. She had been in treatment during the month prior to the termination hearing, but did not complete it. She had been to only two mental health appointments in five months. Even if we accept her claim that she had been sober for a period of a few months, in light of her lack of insight and failure to follow through on substance abuse treatment recommendations and mental health treatment, that short time does not instill confidence that she is stable or will remain sober. *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (noting recent changes in light of history



“are insufficient”). “[I]n considering the impact of a drug addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future.” *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998).

The juvenile court observed:

Neither Cameo nor Andres has made any progress in any area of the case plan. They purport to have had all negative U.A.’s; however, being able to pass drug tests in a six-month period when compared to a lifetime of drug usage, and the extreme dysfunction, chaos and lack of motivation or insight into issues that preclude them from being safe, stable and nurturing parents for any child is inconsequential. Their prognosis for lasting recovery is extremely poor.

Despite over a decade of services provided to Cameo and Andres, these children have never been returned to their custody on even a trial home basis since their removal.

Clear and convincing evidence to terminate the mother’s parental rights exist under Iowa Code section 232.116(1)(f).

There is also clear and convincing evidence to support termination of Cameo’s parental rights under section 232.116(1)(g) because each of these children has been adjudicated CINA, the court has previously terminated Cameo’s parental rights to another child, the mother continues to lack the ability or willingness to respond to services in a meaningful and sustained manner, and an additional period of rehabilitation would not lead to the children being able to return to her care in a reasonable amount of time.

*B. Termination is in the children’s best interests.* Even if termination is permissible, the court must consider whether to terminate by applying the factors in section 232.116(2). Iowa Code § 232.116(2). Termination of both parents’

parental rights is in the children's best interests, as that term is defined in section 232.116(2) (requiring consideration of "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"). We adopt the juvenile court's findings:

The children are doing exceptionally well in foster care. They are excited about the homes in which they reside. Marvin is very excited about his foster home and starting school. The record does not indicate that these children are experiencing any disruption to any type of parental bond as a result of their out-of-home placements. In fact, there is no evidence to indicate that there was any type of significant parent-child bond between these children and their parents. All three children are adoptable.

Mercedes and Jasmine have remained in their current foster home since December 2011. Their foster parents are ready, willing, and able to permanently integrate them into their home. A separate adoptive placement is being sought for Marvin given his many needs,<sup>[3]</sup> with an eye toward continued sibling contact.

*D. No mitigating factor in section 232.116(3) weighs against termination.*

Cameo also contends the juvenile court erred in finding that no factor in section 232.116(3) is applicable because Marvin had been removed from his mother's care and placed in a hospital. See *P.L.*, 778 N.W.2d at 40. ("Finally, if the factors require termination, the court must then determine if an exception under section 232.116(3) exists so the court need not terminate."). Section 232.116(3) states the court "need not terminate" parental rights if "[i]t is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a

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<sup>3</sup> Marvin has been hospitalized and in residential treatment for significant emotional and behavioral disturbances.

permanent family placement for the child.” Under the circumstances before us, this exception will not prevent the termination.

We affirm the termination of both parent’s parental rights.

**AFFIRMED ON BOTH APPEALS.**