

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1103 / 12-1886  
Filed January 24, 2013

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

**K.M., Mother,**  
Appellant,

**L.M., Father,**  
Appellant.

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

A mother and father appeal the termination of their parental rights to their child. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

David A. Dawson of Law Office of David A. Dawson, Sioux City, for appellant mother.

Marvin W. Miller Jr. of Miller, Miller, Miller, P.C., Cherokee, for appellant father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Kristal L. Phillips, County Attorney, and Meaghann Whitmer, Assistant County Attorney, for appellee State.

Leslie Rynell of the Juvenile Law Center, Sioux City, attorney and guardian ad litem for minor child.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

**PER CURIAM**

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

***I. Background Facts and Proceedings***

Kristi, previously a chronic drug user, had a long history with the Department of Human Services. In a separate proceeding, the juvenile court terminated her parental rights to her first child.

Kristi had a second child in 2011, fathered by her husband, Lee. Shortly after the child's birth, Kristi was arrested for domestic abuse assault on Lee and was ordered to have no contact with him. The child remained with his father and paternal grandparents.

In a matter of weeks, Lee faced his own legal challenges. Like Kristi, Lee abused a variety of substances. Within a month of Kristi's arrest, he was found to be under the influence of drugs, and the child was removed from his custody. A drug test revealed cocaine in his system.

The couple's troubles with the law continued. Lee and Kristi obtained a modification of the no-contact order to undergo couple's counseling and, after the session, secretly met. An altercation ensued and Kristi came away with a black eye. Authorities arrested Lee for domestic abuse assault and, later, rearrested him on drug-related charges. Lee spent several months in jail.

Eleven months after the child's removal, the juvenile court held a combined permanency and termination hearing and, following the hearing, terminated the parents' rights to the child. Both parents appealed.

## ***II. Mother's Appeal***

Kristi raises a number of challenges to the termination decision. We only find it necessary to address one of the issues: whether Kristi was entitled to a trial home placement and a six-month extension to enhance the prospects for reunification.

We begin by noting the obvious: Kristi's lengthy and ultimately unsuccessful involvement with the department following the removal of her first child did not bode well for her reunification prospects with the second child. But the record contains overwhelming evidence of Kristi's willingness to respond to services that would correct the situation. At the outset, the department informed Kristi she would need to "attend all mental health appointments," "take all medications as prescribed," "participate in a psychological evaluation," and "abstain from mood altering substances." Kristi met and exceeded these expectations. She submitted to drug tests, all of which were negative; completed a drug treatment program; began attending Alcoholics Anonymous meetings as recommended; provided uncontradicted testimony that she had been drug free for "over a year and seven months"; obtained a twenty-seven-hour-per-week job; purchased a car; cleaned and maintained her apartment; participated in domestic violence treatment sessions; underwent therapy to address anger and other issues; and engaged in home visits with the child two to three times a week, with minimal supervision. When asked about the difference between her efforts with her first child and her efforts in this proceeding, she stated, "I am taking this more

seriously, um, then what I did last time. I worked on anger . . . . I am more determined to do the things that I have to do for myself.”

Kristi’s therapist, who also counseled her during the proceedings involving her first child, reported that her attitude and behavior had changed for the better.

She wrote,

I have seen a significant improvement in Kristi’s ability to stand up for herself and to make better choices. She presents with much honesty on her situation and where she is at with her anxiety and depression. Kristi has reported great motivation and resolve to keep the house clean and functional in the hopes of the return of her son.

At the termination hearing, she testified Kristi was “much calmer,” was “able to hold down a job,” was “more goal focused,” and was committed to “making differences in her life.”

An employee of a service provider who worked with Kristi for eight months confirmed that Kristi made significant strides in her efforts to reunify with her child. She testified that for the previous six months most visits took place in Kristi’s home and the service provider’s role was limited to dropping in for a safety check. She found no safety concerns and no concerns with Kristi’s parenting of the child. She stated Kristi complied with all the goals set by the service provider. When asked if she saw any reason why an overnight or trial home placement could not happen, she stated, “No.”

A department employee who worked with the family did not dispute Kristi’s significant progress. She conceded Kristi passed all of the drug tests administered to her after this child’s removal, completed “her substance abuse treatment,” maintained a safe home, and was “very good about making

appointments.” She even stated, “I guess just overall [she] has been consistent in participating in services requested.”

The department employee’s concern centered on Kristi’s relationship with Lee and the safety risk this relationship could pose to the child. She testified, “I am concerned due to the history and their relationship. There has been more than one incident . . . of domestic violence that have been very severe and the most recent incident happened when there was a no-contact order in place.” She also stated, “My concern would be if Kristi was really able to maintain those boundaries. We have not seen her be able to do that, and I do not know if she would be able to do that on her own.” She continued, “It would concern me that she made that decision once, and that decision being to choose an unhealthy relationship over her child.” The record supports this concern.

Nonetheless, we conclude Kristi’s whole-hearted attempt to address the department’s concerns and her willingness to go above and beyond what was required of her entitled her to a trial home placement and a six-month extension to move toward reunification. See Iowa Code § 232.104(2)(b) (authorizing a juvenile court to postpone the “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.” We conclude the district court abused its discretion in declining to grant Kristi’s request for a six-month extension.

### ***III. Father’s Appeal***

The father contends the juvenile court (A) should not have terminated his parental rights under the cited statutory grounds, (B) should have afforded him

six additional months to work towards reunification, (C) should have concluded that termination was not in the child's best interests, and (D) should have applied an exception to termination.

**A.** The juvenile court terminated Lee's parental rights pursuant to Iowa Code section 232.116(1)(e), (h), and (j). We may affirm if we find clear and convincing evidence to support any of these grounds. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We find clear and convincing evidence to establish that the child cannot be returned to the Lee's custody. See Iowa Code § 232.116(1)(h).

As noted, Lee had a significant history of drug abuse. While he contended he had been sober since 2008, the results of drug tests contradicted this testimony, as did his behavior at one of his supervised visits. Notably, he only began participating in substance abuse treatment one month before the first of several termination hearings.

Also of concern were Lee's criminal charges, which remained pending at the time of the termination hearing. Lee testified he was not slated to go to trial until 2013, leaving uncertainty as to whether he would be available to parent his child.

Finally, Lee had no contact with the child while he was jailed. Although he began weekly supervised visits following his release, he never graduated to semi-supervised or unsupervised visits.

We conclude the child could not be returned to Lee's custody at the time of the termination hearing.

**B., C., D.** Lee's remaining arguments focus on whether it was in the child's best interests to terminate his parental rights, whether an exception to termination applied, and whether Lee should have been granted a six-month extension to pursue reunification. See *id.* § 232.116(2), (3)(c). A therapist wrote that "Lee presents as a father who wants to provide the best that he can for his son." We do not doubt this assertion, but we also note a department employee's statement that Lee was "very inconsistent in [the child's] life."

Given Lee's absence for several months and his delay in seeking drug treatment, we conclude termination was in the child's best interests, an exception to termination based on the closeness of the parent-child bond did not apply, and a six-month extension to attempt rehabilitation was not justified.

#### ***IV. Disposition***

We affirm the juvenile court's termination of the father's parental rights but reverse and remand as to the mother for implementation of a six-month extension.

#### **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Eisenhauer, C.J., and Vogel, J., concur; Vaitheswaran, J., partially dissents.

**VAITHESWARAN, J. (partially dissenting)**

I respectfully dissent in part. I would reverse the termination of the mother's parental rights because I do not believe the State proved the cited grounds for termination. Each statutory ground cited by the juvenile court required the State to prove more than the fact that her history justified termination. I am not convinced the State met this burden.

Iowa Code section 232.116(1)(g) requires the State to prove several elements by clear and convincing evidence. Some of the elements are uncontested. The disputed elements are whether Kristi "continues to lack the ability or willingness to respond to services which would correct the situation" and whether "an additional period of rehabilitation would not correct the situation." See Iowa Code § 232.116(1)(g)(3), (4). I would conclude the State failed to prove Kristi "continues to lack the ability or willingness to respond to services which would correct the situation." *Id.* § 232.116(1)(g)(3). The majority essentially concedes the State also failed to prove that "an additional period of rehabilitation would not correct the situation." For these reasons, I am not convinced section 232.116(1)(g) was satisfied.

Section 232.116(1)(h) requires proof of several uncontested elements and proof that the child cannot be returned to the parent's custody. Nothing stood in the way of reunification, except the State's fear that Kristi might return to her husband. While this fear was not unfounded, I believe the State's concern was mitigated by Kristi's conduct in the months following Lee's arrest for domestic abuse assault. That arrest was made approximately two weeks after the child's



removal. For the next ten months, there was no indication Kristi associated with Lee. Although Lee's incarceration limited the opportunity for contact during the first few months, the State presented no evidence that the couple met following his release from jail five months before the termination decision was filed. In sum, I believe the department employee's "she did it once, she will do it again" testimony was undercut by Kristi's compliance with the no-contact order for far longer than the six-month statutory removal period preceding termination.

In reaching this conclusion, I have considered Kristi's testimony that she remained emotionally attached to Lee and held out hope that he would change. In my view, this evidence does not signal her intent to reconnect with him; Kristi also testified, "I will not jump back into that relationship, because that would be the boundaries I set for the safety of [the child]." Kristi's words were corroborated by the service provider, who confirmed that Kristi understood Lee would have to make changes before he could become a part of her life again. Given Kristi's commitment to stay away from Lee, I am not convinced her unwillingness to relinquish her faith in his prospects is grounds for terminating her parental rights.

Section 232.116(1)(k) requires proof of several elements, including proof that the parent has "a chronic mental illness and has been repeatedly institutionalized for mental illness, and presents a danger to self or others as evidenced by prior acts" and proof 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.” I am unable to find any evidence that Kristi was institutionalized for mental illness. In my view, this ground for termination was not satisfied.

I would reverse the juvenile court’s termination of the mother’s parental rights because, in my view, the cited grounds were unsupported by clear and convincing evidence.