

**IN THE COURT OF APPEALS OF IOWA**

No. 2-115 / 11-2075  
Filed February 29, 2012

**IN THE INTEREST OF A.A. and H.A.,  
Minor Children**

**C.A., Father,**  
Appellant,

**B.D., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Linn County, Susan Flaherty,  
Associate Juvenile Judge.

A mother and father separately appeal a juvenile court order terminating  
their parental rights. **AFFIRMED ON BOTH APPEALS.**

Christopher R. Landherr, Cedar Rapids, for appellant-father.

Henry M. Keyes, Cedar Rapids, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Jerry Vander Sanden, County Attorney, and Rebecca A.  
Belcher, Assistant County Attorney, for appellee.

Cynthia Finley, Cedar Rapids, attorney and guardian ad litem for minor  
children.

Considered by Eisenhauer, C.J., and Danilson and Mullins, JJ.

**MULLINS, J.**

A mother and father separately appeal a juvenile court order terminating their parental rights to two children under Iowa Code sections 232.116(1)(f), (h), and (l) (2011). Upon our de novo review, we affirm on both appeals. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011) (reviewing proceedings to terminate parental rights de novo).

**I. Background Facts and Proceedings.**

The mother and father are the parents of A.A. (born October 2007) and H.A. (born November 2009). The mother and father both have a significant history of substance abuse, mainly alcohol and methamphetamine. They have each participated in various substance abuse treatment programs, but have not been successful at maintaining long-term sobriety.

The mother first came to the attention of the Iowa Department of Human Services (DHS) in 2003. At that time, two older children of the mother were removed from her care and each was adjudicated a child in need of assistance (CINA) due to the mother's methamphetamine and alcohol abuse as well as issues pertaining to proper supervision. The mother completed substance abuse treatment and case permanency plan expectations, and the two older children were eventually returned to her care. The CINA proceedings were closed in 2006.

In August 2010, DHS received a report that the mother's sister-in-law was using methamphetamine in the family home. During the subsequent child protective assessment, the mother, the father, the two older children, A.A., and

H.A. underwent hair drug tests. H.A. tested positive for exposure to methamphetamine, while the mother, the father, one of the older children, and A.A. all tested positive for exposure and ingestion of methamphetamine. The child protective assessment was determined to be confirmed and founded, and both parents were placed on the child abuse registry for denial of critical care for failing to provide proper supervision. On August 18, 2010, all four children were removed from parental care, and placed with their maternal great-grandmother. Eventually, A.A. and H.A. were moved to the care of a paternal aunt where they have remained.<sup>1</sup>

On September 15, 2010, the parties stipulated to the children being adjudicated CINA under Iowa Code sections 232.2(6)(c)(2) and (6)(n) (2009). The parents underwent substance abuse evaluations and participated in intensive outpatient treatment and random drug testing. The parents were also provided twice weekly fully supervised visitation.

In February 2011, the father was unsuccessfully discharged from substance abuse treatment at ASAC due to a lack of attendance. The father also tested positive for methamphetamine in February 2011, March 2011, and three times in April 2011.

The mother was also inconsistent in her attendance at substance abuse treatment, and she was unsuccessfully discharged in June 2011. The mother tested positive for methamphetamine in March 2011 and April 2011.

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<sup>1</sup> The two older children were eventually placed with their respective biological fathers. Permanency orders have been entered for the two older children, and they are not at issue in this appeal.

In May 2011, during a supervised home visit, the visit supervisor observed two two-liter plastic pop bottles with tubing attached with electrical tape that had a white powdery residue inside them. The two bottles were found by one of the older children in a laundry hamper covered by a blanket outside the home between a trashcan and the fence for the yard. Both parents denied knowledge of the item, and stated that the item must have been dumped there by someone else. Both parents were requested to perform drug tests, and both tested positive for methamphetamine. A child protective assessment was confirmed and founded, and both parents were placed on the child abuse registry for denial of critical care for failing to provide proper supervision.

After May 2011, DHS allegedly switched drug testing services, and failed to assign the parents an ID number. As a result, the parents were unable to submit to testing between June and August 2011.

In July 2011, the mother and father were evicted from their home due to nonpayment of rent. They initially moved in with the mother's father. However, the father moved to a campsite after he was asked to leave the home due to his alcohol abuse. The mother eventually moved in with her grandmother.

On August 12, 2011, the mother and the father as well as three other individuals were stopped leaving a Walgreens in Coralville. Two of the individuals had warrants out for their arrest. A consent search was done on the vehicle the group arrived in, and multiple items consistent with manufacturing methamphetamine were found. The mother and father both admitted to the police that they had purchased precursor items, and the group talked about

making methamphetamine together. The mother and the father were both charged with procuring a precursor substance for the manufacturing of methamphetamine in violation under Iowa Code section 124B.9. Both parents were incarcerated following their arrests. Although the mother was released on September 8, the father remained incarcerated at the time of the termination trial because he was already on probation for a previous conviction for purchasing a precursor.

On July 22, 2011, the State filed a petition seeking to terminate the mother and father's parental rights to A.A. and H.A. The petition came to a hearing on September 26, 2011.

At the hearing, the mother testified that she had only used methamphetamine once during the pendency of these proceedings, which was on August 11, 2011. The mother denied ever using before then, and testified that the positive tests were "compromised" due to circumstances other than her use. The mother also admitted that she was an alcoholic, but denied being addicted to methamphetamine. The mother further testified that she would need at least another month before the children could be returned to her care.

The father testified that he was addicted to both methamphetamine and alcohol. He denied using methamphetamine on August 11, but did admit that his last usage was in mid- to late-July 2011. The father testified that he was scheduled to go to substance abuse treatment in Des Moines on August 16, but was unable to go after his arrest. The father further recognized his need for

continued substance abuse treatment, and that he could not currently provide his children with a safe home.

On December 12, 2011, the juvenile court entered an order terminating parental rights under Iowa Code sections 232.116(1)(f), (h), and (l) (2011). The mother and father separately appeal raising four identical issues: (1) the State failed to prove the statutory grounds by clear and convincing evidence, (2) the State failed to make reasonable efforts for reunification, (3) termination was not in the children's best interests, and (4) termination was inappropriate due to the closeness of the parent-child bond and because the child were placed in the care of relatives.

## **II. Statutory Grounds.**

When the juvenile court terminates parental rights on more than one ground, we need only find one ground to be appropriate to affirm. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010). We find the evidence supports terminating parental rights under Iowa Code section 232.116(1)(f) for A.A. and section 232.116(1)(h) for H.A.

The father initially argues that because A.A. was only three years old at the time of the termination hearing, subparagraph one of section 232.116(1)(f) was not satisfied. However, subparagraph one was met because A.A. turned four before the juvenile court issued its termination order. *See In re D.M.J.*, 780 N.W.2d 243, 245 (Iowa Ct. App. 2010).

The only other ground the parents challenge is that the State failed to prove by clear and convincing evidence that the children could not be returned to

their care. See Iowa Code § 232.116(1)(f)(4), (h)(4). The mother and father have a length history of substance abuse. Both failed multiple drug tests during the pendency of this case, and neither has successfully completed substance abuse treatment. See *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). Further, both parents testified they were not ready to have the children returned to their care, and needed additional time for reunification. We find the State met its burden of proof.

### **III. Reasonable Efforts.**

Both parents also argue the State did not provide them with reasonable reunification services when it failed to provided drug testing from June to August 2011. “The reasonable efforts requirement is not viewed as a strict substantive requirement of termination.” *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Rather, “[t]he State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent.” *Id.* In making this consideration, our focus is on the services provided by the State and the response by the parent, not on the services the parent now claims are deficient. *Id.* at 494. Here, the State provided substance abuse evaluation, treatment, and drug testing. The parents were unsuccessfully discharged from treatment and each provided several positive drug tests. In addition, at the termination hearing each admitted methamphetamine use in late-July or early-August. As stated above, the State met its burden that the children could not be returned to parental care. Thus, we reject the parents’ reasonable efforts claim.

#### **IV. Best Interests of the Children.**

In determining a child's best interest, we "give 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." *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (quoting Iowa Code § 232.116(1)(2)).

The children had been removed from parental care for over a year at the time of the termination hearings. During this time, the mother and the father had not made any progress on their alcohol and methamphetamine abuse issues. The parents' methamphetamine abuse prevents them from providing the children with a safe and stable home. *N.F.*, 579 N.W.2d at 341. "At some point, the rights and needs of the child[ren] rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The children need structure and permanency, and should not have to wait endlessly to get it. *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990) ("We have long recognized that the best interests of a child are often not served by requiring the child to stay in 'parentless limbo.'"). We agree with the juvenile court that termination was in the children's best interests.

#### **V. Exceptions to Termination.**

**A. Placement with a Relative.** The juvenile court need not terminate parental rights when "[a] relative has legal custody of the child." Iowa Code § 232.116(3)(a). This exception to termination is permissive, not mandatory. *P.L.*, 778 N.W.2d at 39. The court has discretion, based on the unique



circumstances of each case and the best interests of the child, whether to apply the factor to save the parent-child relationship. *P.L.*, 778 N.W.2d at 39-40.

The children are in the care of their paternal aunt and she is willing to adopt. On our de novo review, we find that terminating parental rights was in the children's best interests given their need for a safe and permanent home. *Id.* Accordingly, the juvenile court did not err in refusing to invoke this exception.

**B. Closeness of the Parent-Child Bond.** Section 232.116(3)(c) provides that the juvenile court need not terminate parental rights when “[t]here is clear and convincing evidence that the termination would detrimental to the child due to the closeness of the parent-child relationship.” In analyzing this exception, “our consideration must center on whether the child will be disadvantaged by termination, and whether the disadvantage overcomes [the parent’s] ability to provide for [the child’s] developing needs.” *D.W.*, 791 N.W.2d at 709. Although we recognize the parent-child bond in this case, the evidence shows that neither parent is able to meet the children’s needs and the children’s needs are not overcome by the disadvantage that may result from termination.

## **VI. Conclusion.**

For the foregoing reasons, we affirm the decision by the juvenile court to terminate the parental rights of the mother and the father to A.A. and H.A.

**AFFIRMED ON BOTH APPEALS.**