

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1203 / 12-2082  
Filed January 24, 2013

**IN THE INTEREST OF G.F., S.F., AND A.F.,  
Minor Children,**

**B.F., Father,  
Appellant.**

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Appeal from the Iowa District Court for Scott County, Christine Dalton,  
District Associate Judge.

A father appeals the termination of his parental rights. **AFFIRMED.**

Randall McNaughton of Lauren M. Phelps, P.L.L.C., Davenport, for  
appellant father.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant  
Attorney General, Michael J. Walton, County Attorney, and Julie Walton,  
Assistant County Attorney, for appellee State.

Marsha Arnold, Davenport, for appellee mother.

Steven Stickle of Stickle Law Firm, P.L.C., Davenport, for appellee  
intervenor.

Lucy Valainis, Davenport, attorney and guardian ad litem for minor  
children.

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

**POTTERFIELD, P.J.**

A father appeals the termination of his parental rights. Because statutory grounds for termination exist and termination best provides for the children's long-term stability and safety, we affirm the termination of the father's parental rights.

**I. Background Facts and Proceedings.**

Brad is the father of S.F., born in 2001; A.F., born in 2004; and G.F., born in 2005. These children came to the attention of the department of human services (DHS) on this occasion because all three were being physically and sexually abused by the mother's paramour and, though she knew of the abuse, the mother did nothing to prevent further occurrences.<sup>1</sup> However, the children have been involved with DHS for many years.

In 2001, when S.F. was residing with the mother and Brad, a child protective assessment found the parents had failed to provide adequate shelter.

In 2006, Brad, the children, and the mother were living with Brad's mother and her paramour, Jay, a registered sex offender. DHS involvement ended when the family moved out of that home and reported they were not going to return. Brad and the mother separated.

However, in December 2007, Brad and the mother were again determined to be responsible for exposing their children to a registered sex offender. Brad, the mother, and the children were living with Brad's mother and Jay, and the children had been left alone with Jay. DHS had additional concerns because the

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<sup>1</sup> The mother and the paramour are currently serving lengthy prison sentences stemming from the sexual abuse.

mother had left the children alone without supervision on three separate occasions, and the children had witnessed on-going domestic violence perpetrated by Brad upon the mother. The children were removed from their parents' custody for almost two years during this prior juvenile court involvement and were placed in relative care with Brad's sister and her husband. Services were offered, but Brad did not believe that Jay posed a danger to his children, did not attend a batterer's education program (BEP) as required, and generally did not participate in services. The children were returned to the mother's home in October 2009 and to her custody in April 2010—she and Brad were not together at that time.

In August 2011, DHS again became involved when one of the children reported to school officials sexual abuse, physical abuse, and domestic violence by their mother's paramour. A child protective assessment was initiated on August 17. A September 2011 entry in that assessment noted "Brad's lack of participation in services in the past and failure to address domestic abuse issues." It also noted Brad was "currently homeless." The children were again placed, on a voluntary basis, in the home of their aunt and uncle. A December 19, 2011 report to the court noted Brad was not "in a position to care for the kids nor do[es he] recognize the emotional or basic safety needs of the children." Brad was again living with his mother and Jay.

In January 2012, the children were adjudicated children in need of assistance (CINA). The adjudication order noted Brad "has had very little contact with his children in recent years but he is participating in visitation and services."

The court found the children could not be placed with their father. The paternal aunt and uncle's motion to intervene was granted on February 13, 2012.

The February 13, 2012 dispositional order reads, in part:

[Brad] lives with his mother and her paramour, a convicted sex offender. He thinks the sex offender is no threat to his daughters' safety. He holds a good job but seems unable to live on his own. He is not currently supporting the children financially at this time. He did not see his children regularly in the past. He does want to assume custody of his daughters. He reports no current substance abuse issues or mental health issues. He has completed over half of the BEP classes. [DHS] is requesting a psychological evaluation and should immediately complete a parenting assessment on [Brad]. He is to attend all scheduled visitation, seek independent stable and safe housing, and complete parenting classes as needed. [DHS] is also offering services to [Brad] so that he understands the threat sexual abuse poses and to deal with the aftermath of his daughters' abuse.

A permanency hearing was held on June 12, 2012. It was noted that Brad had tested positive for marijuana on February 9. An April 9 follow-up urinalysis (UA) test was scheduled, but Brad did not show. Brad's counsel relayed a message to DHS asking that the test be rescheduled. Because UAs are to be random DHS did not agree. Brad acknowledged he continued to reside with his mother and Jay. He stated he was looking for a place to live, but had not found anything he could afford. He testified Jay was no longer required to register as a sex offender. Brad asked that the proceedings be continued. His attorney asked, "In your opinion, how much time would be required for you to meet all of the goals that DHS has given you: financial independence being one of them, getting your own place another one," and Brad stated, "Shouldn't take me more than three months. Shouldn't take that long."

The juvenile court filed a permanency order on July 3, 2012, in which the court observed,

The primary concern with [Brad] is not day-to-day care of the children, he can do that with some assistance. However, [Brad] does not think it is a problem for his daughters to be around a registered sex offender . . . . He simply does not view Jay as a safety threat to his daughters. . . .

[Brad] does not believe he needs help parenting the girls. His girls have been sexually abused and had to rescue themselves from the abuse because their mother did not. They will need assistance and their caregivers will need special training to help them deal with the trauma of their young lives. [Brad] was not an active parent until the Department became re-involved with the family in August of 2011. He has had a random drug screen positive for marijuana. He has not lived independent of his mother and [Jay] during the duration of this case.

. . . .  
. . . . [Brad] has made some progress toward reunification but after many months of services this year, and well over one year of services during the last CINA, he has been unable to assume full care of his daughters. The adjudicatory harm has not been alleviated despite the offer of services. There is no indication that an additional six months will change the outcome.

A petition to terminate parental rights was filed. At the October 31, 2012 hearing DHS social worker, Lynn Hamel summarized:

As indicated throughout my testimony, I believe [Brad] can be a very positive—play a very positive role in their [the children's] lives. I believe he loves his daughters, wants good things for them, wants to be part of their lives, and I believe they want the same thing. I don't think he fully understands the emotional needs of his daughters based on the sex abuse they endure, nor has he exercised good judgment, specifically with regard to [Jay] and the risk he poses to them.

Hamel testified the current custodians were willing to adopt and preferred termination of parental rights to guardianship. Hamel testified adoption would provide the most permanent and least disruptive solution.

Thirty-six-year old Brad testified that his sister sometimes brings the children over to his mother's house where the children would be around Jay, and DHS did not object. He felt DHS was applying a different standard to him and his sister. Brad acknowledged that DHS does not believe the children can live safely in the same house as Jay. The following then occurred:

Q. So you can't provide a home DHS feels is safe; isn't that right? A. I could, but why should I? I have rights.

Q. You are choosing [Jay]? A. I am not choosing Jay over my kids.

Q. Let me ask the question: You are choosing to stay with [Jay] rather than provide a home for your kids? A. No. I am staying with my mom, not Jay.

Brad also acknowledged his mother was recently convicted of a drug charge. When asked what drug charge, he responded, "I don't know. I didn't talk to her about it."

On November 6, 2012, the juvenile court terminated Jay's parental rights pursuant to Iowa Code section 232.116(1)(d), (f), and (i) (2011).<sup>2</sup> The court

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<sup>2</sup> Section 232.116(1) allows termination of 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 physically or sexually abused or 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.

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

(1) The child is four years of age or older.

(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 twelve of the last eighteen months, or for the

found that “[a] person who cannot yield when the safety and further relationship with his children is in jeopardy, is demonstrating an overall disregard for the needs of their children.” The court also found that “[Brad] won’t protect his girls, doesn’t even see the need to, and shows little empathy or insight into the trauma they have suffered.” The court stated termination will “ensure that the people caring for [the children] will protect them from further sexual abuse and have an understanding of the trauma connected with the abuse.”

Brad appeals, contending the court erred in finding: (1) reasonable efforts had been made to reunify the father with his children; (2) clear and convincing evidence supported termination; and (3) termination was in the children’s best interests. He asserts the “Court’s rubber-stamp approval of DHS’s unsupported, uninvestigated, and erroneous opinions [concerning living with Jay] was plain error.”

## **II. Scope and Standard of Review.**

Our review of termination of parental rights proceedings is *de novo*. We are not bound by the juvenile court’s findings of fact, but we do give them weight, especially in assessing the credibility

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last twelve consecutive months and any trial period at home has been less than thirty days.

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

*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 physical or sexual abuse or 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.

of witnesses. We will uphold an order terminating parental rights if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. 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.”

*In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010) (citations omitted).

### **III. Discussion.**

A. *Reasonable efforts.* Brad claims reasonable efforts have not been made to reunify him with his children. We disagree.

Our child welfare laws require the DHS to “make every reasonable effort to return the child to the child’s home as quickly as possible consistent with the best interests of the child.” Iowa Code § 232.102(7); *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). But we do not view reasonable efforts as a “strict substantive requirement of termination.” *C.B.*, 611 N.W.2d at 493. The State must show that it exerted reasonable efforts to reunify the family “as part of its ultimate proof the child cannot be safely returned to the care of a parent.” *Id.*

Brad and his family have been involved with DHS intermittently over a number of years. Since 2006, Brad has been aware that DHS considered it a risk to their safety for Brad’s children to live in the same household as a convicted sex offender. He was ordered to complete BEP during the 2008-2010 juvenile court involvement. Brad did not participate in recommended services then. During the CINA proceedings initiated in 2011, services offered to Brad included visitation; a parenting inventory; Family Safety, Risk and Permanency (FSRP) services, some of which focused on improving Brad’s parenting skills and gaining more realistic expectations of his children, some aimed at providing more appropriate and balanced meals; assistance in searching for independent



housing; BEP; and information about child sexual abuse and its effects. Brad made progress in many of the areas, but continues to insist Jay poses no danger to his children.

Brad had progressed to unsupervised visits with his children in late 2011, but visits returned to supervised in February 2012 after Brad informed his FSRP service provider the children were being physically abused by his sister. DHS wished to investigate the allegations without Brad having an opportunity to influence the children's responses to their questions. This return to supervised visits allowed service providers to ensure their investigation into Brad's allegations was untainted by interference and influence by Brad. There were no reports by the children of physical abuse in the months that followed. Brad did request increased visitation, but did not receive it.

Also in February, Brad submitted a positive UA and missed the subsequent April 2012 UA drop request. Brad requested advance notice for additional UAs to arrange for transportation. DHS does not provide advance notice for "random" drug testing.

At the June permanency hearing, Brad acknowledged that DHS did not believe his current home was suitable for his children due to the presence of a convicted sex offender. He stated it would take him no more than three months to find another suitable place. Yet, at the October termination hearing, Brad continued to live in the same household he had known since 2006 was unsuitable. He had sufficient disposable income to live independently. His assurances that Jay poses no risk to Brad's children are not convincing. Nor is

his apparently deliberate lack of knowledge as to the nature of his mother's recent drug conviction.

The record supports the juvenile court's finding that reasonable efforts at reunification have been made.

*B. Statutory grounds.* The grounds for termination must be proved by clear and convincing evidence. Iowa Code § 232.116(1); see *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 on any ground we find supported by the record. *D.W.*, 791 N.W.2d at 707.

Brad does not contest any particular statutory ground, arguing only that there is not clear and convincing evidence to support termination and citing Iowa Code section 232.116. Generally, failure to cite authority in support of an issue may be deemed a waiver of that issue. See Iowa R. App. P. 6.903(2)(g)(3).

In any event, upon our de novo review, we find clear and convincing evidence to support termination under section 232.116(1)(f): These children, all older than four years of age and previously adjudicated CINA due to severe physical and sexual abuse by their mother's paramour, have been out of their parents' custody for more than twelve consecutive months. We find clear and convincing evidence that the children cannot presently be returned to Brad because he is unable to provide safety to his children—he refuses to or is unable to recognize any risk to his children. That failure to recognize risk is evidenced in his insistence that Jay is the children's "grandpa" and "would not do nothing to

my kids.”<sup>3</sup> It is also evidenced in Brad’s lack of concern about the drug charges of which his mother was recently convicted. As so aptly stated by the district court, “A person who cannot yield when the safety and further relationship with his children is in jeopardy, is demonstrating an overall disregard for the needs of their children.” We agree with the juvenile court that because Brad does not see the need to protect his children, we are entitled to conclude the children cannot be returned to his custody. See *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) (noting that statutory termination provisions are preventative and “mandate action to prevent probable harm to a child”).

The evidence supports a finding the father cannot or will not protect his children. We therefore affirm the termination of his parental rights pursuant to Iowa Code section 232.116(1)(f). Having found grounds for termination exist, we must consider whether to terminate parental rights. See Iowa Code § 232.116(1) (“Except as provided in subsection 3, the court *may* order the termination of . . . the parental rights . . . .” (emphasis added)). In doing so, “the court shall 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.” *Id.* § 232.116(2). Finally, before terminating a parent’s parental rights, the court must consider if any of the factors contained in section 232.116(3) allow the court not to terminate. *Id.* § 232.116(3).

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<sup>3</sup> The juvenile court noted that “[s]ex offenses against children most often happen at the hands of caretakers and people close to the children” and that Jay’s “victims were children related to” Brad and his mother. Brad’s denial of any risk to his children does not bode well for their safety in his care.

*C. Termination is in children's best interests.* Brad argues that termination was not in the children's best interests and not required because the children were in a relative placement and a guardianship could preserve the "close father-child relationship." See *id.* § 232.116(3)(a), (c).

Lynn Hamel testified guardianship was considered, but not recommended by DHS. Hamel stated guardianship posed a risk of instability because there had been tension between Brad and his sister. The attorney for the relative custodians stated the aunt and uncle preferred termination and adoption and believed that to be in the best interests of the children. The guardian ad litem argued for termination of parental rights to allow the children needed stability.

Giving "primary consideration to the child[ren]'s safety, to the best placement for furthering the long-term nurturing and growth of the child[ren], and to the physical, mental, and emotional condition and needs of the child[ren]," see *id.* § 232.116(2), we conclude termination and adoption provides the children the stability they need and deserve. The children are integrated in a home where their psychological and safety needs are being met. Though we acknowledge a bond between father and children, especially in light of the father's testimony that his sister is likely to allow continued contact, we do not find termination of the father's parental rights would be detrimental as that term is used in section 232.116(3)(c).

We read the father's final appeal issue as a general dissatisfaction with the juvenile court's findings. We have conducted a *de novo* review, however,

and agree with the court's findings and conclusions. We therefore affirm the termination of the father's parental rights.

**AFFIRMED.**