

**IN THE COURT OF APPEALS OF IOWA**

No. 2-214 / 11-1935  
Filed March 28, 2012

**IN THE INTEREST OF K.W. and K.K.,  
Minor Children,**

**R.D.W., Father,  
Appellant,**

**J.A.R., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Benton County, Jane F. Spande,  
District Associate Judge.

A father and mother appeal separately from the order terminating their  
parental rights to K.W., and the mother appeals the order modifying permanency  
as to K.K. **AFFIRMED ON ALL APPEALS.**

Andrew Abbott of Abbott Law Office, P.C., Waterloo, for appellant father of  
K.W.

David Burbidge, Iowa City, for appellant mother.

M. Victoria Cole, Cedar Rapids, for father of K.K.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, David C. Thompson, County Attorney, and Jowanda Peterson,  
Assistant County Attorney, for appellee State.

Raymond Lough, Vinton, for intervenor.

Robert Fischer of Fischer Law Firm, L.L.P., Vinton, for minor children.

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

**DANILSON, J.**

A father (Ron) and mother (Julie) appeal separately from the order terminating their parental rights to K.W.; and the mother appeals the order modifying permanency as to K.K.; K.K.'s father (Don) does not appeal. The juvenile court has prepared a lengthy, detailed, and well-reasoned permanency and termination order, which accurately covers the applicable law and all relevant considerations. The parents have been provided reasonable services and reasonable time to overcome their individual difficulties with only sporadic and temporary progress. K.W.'s young age and need for stability supports termination. Unlike K.W., K.K.'s strong bond to his parents supports a guardianship in lieu of termination. Upon our de novo review, we come to the same conclusions as did the juvenile court, and we therefore affirm.

We will summarize only briefly the lengthy history of this family's juvenile court involvement, which the district court more fully recounts in the termination and permanency order of November 23, 2011.

Julie is the mother of K.K., born in December 2002, and K.W., born in May 2009. Don is the father of K.K., though K.K. has never resided with Don and, prior to juvenile court involvement, had only sporadic contact with him. This family became involved with juvenile court and the Iowa Department of Human Services (DHS) in the fall of 2007 after two founded child abuse assessments: Julie's alcohol consumption impaired her ability to supervise K.K. appropriately.<sup>1</sup>

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<sup>1</sup> During the child abuse assessment, Julie reported that in 2005 she had been prescribed Antabuse, a prescribed medication for some persons dealing with alcohol abuse that makes that person physically sick if they consume alcohol.

K.K. began living with his maternal grandparents as a voluntary placement in late 2007, was adjudicated a child in need of assistance (CINA) on December 4, 2007, and was formally placed in the custody of DHS for relative placement in January 2008. Numerous services were offered to the family, including mental health and substance abuse treatment for Julie. While in treatment Julie met Ron. Julie progressed to a trial home placement with K.K. in December 2008. She learned soon after K.K.'s trial placement that she was pregnant and the pregnancy was considered high risk. Ron is the father of K.W. As the juvenile court described the situation in late 2008, "[t]he pregnancy, Julie's employment and her continuing relationship with Ron interfered with Julie's ability to consistently care for [K.K.] Thus there were times during the trial home placement where [K.K.] stayed with his grandparents for extended periods." In 2009, Ron relapsed in the abuse of alcohol and prescription drugs, which continued juvenile court involvement.

When K.W. was born in May 2009, K.K. was staying with his grandparents, but returned to his mother's home shortly after K.W.'s birth. Ron was living with Julie at the time. K.W. was adjudicated a CINA on August 4, 2009, as to both Julie and Ron. Ron and Julie separated in the fall of 2009 after Ron was arrested for public intoxication and probation violations. Ron participated in substance abuse and mental health treatment and eventually returned to an inpatient program. Julie struggled and continued to rely upon her parents for assistance with both children. Services to the family continued. K.K., whose play therapy had ended in early 2009, returned to play therapy after

K.W.'s birth because of K.K.'s subsequent aggressive behaviors with his mother and grandmother.

In late July 2010, Julie left K.K. and K.W. at her apartment with two other children, ages five and seven, while she went to a party. The seven-year-olds were reportedly to supervise the two younger children (K.W. would have been just over one year old), with a next door neighbor checking in occasionally. A child abuse referral was received by DHS. Julie denied drinking that evening, but admitted she had consumed alcohol prior to that evening and did so to self-medicate.

Julie entered into an agreement with DHS in August 2010 voluntarily placing both children with the grandparents. K.K.'s behaviors deteriorated, and those behaviors were addressed in play therapy and individual therapy. Upon this relapse, Julie again sought treatment and appropriate medication for her mental health needs and sobriety.

In September 2010, the juvenile court modified the dispositional orders for both children, placing them in the grandparents' custody under DHS supervision and the grandparents withdrew an earlier request for concurrent jurisdiction. However, in December 2010, the grandparents again filed a motion for concurrent jurisdiction to pursue guardianship of K.K. By December 2010, K.K. was visiting regularly with Don and, in late January 2011, Don and K.K. began therapy together.

On January 4, 2011, the court approved the parties' agreement for a trial home placement of K.W. with Julie. K.K. remained in his grandparents' custody. Don filed an application to modify K.K.'s permanency goal from reunification with

the mother to placement with Don. The grandparents resisted and filed a motion to modify permanency goal as to both children. The motions were set for hearing in May 2011.

In March 2011, however, Julie was arrested for public intoxication and later charged with child endangerment as well. She and K.W.—and two other adults—were in a vehicle that went into a ditch. Julie denied driving, but admitted she was intoxicated while K.W. was with her. K.K. was not with Julie because he was still residing with his grandparents. Before and after this March incident, Julie was in outpatient substance abuse treatment. It was suggested Julie transition to a highly structured residential treatment program, but Julie was unwilling to participate. Instead, she re-entered a different residential treatment program, MECCA. She completed that twenty-two day program on May 11, 2011, and then transitioned to an intensive outpatient treatment program. Her mental health medications were changed, and new mental health concerns were identified.

The court would later describe K.K.'s involvement in counseling as

so time intensive in early 2011 that his remedial services ended in the spring of 2011. . . . K.K. was not only involved with two separate therapists, one for each parent, but was also still having separate weekly visits with each parent. He obviously had little time with his school and family situation to be with his friends, to be a typical child with typical childhood concerns.

Due to Julie's inpatient treatment, the filing of a petition to terminate Julie's and Ron's parental rights as to K.W., and the fact the statutory period for reunification had not yet expired, the May 2011 hearing was continued.

A review hearing occurred on June 14 and July 5, 2011, the court denied any change in placement for either child. As the court explained in its combined permanency and termination order:

Julie had only recently completed MECCA's residential program for a second time. [Don] had only recently completed the substance abuse evaluation order in 2008 and, due to a paperwork delay, had only recently completed the psychological/psychiatric evaluation also first ordered in 2008. While [K.K.]'s overnight and weekend visits with his father were going well, the disruption by a change in placement was not in his best interests given the bond [K.K.] has with [K.W.], the overall length of time [K.K.] had remained with [the grandparents] and the fact permanency concerning both children had not yet been addressed. Similar[ly,] disruption for placement of K.W. with his mother was not in his best interests. Julie was again in a new relationship as of the June 14 hearing. Julie's history of dishonesty with the Department, [K.K.], her parents and service providers reasonably required that meaningful change be proven rather than promised. The court also in light of the history of the family and services denied Julie's request for mandated counseling involving her parents and denied her request to mandate further therapy for [K.K.] [K.K.]'s therapist did not perceive any need for continued play therapy. . . . Although the Court ordered in September 2010 that all family members participate in family therapy, any further mandate of participation was unlikely to timely achieve meaningful change in the adult's relationships with one another and likely to cause further unnecessary stress to [K.K.]

Thereafter, as concerning K.K., Don withdrew his request to modify the permanency goal, and all parties, except Julie, requested the permanency goal be modified to place guardianship of K.K. with the grandparents. As to K.W., the State, DHS, the guardian ad litem, and the grandparents all requested the termination of both parents' parental rights. Ron was then incarcerated for violating his probation on a second-degree burglary conviction.

A hearing on the pending matters was held on September 9, September 30, and October 28, 2011. Pursuant to Iowa Code section 232.104 (2011),<sup>2</sup> the court entered an order modifying the permanency goal with regard to K.K. and placing him in guardianship with the grandparents under the protective supervision of DHS. The court terminated Julie's parental rights as to K.W. pursuant to section 232.116(1)(h) and (l); the court terminated Ron's parental rights to K.W. pursuant to section 232.116(1)(e), (h), and (l).<sup>3</sup> The juvenile court

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<sup>2</sup> Section 232.104(2)(d)(1) provides, "After a permanency hearing the court shall do one of the following . . . [e]nter an order, pursuant to findings required by subsection 3, to . . . [t]ransfer guardianship and custody of the child to a suitable person."

<sup>3</sup> Section 232.116(1) allows termination of parental rights if:

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. . . .

. . . .

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.

. . . .

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

made specific and extensive findings that guardianship for K.K. and termination for K.W. were in the children's best interests.

On appeal, Ron argues that K.W. should have been returned to Julie or permanency should have been deferred. Julie argues the juvenile court erred in denying her motion for reasonable services and in terminating her parental rights to K.W. As to K.K., Julie argues on appeal that the court erred in modifying the permanency order and in denying her motion for reasonable services.

Our review of permanency orders is *de novo*, as is our review of termination rulings. *In re A.A.G.*, 708 N.W.2d 85, 90 (Iowa Ct. App. 2005); *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010).

We have thoroughly reviewed the record. We find no merit in the parties' contentions, and we adopt the juvenile court's conclusions as our own. Those conclusions include, in part:

Ron is a chronic alcoholic. His mother has a severe alcohol problem. Ron also has a chronic history of illegal drug use and abusing prescribed medication. His criminal history in addition to the burglary convictions includes convictions for public intoxication, underage possession of alcohol, intentional damage to property, fighting, interference with official acts, and driving while suspended. Ron's only contact with [the] Department's current caseworker since separating from Julie is one letter wherein he requested his family be allowed contact with [K.W.] . . .

Julie has participated in the following services over the four years juvenile court has been involved with her children: inpatient and outpatient substance abuse services, mental health counseling and treatment, remedial services, FSRP services, family centered services, Early Access services, supervised visits, family team meetings and protective day care. Remedial services have included assistance with parenting skill development, employment searches and budgeting. [K.K.] has participated in individual and

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custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.



play therapy with two therapists. Each of his parents has been involved in [K.K.]’s therapy at various times.

. . . Julie is at risk of relapse given her history of substance abuse and treatment. To remain sober she must avoid associating with those who use alcohol as well as those who use and abuse legal and illegal drugs. . . . Critical to her recovery is her need to consistently follow through with her mental health treatment needs. . . . Her mental health diagnoses are extensive . . . . She is likely unable to appropriately respond to routine stress in relationships and day to day life without appropriate mental health care and remains at relapse [risk] in her sobriety without that mental health counseling and treatment.

Julie is a good mother when she is not abusing alcohol or drugs, her mental health needs are being met and her focus is not distracted by her male relationships. [K.K.] knows that side of his mother and obviously loves her. He is however very angry over her bad choices and remains afraid for his safety with her because of their past experiences together . . . . [K.K.] has lived with his grandparents for a greater amount of time since his birth than he has lived with his mother. . . . [K.W.] has continuously resided with his grandparents since March 10, 2011, more than seven months as of the completed hearing date.

Both children are safe with the [grandparents]. Both children are emotionally secure at the [grandparents]. [They] trust that their grandparents will consistently protect them from harm. . . . While neither [child] has incurred physical harm as a result of their mother’s neglect, that result is more a matter of good fortune than a credit to Julie’s care during the times she was drinking or using.

. . . .  
The mother’s request for additional services and for an extension of time for reunification, with or without additional services, is denied. Given the extensive services provided to date, and the period of time those services have been in place, the Court finds no meaningful benefit likely to result from more time or more services. Julie has had extended periods of sobriety only to relapse despite that progress. . . .

Neither child can be safely returned to [Julie] at this time. Their life with her has been accurately characterized as a roller coaster ride. There is no reason to believe that ride has ended for Julie or for these children if living with their mother. These children desperately deserve to go on with their lives rather than await further uncertainty and stability of care with their mother. . . .

The juvenile court determined, and we agree, with respect to K.K. termination is not in the child's best interests, but guardianship with the grandparents is. See Iowa Code § 232.104.

As to K.W. and the termination of parental rights, "[w]e only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm its ruling." *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000).

Section 232.116(1)(h) provides termination may be ordered when there is clear and convincing evidence a child age three or younger who has been adjudicated CINA and removed from the parents' care for the last six consecutive months cannot be returned to the parents' custody at the time of the termination hearing. Iowa Code § 232.116(1)(h). There is clear and convincing evidence that K.W. is under three years, has been adjudicated a CINA and removed from Julie's custody for the last six months, and cannot be returned to either Ron or Julie at the time of the termination hearing. K.W. cannot be returned to Ron, who is incarcerated. And Julie's long history of substance abuse, extensive services, and relapse resulting in her inability to properly care for her children, convince us there is a substantial risk of relapse and inadequate parenting in the future. See *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997) (stating in "considering what the future holds for the child if returned to the parents . . . we look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future").

Giving "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,” we find termination is in K.W.’s best interests, see Iowa Code § 232.116(2).

While we acknowledge K.K. and K.W. are placed with relatives, which may be considered as a factor that weighs against termination, see Iowa Code § 232.116(3), we agree with the juvenile court that termination is nonetheless in the K.W.’s best interests here: his brother, K.K., has endured many years of awaiting his mother’s ability to parent and, as a result, has had to participate in extensive mental health therapy. K.W. should not be required to repeat K.K.’s roller coaster ride. In light of the extensive services offered to Julie over the last more than four years, we reject her claim that additional services or an extension of those services are warranted. We acknowledge a guardianship for one child and termination of parental rights for a second child is somewhat unusual. However, as the juvenile court observed, “[K.K.] has a strong bond with both parents” and “it is important to [K.K.] that all ties to his [mother] not be severed.” The court also noted that K.W. was only two and one-half years of age at the time of the court’s ruling, and needed “stability and certainty of care.” Moreover, Ron and Julie could not provide “constant, responsible, and reliable parenting.” These facts support the conclusions reached by the juvenile court and the different applications of the law to each child.

We therefore affirm on all appeals.

**AFFIRMED ON ALL APPEALS.**