

**IN THE COURT OF APPEALS OF IOWA**

No. 2-382 / 12-0268  
Filed May 23, 2012

**IN THE INTEREST OF K.S. and A.S.,  
Minor Children,**

**D.M., Father,  
Appellant.**

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Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A father appeals a juvenile court order terminating his parental rights to two children. **AFFIRMED.**

Matthew L. Noel of Blair & Fitzsimmons, P.C., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Jean A. Becker, Assistant County Attorney, for appellee.

Sarah Stork Meyer of Clemens, Walters, Conlon & Meyer, L.L.P., Dubuque, attorney and guardian ad litem for minor children.

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

**MULLINS, J.**

A father appeals a juvenile court order terminating his parental rights to two children, A.S. (born June 2008) and K.S. (born May 2010), under Iowa Code section 232.116(1)(h) (2011).<sup>1</sup> The father argues the State failed to prove the statutory ground by clear and convincing evidence, and that he should have been given an additional six months to work towards reunification. We affirm.

**I. Background Facts and Proceedings.**

The family first came to the attention of the Iowa Department of Human Services (DHS) in October 2009 after an incident of domestic violence. The father had punched and choked the mother during an argument while the mother was holding A.S. in her arms. As a result of the incident, the father was arrested and charged with domestic abuse assault causing bodily injury and child endangerment. A no-contact order was subsequently entered between the father and the mother. A child protective assessment was also completed and determined to be founded for denial of critical care: failure to provide proper supervision, and the father was placed on the child abuse registry. Safety services were provided to the mother, but she was uncooperative, and the case was eventually closed.

In May 2010, the mother came back to the attention of DHS, when K.S. tested positive for marijuana at birth. The father was in jail at this time, and voluntary services were again instituted with the mother. The DHS case worker sent a letter to the father requesting he contact her as soon as he was released,

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<sup>1</sup> The juvenile court also terminated the parental rights of the children's mother. She has not appealed.

but he failed to do so when he was released at the end of September 2010. Shortly after his release, the father violated of the no-contact order, and was sent to prison.

On December 1, 2010, the children were adjudicated children in need of assistance under Iowa Code sections 232.2(6)(c)(2), (n), and (o) (2009). Over the next year, the mother consistently struggled with services resulting in the children eventually being placed into family foster care.

While in prison, the father maintained contact with DHS through letters, but was unable to have contact or visits with his children or engage in services due to his incarceration. In November 2011, the father was granted work release and was transitioned to the Elm Street Correctional Facility in Dubuque. The father is not permitted to have children placed in his care at this facility.

On December 7, 2011, the father had his first visit with the children in at least nineteen months. At this visit, the children did not recognize the father or know who he was. For the next two weeks, the father had two two-hour visits per week with his children. However, the visits were suspended when the children began to exhibit significant behaviors during and after visits, which included tantrums, defiance, being very clingy, changes in eating and sleeping habits, and being more aggressive in their play. The children's therapist reported that the children were overwhelmed with the visits and recommend the visits be decreased. DHS subsequently decreased the visits to once a week for one hour.

On December 22, 2011, the State filed a petition to terminate the father's parental rights to the children. The petition came to a hearing on January 26,

2012. At the termination hearing, the father testified that he was employed, had an apartment, and expected to be out of the Elm Street Facility in about a month and a half.

On February 3, 2012, the juvenile court entered an order terminating the father's parental rights under Iowa Code section 232.116(1)(h) (2011). The father appeals.

## **II. Standard of Review.**

We review termination orders de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give weight to the juvenile court's findings, but are not bound by them. *Id.*

## **III. Analysis.**

Under the statutory ground, the father only challenges the element requiring the State to prove by clear and convincing evidence that the children could not presently be returned to his care. See Iowa Code § 232.116(1)(h)(4). At the time of the termination hearing, the father was residing in the Elm Street Correctional Facility, which does not permit placement of the children with him. Thus, we find the State met its burden.

Although the statutory ground has been shown, the juvenile court had the option to continue the placement for an additional six-month period to allow the father to continue to work towards reunification. See *id.* § 232.117(5). However, before making such an order, the court must be able to make a determination that "the need for removal of the child from the child's home will no longer exist at

the end of the additional six-month period.” *Id.* § 232.104(2)(b). As our court has noted:

Under some circumstances extensions could be appropriate. “The judge considering them should however constantly bear in mind that, if the plan fails, all extended time must be subtracted from an already shortened life for the children in a better home.”

*In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa Ct. App. 2005) (quoting *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987), *cert. denied sub nom. In re A.C. v. Iowa*, 485 U.S. 1008 (1988)).

Upon our review, we agree with the juvenile court that a six-month extension would not be appropriate in this case. The father has been incarcerated for a majority of the children’s lives. For the first nineteen months of this case, the father had no visits or interaction with his children. See *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993) (holding a father “cannot use his incarceration as a justification for his lack of relationship with the child”). When visits were started, the children did not recognize the father or know who he was. In addition, the children’s behaviors regressed immediately following the visits. Although we have not ignored the father’s recent efforts, his prolonged absence from his children’s lives prevents reunification now and in the foreseeable future. The statutory time for reunification has long passed, and the children should not be forced to endlessly await the maturity of their natural parent. *In re M.Z.*, 481 N.W.2d 532, 536 (Iowa Ct. App. 1991). Accordingly, we affirm the juvenile court’s order terminating the father’s parental rights to A.S. and K.S.

**AFFIRMED.**