

**IN THE COURT OF APPEALS OF IOWA**

No. 2-481 / 12-0713  
Filed July 11, 2012

**IN THE INTEREST OF P.A.,  
Minor Child,**

**B.S., Father,**  
Appellant,

**A.M.A., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Cerro Cordo County, Gregg R. Rosenblatt, District Associate Judge.

A father and mother appeal from the order terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

Colin C. Murphy of Law Offices of Colin C. Murphy, P.C., Clear Lake, for appellant-father.

Kristen N. Ollenburg of Pappajohn, Shriver, Eide & Nielsen, P.C., Mason City, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Carlyle D. Dalen, County Attorney, and Nichole M. Benes, Assistant County Attorney, for appellee-State.

Mark Young, Mason City, attorney and guardian ad litem for minor child.

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

**MULLINS, J.**

A father and mother appeal separately from the April 9, 2012 district court order terminating their parental rights to their son, P.A. (born September 2010), under Iowa Code section 232.116(1)(h) (2011). Both parents argue that the State failed to prove the statutory grounds supporting termination and that termination is not in the child's best interests. The mother also argues termination would be detrimental to P.A. due to the closeness of the parent-child relationship. Upon our de novo review, we conclude the mother and father have been unable to resolve their addictions or the dishonesty stemming from those substance abuse issues. We affirm on both appeals.

**I. Background Facts and Proceedings**

The mother and father of P.A. have a history of drug abuse and addiction, which first brought the family to the attention of the Department of Human Services (DHS). Following P.A.'s birth in September 2010, allegations of both parents using illegal drugs in the presence of the child and caring for him while under the influence prompted DHS visits to the home. Following several failed attempts to gain entry to the home, officials entered the home pursuant to a court order and made contact with the parents. Evidence of drug use was present throughout the home, and both parents admitted illegal intravenous use of a medication known as Dilaudid, a form of morphine. The parents also described an extensive history of illegal drug use to DHS, including methamphetamine, marijuana, and opiates. P.A. was voluntarily placed in foster care in December 2010. In the days following, P.A. tested positive for methamphetamine.

In February of 2011, P.A. was adjudicated a child in need of assistance (CINA) and was ordered to remain in foster care with supervised visits with his parents. On April 21, 2011, a dispositional order was entered. P.A. remained in family foster care; however, both parents had progressed to unsupervised visitation. Both parents had been participating in substance abuse treatment services, and at the time of the disposition, it was anticipated that P.A. could return to the parental home by June of 2011.

During an unsupervised visit with the parents in May of 2011, DHS and family safety, risk and permanency (FSRP) workers checked on P.A. and discovered a significant amount of drug paraphernalia in the home, including needles and spoons with drug residue on them, which could not be explained by either parent. Supervised visitations were reinstated, and both parents were ordered to complete new substance abuse evaluations. The mother was also ordered to initiate mental health counseling. Although both parents maintained that the paraphernalia was not from recent usage, the home had been inspected prior to the commencement of unsupervised visits with P.A., and no such paraphernalia had been found. The juvenile court found P.A. could not be returned to the care of his parents due to concerns about drug use and dishonesty regarding drug use.

In late 2011, the father experienced a series of significant problems related to his drug use. A vein collapse in his arm required emergency hospitalization in Iowa City. Shortly thereafter, he overdosed while at the home he shared with the mother, causing another emergency hospitalization.

At a review and permanency hearing held in December of 2011, DHS reported that little progress had been made by either parent, and due to the continuing issues with drug use and noncompliance with court orders to participate in substance abuse treatment, P.A. could not be returned to the care of either parent. The mother's deferred judgment status for two felonies was also in jeopardy during this same period. An application for probation revocation that alleged she had made misrepresentations to the sentencing judge was pending at the time of the termination hearing.

Both parents were unsuccessfully discharged from substance abuse programs for lack of participation, and neither was able to make satisfactory progress as determined by DHS at the time of the termination. The father has continued outpatient treatment for opiate addiction and has utilized Suboxone to suppress opiate cravings. In the April 9, 2012, termination order, the juvenile court noted, "There is no indication that [the father] and [the mother] currently have the stability necessary for furthering the long-term nurturing and growth of [P.A]."

## **II. Standard of Review**

We conduct a de novo review of termination of parental rights proceedings. *P.L.*, 778 N.W.2d at 40. Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* "Evidence is considered

'clear and convincing' when there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.* (citations omitted).

### **III. Analysis**

Terminating parental rights under Iowa Code chapter 232 follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. We must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against terminating the parental rights. *Id.*

#### **A. Grounds for Termination**

"We 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 that termination may be ordered when there is clear and convincing evidence a child under the age of three, who has been adjudicated a CINA and removed from the parent's care for at least the last six consecutive months, cannot be returned to the parent's custody at the time of the termination hearing. We find the State established the required statutory ground for termination in this case as P.A. was one and a half years old at the time of the termination hearing, had been

removed from the parents' custody for fourteen months, and could not be returned to their custody due to drug paraphernalia recently found in the parents' home.

### **B. Factors in Termination**

Next, even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). In determining the best interests, this court's primary considerations are "the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." *Id.*

The father argues that due to his completion of four weeks of inpatient treatment for substance abuse and current use of Suboxone to combat opiate cravings, there is nothing to suggest that he cannot successfully care for P.A. However, the multiple relapses he experienced during the pendency of this case, one of which resulted in emergency hospitalization, indicate otherwise. Despite the limited success the father has recently experienced with the use of Suboxone, there is still a significant danger of relapse. The changes made by the father in recent months are insufficient due to his repeated failures to take control of his substance abuse in the preceding months. *See In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) ("Time is a critical element. A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting.").

The mother argues the State failed to meet its burden in demonstrating by clear and convincing evidence that P.A. could not be returned to her care. While she argues she has made significant progress towards independence from the father and toward successfully completing her substance abuse programs, she has failed to alleviate DHS concerns regarding both issues. Her continued contact with the father, and her presence in his home during his drug overdose raise serious concerns about the kind of environment P.A. would be subjected to if returned to the mother's care. P.A. has been removed from his parents' care since December 2010. While the mother has made significant improvements since that time and clearly cares for her son, there is no indication she has reached a point of stability that would allow his immediate return to her care.

The father's lengthy roller coaster of multiple substance abuse treatments has not shown significant or permanent success, and the mother has failed to display a marked change in her behavior over a substantial period of time. Children should not be forced to endlessly await the maturity of a natural parent. *In re D.W.*, 385 N.W.2d 570, 578 (Iowa 1986). At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). P.A. needs and deserves both safety and permanency in his life. The mother and father are not able to provide for P.A.'s long-term nurturing and growth. P.A. is currently in foster care that is a permanent placement option. We agree with the juvenile court that due to "all the concerns with [the mother] and [the father] . . . P.A.'s long-term safety cannot be guaranteed with either parent."

### **A. Exceptions to or Factors against Termination**

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *J.L.W.*, 570 N.W.2d at 781. The court has discretion based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

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 be detrimental to the child at the time 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. Under the circumstances in this case, we will not maintain a parent-child relationship where there exists only a possibility the mother or father will become a responsible parent sometime in the unknown future. Assuming the child has a bond with both his mother and father, in this case, the relationships are not so close that they warrant further jeopardizing P.A.’s future by returning him to their care. No exception or factor in section 232.116(3) applies to make termination unnecessary.



**IV. Conclusion**

There is clear and convincing evidence that grounds for termination exist under section 232.116(1)(h), termination is in the child's best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different result. We affirm the juvenile court order terminating the parental rights of both the mother and the father of P.A.

**AFFIRMED ON BOTH APPEALS.**