

**IN THE COURT OF APPEALS OF IOWA**

No. 3-567 / 13-0599

Filed June 12, 2013

**IN THE INTEREST OF A.U. and J.U.,  
Minor Children,**

**H.O., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Butler County, Peter B. Newell,  
District Associate Judge.

A mother appeals the termination of her parental rights. **AFFIRMED.**

Brett H. Schilling of Schilling Law Office, P.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Greg Lievens, County Attorney, and Martin Petersen, Assistant  
County Attorney, for appellee.

Elizabeth Biver, Parkersburg, for father.

Michael Bandy, Waterloo, attorney and guardian ad litem for minor  
children.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

**MULLINS, J.**

A mother appeals from the juvenile court order terminating her parental rights to two children under section 232.116(1)(f) (2013). The mother contends (A) the State failed to make reasonable reunification efforts, (B) the State failed to prove statutory grounds for termination, (C) terminating her parental rights is not in the children's best interests, (D) statutory exceptions save the parent-child relationship, (E) the court should have established a guardianship of the children with the paternal grandparents rather than terminating her parental rights, and (F) she should be awarded more time to work toward reunification. We affirm.

**I. Background Facts & Proceedings**

The mother has four children—A.U. (born 2003), J.U. (born 2004), Z.O. (born 2008), and J.H. (born 2012)—with three different biological fathers. The mother's parental rights to A.U. and J.U. are at issue in the present appeal.<sup>1</sup>

A.U. and J.U. have the same biological father, Jamie. At the time of the termination hearing, A.U. and J.U. lived with their paternal grandparents. The paternal grandparents are ready, willing, and able to adopt A.U. and J.U. pending the outcome of these proceedings.

Throughout most of this case the mother has been in a physically and verbally abusive relationship with her boyfriend, Nathan. Both the mother and Nathan have a history of drug abuse and criminal activity.

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<sup>1</sup> The mother's two other children, Z.O. and J.H., are not at issue in the present appeal. Z.O.'s biological father is John. John was granted sole custody of Z.O. in August 2012. J.H.'s biological father is Nathan. J.H. was not yet born at the time A.U., J.U., and Z.O. were removed from the mother's care. As will be discussed later in this opinion, J.H. was subsequently adjudicated a child in need of assistance but continued to live with the mother throughout the relevant proceedings.

On February 27, 2012, police officers executed a search warrant at the mother's home to investigate evidence of a methamphetamine lab. At the time the mother was pregnant with Nathan's child, J.H. The children lived with their mother and Nathan in the mother's home. The mother's home had no running water, no beds for the children to sleep on, no working refrigerator, and minimal electricity. There were massive piles of trash everywhere. The children had ready access to dangerous chemicals, including muriatic acid, ether, camping fuel, lithium, pseudoephedrine, and pill grinders. The police located over 500 hypodermic needles, marijuana, and numerous pieces of drug paraphernalia. A makeshift methamphetamine lab had been spilled in the laundry room. An active methamphetamine lab was still venting in the attic.

As a result of the search the police arrested the mother and Nathan. The police charged the mother with manufacturing methamphetamine, possession of pseudoephedrine with the intent to manufacture methamphetamine, possession of ether with the intent to manufacture methamphetamine, possession of lithium with the intent to manufacture methamphetamine, possession of marijuana, and child endangerment. Nathan faced similar charges. Both the mother and Nathan refused drug testing.

Following the mother's arrest on February 27, 2012, the children were removed from her care. She stipulated to continued removal. At a subsequent hearing the juvenile court confirmed removal. A.U. and J.U. were placed with their father, Jamie. Z.O. was placed with his father, John. While the mother and

Nathan were in jail, the State filed a petition to adjudicate the children as children in need of assistance.

In March 2012, the court held an adjudication hearing. Results from a hair stat test indicated that at least one of the children, Z.O., had been exposed to, and had ingested, methamphetamine. The court adjudicated the children as children in need of assistance under to Iowa Code section 232.2(6)(c)(2). The court then ordered the mother to undergo substance abuse and mental health evaluations and follow through with any recommended treatment.

In April 2012, the court held a dispositional hearing. By that time the mother had completed a mental health evaluation. During the evaluation the mother reported a family history of mental illness, addiction, and physical and sexual abuse. She admitted to using methamphetamine prior to becoming pregnant with J.H. and admitted to using marijuana during her pregnancy. Despite overwhelming evidence of active methamphetamine labs, she denied any knowledge of methamphetamine manufacturing in her home. The court ordered continued placement of the children with their fathers and ordered the mother to participate in substance abuse treatment, mental health treatment, and family therapy.

After the dispositional hearing the mother bonded Nathan out of jail. Apparently homeless, the mother lived with Nathan in a tent in a local park. Service providers told the mother she needed to focus more on her children than on her relationship with Nathan. The children's guardian ad litem made it clear to

the mother that he would not recommend the children be returned to her care if she continued a relationship with Nathan.

In July 2012, the mother gave birth to J.H.—Nathan's child. J.H. has been adjudicated a child in need of assistance, but remains in the mother's care. The State asserted that the mother had yet to take responsibility for Z.O. testing positive for methamphetamine and continued to deny any knowledge of the methamphetamine labs in her home.

That same month service providers found Jamie unresponsive and passed out on the floor of his home while caring for A.U. and J.U. Jamie admitted he had taken muscle relaxers. He was admitted to in-patient detox centers in both July and August. He was later hospitalized after collapsing at a grocery store. Medical providers determined that his liver was not working properly. Providers then recommended that he undergo an intensive, six-month treatment program. A.U. and J.U. stayed with their paternal grandparents while their father was in the hospital.

In early January 2013, the mother canceled a pretrial release appointment. After the mother canceled the visit, her pretrial release officer and a local law enforcement officer went to the mother's home to conduct a welfare check. Initially, the mother would not answer her door. Approximately fifteen minutes later the mother allowed the officers to enter the home. The officers discovered Nathan and his brother inside the mother's home. Officers then located another man, Nathan's friend, hiding in the garage. Nathan's friend was high on methamphetamine and was arrested for possession of

methamphetamine, marijuana, and drug paraphernalia. Subsequent drug testing confirmed that Nathan had also recently used methamphetamine. Nathan then admitted to using methamphetamine and marijuana on several recent occasions. As a result of the incident, the mother was arrested for violating the terms of her pretrial release.

In late January 2013, the court held a combined review and permanency hearing. Based on Jamie's substantial substance abuse issues, the juvenile court ordered placement of A.U. and J.U. with relatives. DHS subsequently transferred placement of the children to Jamie's parents, the children's paternal grandparents. The court ordered the mother to continue mental health and substance abuse treatment. After the hearing the State filed a petition to terminate the mother's parental rights of A.U. and J.U.

After her release from jail for violating the terms of pretrial release, the mother filed an "application for hearing on lack of reasonable efforts" wherein she requested additional visitation. The court scheduled a hearing on reasonable efforts to be held at the same time as the termination of parental rights proceedings.

On February 28, 2013, the court held the termination of parental rights hearing. A social worker for the Department of Human Services (DHS) testified for the State. The social worker testified that the mother did very well with the children during supervised visits. During the visits the mother was attentive, had age-appropriate expectations for them, and was nurturing. The social worker also testified that the mother failed to take responsibility for the deplorable,

unsafe conditions of her home that led to removal. The mother continued to deny knowledge of methamphetamine labs and refused to acknowledge issues with the physical condition of the home. The social worker expressed concern about the mother's involvement in a physically and emotionally abusive relationship with Nathan throughout the duration of this case. Only when Nathan's imprisonment seemed imminent in January 2013 did the mother express a willingness to end their relationship.

During the termination proceedings the mother's mental health counselor and drug treatment counselor testified that the mother had made progress in her recovery. The mother had successfully completed a drug treatment program and maintained sobriety throughout the duration of the case. The mother's mental health counselor testified that in January 2013 the mother finally acknowledged her role in the children's removal and expressed a readiness to make the children a priority in her life. The mother testified on her own behalf. She emphasized her progress in obtaining part-time employment and maintaining sobriety. She also expressed a willingness to prioritize her children over her other relationships.

The juvenile court terminated the mother's parental rights under Iowa Code section 232.116(1)(f), and terminated Jamie's parental rights under section 232.116(1)(l). The mother's appeal followed. Jamie did not appeal.

## **II. Error Preservation**

We apply our standard error preservation rules to termination of parental rights cases. See *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012). "Even issues

implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.” *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003). The mother acknowledges that the juvenile court did not rule upon issues of guardianship and additional time. As the mother did not subsequently request such a ruling, she has not preserved error for appellate review. See Iowa R. Civ. P. 1.904(2), *A.B.*, 815 N.W.2d at 773.

### **III. Standard of Review**

We review termination of parental rights proceedings de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We give non-binding deference to the juvenile court’s factual findings, especially when determining the credibility of witnesses. Upon our review, the children’s best interests are of paramount concern. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

### **IV. Analysis**

#### **A. Reasonable Efforts**

The mother contends the State failed to make reasonable reunification efforts because the court denied her request for increased visits with the children. After removal, the State has an obligation to make reasonable efforts to reunify a parent and child. Iowa Code § 232.102(7), .102(10)(a) (setting forth reasonable efforts). The duty to make reasonable efforts is not, however, “a strict substantive requirement of termination.” *C.B.*, 611 N.W.2d at 493. Rather, “the scope of the efforts by the DHS to reunify parent and child after removal impacts the burden of proving those elements of termination which require reunification efforts.” *Id.* Although visitation is one factor we may consider in determining



whether the State made reasonable reunification efforts, the issue of visitation cannot be considered in a vacuum. See *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996).

Throughout nearly the entire underlying child in need of assistance case, the mother refused to acknowledge her role in creating the hazards that plagued the children's home environment. Although the mother seemed willing to allow Nathan to shoulder the blame for the methamphetamine labs and the deplorable conditions in the home, she continued to maintain a relationship with Nathan and continued to expose her children to him. The mother's request for increased visitation came just days after she was arrested for violating the terms of her pretrial release—just days after police officers found Nathan's friend hiding in her garage with methamphetamine and marijuana, and only weeks before the termination hearing. It was not until sometime in January 2013 that she acknowledged for the first time her role in the children's removal. In light of all the circumstances and all the other services provided to the mother, we find DHS's refusal to allow unsupervised or expanded visitation was reasonable. Upon our *de novo* review, we find the State made reasonable efforts to reunify the mother with her children. See Iowa Code § 232.102(7), .102(10)(a).

#### **B. Statutory Grounds**

The mother contends the State failed to prove grounds for termination under section 232.116(1)(f) because the children were not removed from the home for the requisite period of time and the children could have been returned to her care. To terminate parental rights under section 232.116(1)(f), the State

must show the child is four years old or older, has been adjudicated a child in need of assistance, has been removed from the home for the requisite period of time, and the juvenile court could not return the child to the parent's custody pursuant to section 232.102. See Iowa Code § 232.116(1)(f)(1)–(4). The mother concedes A.U. and J.U. were four years old or older and had been adjudicated in need of assistance. See *id.* § 232.116(1)(f)(1)–(2). Thus, our review will focus on whether the children had been removed for the requisite period of time and whether the juvenile court could not return the children to the mother pursuant to section 232.102. See *id.* § 232.116(1)(f)(3)–(4).

First, the mother argues that the children have not been removed for the requisite period of time because the children lived with their father for several months after being removed from her care. To terminate parental rights pursuant to section 232.116(1)(f)(3), the children must have “been removed from the physical custody of the child’s parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.”

The mother’s argument that the children must be removed from the custody of *both* parents to terminate the parental rights of either parent is based on an erroneous statutory construction. Consistent with our rules of statutory construction under Iowa Code section 4.1(17), “the singular includes the plural, and the plural includes the singular.” Thus, “parents” as used in section 232.116(1)(f)(3), includes “parent”. In other words, where the child’s parents are separated, if the juvenile court removes the child from the care of one parent and

places the child in the care of the other parent, the placement does not toll the removal period under section 232.116(1)(f)(3).<sup>2</sup> This construction is consistent with the best interest of the children and the statutory framework of chapter 232. See *In re N.M.*, 491 N.W.2d 153, 155 (Iowa 1992).

In this case, the children have clearly been removed from the mother's care for the requisite twelve consecutive months with no trial period in the mother's home. As a result, we find the State proved grounds for termination under section 232.116(1)(f)(3) by clear and convincing evidence.

Second, to determine whether the State met its burden to prove statutory grounds for termination under section 232.116(1)(f)(4), we must consider whether the State presented clear and convincing evidence that the children are imminently likely to suffer an adjudicatory harm upon their return to the mother's care. See Iowa Code §§ 232.116(1)(f)(4), .102(5)(a)(2), .2(6); *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). Here, the children were removed from the mother's care after being found in deplorable living conditions. The children had no bed to sleep on and were left to roam about a trash-filled home containing an active methamphetamine lab. The home provided the children with ready access to hypodermic needles and dangerous chemicals but had minimal electricity, no working refrigerator, and no running water. As a result of these conditions A.U. and J.U. learned to urinate outside and persisted in this behavior after removal.

Throughout this case the mother continued to associate with individuals who manufactured and abused methamphetamine. These individuals posed a

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<sup>2</sup> This is not a situation where one parent voluntarily transferred care to another parent. The court removed A.U. and J.U. from the mother's care and placed them with Jamie.

significant threat to the health and safety of the children. This threat is particularly salient considering one of the children, Z.O., tested positive for having ingested methamphetamine; Z.O. was just three years old at the time. The month before the termination hearing, the mother was arrested after allowing individuals in possession of methamphetamine and marijuana into her home.

The mother has only recently asserted a desire to end her relationship with Nathan and cut ties with other individuals who may pose a threat to her and her children. In light of the mother's continued relationship with Nathan throughout this case, her assertions lack credibility. At the time of the termination hearing, Nathan had not yet been sentenced for his role in exposing the children to considerable risk while manufacturing methamphetamine inside the family home. Though it seemed likely Nathan would face a considerable prison sentence, the mother's willingness to associate with Nathan and others that abuse methamphetamine continued to place the children at imminent risk of suffering adjudicatory harm under the mother's care.

While the mother has made strides in improving her life and in maintaining her sobriety, there remain serious concerns about returning the children to the mother's care. We recognize that the State has presented no safety concerns about the youngest child, J.H., continuing to live with the mother. We have not been called upon to review the propriety of that living arrangement. Indeed, J.H. was not made to endure the same horrific living conditions as the other children and was not yet born at the time the other children were removed from her care. It is clear, however, that the mother's lack of concern for her children's safety

leading to their removal and her failure to acknowledge her role in creating these hazards until the eve of termination raises serious concern about her ability to parent any child now or at any time in the near future. Upon our de novo review, we find the State presented clear and convincing evidence the children could not be returned to the mother's care because they are imminently likely to suffer an adjudicatory harm upon their return pursuant to section 232.116(1)(f)(4).

### **C. Best Interests**

The mother argues terminating her parental rights is not in the children's best interests. To determine whether terminating parental rights is in the children's best interests, 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(2)). At the time of the termination hearing, A.U. and J.U. lived with their paternal grandparents. The paternal grandparents are ready, willing, and able to adopt A.U. and J.U. pending the outcome of these proceedings. The paternal grandparents are able to provide the type of long-term nurturing and growth these children deserve and are best able to meet their physical, mental, and emotional needs. Upon our de novo review, and in express consideration of our previously articulated concerns about returning the children to the mother's care, we find terminating the mother's parental rights is in the children's best interest. See Iowa Code § 232.116(2).

**D. Statutory Exceptions**

The mother argues the juvenile court erred in not applying the statutory exceptions to termination under section 232.116(3) to save the parent-child relationship. The juvenile court need not terminate the relationship between the parent and the child if “[a] relative has legal custody of the child” or “[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.” See *id.* § 232.116(3)(a), (c). These exceptions are permissive, not mandatory. See *P.L.*, 778 N.W.2d at 39. A juvenile court may exercise its discretion in deciding whether to apply these exceptions based on the unique circumstances of each case and the best interests of the children. See *id.* Based on the mother’s reckless behavior in exposing the children to appalling living conditions, her lack of insight into her role in creating those conditions, and her continued relationship with the man she said was responsible for exposing her children to methamphetamine labs, we find no error in the juvenile court’s refusal to apply statutory exceptions to prevent termination. See Iowa Code § 232.116(3)(a), (c).

**AFFIRMED.**