

**IN THE COURT OF APPEALS OF IOWA**

No. 3-596 / 13-0680

Filed June 26, 2013

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

**Z.F., Father,  
Appellant,**

**G.W., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Constance C. Cohen,  
Associate Juvenile Judge.

A mother and father separately appeal from the termination of their  
parental rights. **AFFIRMED ON BOTH APPEALS.**

Andrew J. Tullar of Tullar Law Firm, P.L.C., Des Moines, for appellant  
father.

Laura J. Lockwood of Tagtow & Lockwood, P.L.L.C., Des Moines, for  
appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, John Sarcone, County Attorney, and Stephanie Brown,  
Assistant County Attorney, for appellee State.

John Jellineck of the Juvenile Public Defender Office, Des Moines,  
attorney and guardian ad litem for minor child.

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

**POTTERFIELD, J.**

A mother and a father of a ten-month old child separately appeal from the termination of their parental rights. Because statutory grounds for termination exist, permanency is in the child's best interests, and a six-month extension is not warranted under the circumstances, we affirm.

The mother voluntarily consented to the child's removal in August 2012, and the child was placed with his paternal grandmother. The father had been arrested for a domestic assault upon the mother, and the mother was homeless and unable to care for the two-month-old infant. A no contact order kept the father from visiting with the child until the protective order was lifted in September 2012.

On September 19, 2012, the child was adjudicated a child in need of assistance (CINA) following an uncontested hearing. A November 15 dispositional hearing was also uncontested and resulted in the continued placement of the child with the grandmother. The parents were not consistently complying with services and had missed many visits and appointments with their child.

A review hearing was held on January 10, 2013. The juvenile court noted the parents were doing a better job of engaging in services, but needed to demonstrate consistency and growth.

The mother's engagement with services thereafter declined, she had stopped taking medications for depression due to funding issues, and was not attending therapy. The father did not consistently participate in services after the review hearing. He had not addressed his previous domestic violence. He had

not yet resumed batterer's education program (BEP), claiming a lack of funds to participate. The parents also failed to attend doctor appointments and arrived only after a scheduled medical procedure for their child. The parents were living with another person in housing they admitted was not appropriate for their child.<sup>1</sup>

A petition to terminate parental rights was filed on February 5 and the termination trial was held on March 28 and April 10, 2013. At the trial, the mother reported that she and the father had moved in with another family (a mother, her adult son, and her minor child). They were not required to pay rent. She testified, "[W]e would like a little bit more time to get our apartment and be on steady ground." She stated she was working part-time cleaning houses. She acknowledged inconsistency in attending the one supervised visit per week the parents had with their child, failure to attend consistently and to complete parenting classes, that the bond with her child was "not . . . complete the way as much as it should be," and that she had unresolved mental health issues.<sup>2</sup> She also noted that she and the father would like to get couple's therapy "started again," but the father had to complete the BEP program first.

The father testified he was working more than thirty hours per week with evening hours (between 5 p.m. and 12:30 a.m.). He testified he generally falls asleep about 3 a.m. and then has difficulty hearing his alarm in the morning. He

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<sup>1</sup> At the termination trial, the mother testified there were different people coming in and out all the time, the "place wasn't the cleanest" and when they would try to clean, "it would last for two days and then the place would be a pigsty again." She also stated their roommate "had a habit of throwing knives at the wall."

<sup>2</sup> The mother stated she was working on self-control in her therapy sessions. The mother testified she has diagnoses of manic depression and ADHD, for which she is prescribed medications, but was not taking the medications due to lack of money. She acknowledged being given information at a family team meeting in January to assist in funding her medications. She had not followed up on that information.

acknowledged missing visits with his child because of “[o]versleeping or just not calling in time.” He acknowledged a lack of consistency in attending the one-time-per-week supervised visits with his child. He noted he was in BEP classes, having started up again in February.<sup>3</sup> He stated he had eighteen classes yet to complete. The father had also begun seeing a counselor in the middle of February—prior counselors had terminated him due for missing too many sessions. The father acknowledged not completing parenting classes. He testified he needed to work on budgeting issues and “getting up on time and going to the things I have to do.” The father testified he had received a tax refund of \$4000 in February, yet he had saved only \$600 for a down payment on future housing.<sup>4</sup> He had not paid off his fines in the amount of about \$300.

A department of human services (DHS) social worker, Jacqueline Stubbers, testified she was recommending the termination of each parent’s parental rights rather than a guardianship with a relative because for a child “who hasn’t even reached one yet permanency is essential” and “[g]uardianship does not allow that type of permanency” as a juvenile court hearing is required each year to determine whether the best interest of the child is being served. See Iowa Code § 232.104(7)(a) (2013). She also did not recommend an extension of time due to the parents’ past lack of compliance with services. She acknowledged there had been recent improvement in the number of visits and services attended by the parents, but stated,

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<sup>3</sup> The BEP was required under the terms of his probation. He had been discharged from the program earlier due to missing too many classes.

<sup>4</sup> He testified he spent over \$1000 on a 42” television and \$250 on a gaming system. He had also spent about \$400 for items for his child including a car seat, clothing, toys, and diapers. The rest of the money he spent on himself.

Although the parents have had improved consistency with their services, they still haven't been consistent. They haven't been making the additional offered visits that the custodians make available to them every weekend. They haven't made their [Family Safety, Risk, and Permanency] FSRP visits. They both have reported that they've cancelled therapy appointments. They didn't restart parenting classes just until last week and the week prior to that. There's still a lot of services that need to happen for [this family]. And, realistically, [the child] doesn't have the time to wait for it.

Stubbers also testified the custodial grandparents are willing to adopt the child.

Jewel Condon, the FSRP service provider who supervised visits through the end of February, testified the parents had recently begun to recognize the child's needs. She agreed that "one of the best ways to develop and strengthen a bond . . . is by consistently attending visits" and testified that she had "countless conversations [with the parents] about the importance of being consistent for [A.F.]" She agreed that the mother and father were "minimally adequate parents" during supervised visits. She also testified that when she left her employment at the end of February, she still believed the parents "needed supervised visitation."

The current FSRP worker, Nicole Reedy, testified she provided to the parents one supervised visit per week, which lasted an hour and a half. In the five weeks she had been assigned to the case, the parents had missed one visit because they had not confirmed the visit in time. Reedy testified the parents were "able to maintain during that hour-and-a-half visit" and that the child "is becoming more bonded" to the mother. She expressed concern, however, as to the parents' ability to care for the child for an extended period of time. Reedy also testified that she had provided the parents with housing and temporary

agency referrals two weeks before, and DHS had given the mother information on how to get assistance for paying for her medication. She did not know if the parents had followed up with any of that information. She recommended termination of the parents' rights.

The juvenile court did terminate the parents' rights pursuant to Iowa Code section 232.116(1)(d) and (h) (2013).<sup>5</sup> The court wrote:

Eight months have now passed since the Juvenile Court first became involved in this family's life. Prior to that time, DHS-eligible services had been provided to the family. Despite the intensive and expansive services offered to the family, the parents continue to require full supervision during their sessions with [A.F.] Additionally, the parents are unable to maintain consistency in visiting their son and routinely opt out of opportunity for nonprofessionally supervised contact. Circumstances which led to the removal originally continue to exist, including inadequate

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<sup>5</sup> Section 232.116(1) provides, in pertinent part, that the court "may order" the termination of parental rights when "any of the following" is shown by clear and convincing evidence:

(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.

....

(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.

housing, unresolved domestic violence, and untreated mental illness.

. . . .  
 . . . The recent progress [the parents] have made in FSRP sessions does not overcome the history of slow progress. While there are no protective concerns in a supervised setting, there is no confidence that the parents are ready to meet this child's needs on their own for even a day at a time.

The parents contend that they are ready to meet all of [the child's] needs at the current time and should reunify immediately. Clearly, he cannot be returned to their care without a significant risk of further adjudicatory harm. They are routinely unable to wake up in time for visits and classes. They have not addressed their mental health issues. They are disorganized and have minimal independent living skills.

The court denied each parent's request for an extension of time to seek reunification and found that termination was in the child's best interests as defined by section 232.116(2).<sup>6</sup> With respect to the parents' request for additional time to seek reunification the court concluded, "There is nothing in the extended history of this case that allows the Court to conclude that there is a reasonable likelihood that real change will occur that will eliminate the need for removal over the next six months." See *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa Ct. App. 2005) ("In order to continue placement for six months, the statute requires the court to make a determination the need for removal will no longer exist at the end of the extension." (citing Iowa Code § 232.104(2)(b))).

The court also rejected the parents' contention that placement of the child with a relative should preclude termination under section 232.116(3).<sup>7</sup> The court

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<sup>6</sup> In determining 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." Iowa Code § 232.116(2).

<sup>7</sup> Iowa Code section 232.116(3) provides, "The court need not terminate the relationship between the parent and child if the court finds . . . (a) [a] relative has legal custody of the

concluded that guardianship “is an improper permanency outcome for a child so young.”

Upon our de novo review, see *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011), we find there is clear and convincing evidence to support termination of each parent’s parental rights pursuant to Iowa Code section 232.116(1)(h); the child’s statutory best interests are best served by termination; and no section 232.116(3) factor serves to preclude termination. We agree with the juvenile court’s findings, reasoning, and conclusions and adopt them as our own. We therefore affirm. See Iowa Ct. R. 21.26(1)(d), (e) (2013).

**AFFIRMED ON BOTH APPEALS.**

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child.” The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).