

**IN THE COURT OF APPEALS OF IOWA**

No. 3-663 / 13-0786

Filed July 10, 2013

**IN THE INTEREST OF A.R.C. III,  
S.Q.S., and J.W.,  
Minor Children,**

**S.Q.S., Mother of A.R.C. III and S.Q.S.,  
Appellant,**

**A.R.C. JR., Father,  
Appellant.**

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Appeal from the Iowa District Court for Woodbury County, Mary L. Timko,  
Associate Juvenile Judge.

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

John S. Moeller of John S. Moeller, P.C., Sioux City, for appellant-mother.

Joseph W. Kertels of Juvenile Law Center, Sioux City, for appellant-father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney  
General, Patrick Jennings, County Attorney, and Dewey Sloan, Assistant County  
Attorney, for appellee.

Tod J. Deck, Sioux City, attorney and guardian ad litem for minor child.

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

**MULLINS, J.**

A mother and a father appeal, separately, from the juvenile court order terminating their respective parental rights under Iowa Code section 232.116(1)(d) and (h) (2013). The mother and the father both contend that the juvenile court erred in terminating their parental rights because the State did not present clear and convincing evidence of statutory grounds for termination. Additionally, the father contends the closeness of his bond with the children weighs against termination. We affirm on both appeals.

**I. Background Facts & Proceedings**

The father has two children with the mother: A.C. (born 2011) and S.S. (born 2009). The father has a third child, J.W. (born 2009), with another woman. At issue are the father's parental rights to A.C., S.S., and J.W. Also at issue are the mother's parental right to A.C. and S.S. Although J.W.'s mother's parental rights were terminated, she did not appeal.

The father has a long, violent criminal history. In October 2006, at just seventeen years old, he was arrested for threatening and extorting adolescent girls. In early 2007, he was convicted of harassment and subject to a five-year restraining order. In September 2007, he threatened another person with a knife. In July 2009, he stabbed a man during a street fight. In early 2010, he assaulted his sister.

The mother and the father have a deeply troubled relationship rife with domestic violence. Their violent relationship and verbal disputes frequently played out in front of the children. The documented course of their domestic

violence is largely responsible for the involvement of the Department of Human Services (DHS) in this case. At least three domestic abuse reports resulted in child protective services (CPS) assessments prior to adjudication. As the termination of parental rights in this case centers on the ongoing nature of domestic violence placing the children in imminent danger, we will briefly recount the reported domestic disputes.

In June 2010, the DHS received its first report of domestic violence occurring between the mother and father. The report alleged that the father was very controlling and would not allow the mother to have a cell phone, see her family, or go to work. It was also reported that the father's abuse left large bruises on the mother's arms. The mother and father denied any abuse, and the mother claimed she got the bruises from "playing around" with the father. This first report of abuse was unfounded.

Then, in July 2010, the DHS received another report of domestic violence between the mother and father. The report asserted that the mother had multiple bruises on her neck and arms as a result of a domestic dispute. The father denied any violence, but admitted he had argued with the mother.

Next, in August 2010, while the second report of domestic violence was still under investigation, another domestic disturbance required police intervention. This time, the father reportedly left the mother at a grocery store and made her walk home. When the mother arrived home, she attempted to leave the home with S.S. The father reportedly would not allow the mother to

leave home with the child. When the police arrived, the mother denied that the father held her in the home against her will.

Then, in October 2010, the DHS received another report that the mother had bruising on her arms and a black eye from the father grabbing and hitting her. The mother admitted that she had gotten into an argument with the father. During the argument the father chased her around inside and outside the home and eventually grabbed her by the neck leaving a deep scratch mark in her skin. She also admitted that the father had grabbed her on several other occasions leaving bruises.

Later in October 2010, the DHS learned of another domestic dispute between the mother and father. The father reportedly threatened the mother, would not allow the mother to care for S.S., and had taken off in the mother's car with both S.S. and J.W. At the time, the father did not have a valid driver's license. The DHS instructed the parents that they would need to engage in services designed to reduce the domestic violence in the home in order to avoid juvenile court involvement.

In November 2010, the DHS initiated voluntary services with the parents to help the parents address their dysfunctional, violent behavior. In December 2010, the DHS expanded the services to include family safety, risk, and permanency (FSRP) services from the Boys and Girls Home in an effort to provide the children with a healthy living environment.

In February 2011, someone reported to law enforcement that they saw the father dragging the mother into their home with both small children present.

Police officers responded to the home and eventually kicked in the door to perform a welfare check. The father screamed and yelled at the officers and had to be handcuffed to ensure the officers' safety. The father denied any violence. The mother seemed afraid to talk to officers in the father's presence. She did, however, admit that they had gotten into an argument and he had been rough with her.

Later in February 2011, the mother and father were involved in an altercation at the mother's place of employment. According to the mother's sister, who works with the mother, the father had threatened to assault the mother. The mother then passed her sister a note asking her to call the police if she did not hear from her by a certain time. Later that day the mother and father went to the babysitter's home to retrieve the children. While at the babysitter's home, the mother and father got into an argument. During the argument, the father pushed the mother up against the wall "pretty hard." As a result police officers arrested the father for domestic abuse assault.

In March 2011, the State filed a petition to adjudicate S.S. and J.W. as children in need of assistance (CINA). The State asserted the ongoing domestic violence between the mother and father as the grounds for the petition.

In April 2011, the juvenile court held an adjudication hearing. The mother's attorney requested a continuance. As a result of the continuance, the State requested the children be removed from parental custody. Rather than remove the children from parental custody, the mother and the father agreed to a no-contact order between them. The mother agreed to care for S.S.; the father

agreed to care for J.W. Both parents agreed not to have any unauthorized contact with one another.

In June 2011, the juvenile court held an adjudication hearing on the State's petition to adjudicate S.S. and J.W. as CINA. The court found that "domestic violence is a way of life" for the mother and the father. As a result, the court found the children were imminently likely to suffer harm from physical abuse, neglect, or lack of supervision. The court then adjudicated S.S. and J.W. as children in need of assistance pursuant to Iowa Code section 232.2(6)(b), (c)(2), and (n) (2011). The juvenile court continued the no-contact order over the father's objection.

In August 2011, the juvenile court held a dispositional hearing. At the time of the hearing, the mother was pregnant with her second child, A.C. The mother and the father had begun individual therapy and couples counseling. The court ordered the mother to find appropriate and safe housing for the children, continue to attend domestic abuse counseling, and continue to participate in FSRP services. The court ordered the father to find appropriate and safe housing for the children, engage in individual counseling to address domestic violence and anger management issues, and provide financial support for the children. The court continued to order no unauthorized contact between the parents.

Shortly after the dispositional hearing, the mother voluntarily placed S.S. into family foster care. The State also learned that the parents had been violating the no-contact order. Based on the mother's voluntary placement and

the parents' repeated, surreptitious violations of the no-contact order, the State moved to modify the dispositional order.

In October 2011, the mother gave birth to A.C. Shortly after A.C.'s birth the State filed a petition to temporarily remove A.C. from the mother's care. In a subsequent combined modification and removal hearing, court security had to restrain the father after he yelled profanities at the DHS case manager and FSRP provider. The court then continued the modification and removal hearing.

In November 2011, the juvenile court held a review/modification hearing concerning S.S. and J.W., and a removal/adjudication hearing concerning A.C. The court allowed the mother to have custody of S.S. and A.C. provided that she lived in her mother's, the children's maternal grandmother's, home. The court allowed the father to continue to have custody of J.W. The court then outlined the issues continuing to necessitate court involvement including the parents' inconsistent participation in therapy and services, and ordered no contact between the parents unless authorized by the DHS.

In January 2012, the mother and the father violated the court's no-contact order. During the unauthorized contact the parents engaged in a verbal argument that quickly turned physical. The altercation culminated in the father forcing the mother to the ground and choking her. The police had to intervene to separate the parties. The father claimed the mother assaulted him; the mother claimed she only clawed at the father to keep him from choking her. This latest episode of domestic violence occurred in the presence of the children. Police

officers arrested the father for domestic abuse assault and found drug paraphernalia in his possession.

Soon after the physical altercation leading to the father's arrest, the juvenile court held a combined dispositional hearing for A.C. and a dispositional review hearing for S.S. and J.W. During the hearing, the State orally moved to remove the children from the parent's care citing ongoing domestic violence, the father's recent arrest, and continued violation of the court's no-contact order. The court found that text messages between the parents "display a relationship fraught with abusive language, name calling, controlling actions, and immaturity of the kind one would expect from dysfunctional teenagers rather than teenagers who are the 'parents' of two or three children themselves." As a result, the court found both the mother and the father in contempt for violating the no-contact order. The court also ordered the removal of all three children from parental care. The DHS then placed S.S. and A.C. with the children's maternal grandmother. The DHS placed J.W. with the child's paternal great-aunt.

The mother then had a disagreement with the children's maternal grandmother. As a result, DHS placed S.S. and A.C. in family foster care.

In late February 2012, the father was again arrested for violating the no contact order. The following day, the mother moved into a domestic abuse shelter.

From February 2012 through October 2012, the mother and the father made some progress toward reunification. This progress was, however, thwarted by their continued violation of the court's no-contact order and the

father's verbally aggressive behavior toward service providers. In October 2012, the State filed a petition to terminate parental rights.

In January 2013, the juvenile court held a joint permanency hearing and termination of parental rights proceedings. Just days after the January 2013 termination proceedings, the State moved to reopen the record before the juvenile court had made its final termination decision. The State's motion was alleged another violation of the court's no-contact order. The violation was based on a report that law enforcement responded to the father's residence for a disturbance between a male and a female. After police pounded on the door repeatedly, the father finally answered. The police eventually found the mother hiding in the laundry room inside the clothes dryer. Police officers arrested the mother for violating the no-contact order.

Several days after the no contact order violation, the father was a passenger in a fatal car accident in which three of the five persons in the vehicle were killed after the car sped away from a local bar. The father was fortunate to have escaped the accident with his life.

The juvenile court terminated the mother's parental rights to S.S. under Iowa Code section 232.116(1)(d), and terminated her parental rights to A.C. under section 232.116(h). The court then terminated the father's parental rights to S.S. and J.W. under section 232.116(d), and terminated his parental rights to A.C. under section 232.116(1)(h).

The mother and father separately appeal the termination of their respective parental rights.

## II. Standard of Review

Appellate review of a juvenile court order terminating parental rights is 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. *See id.* Throughout our review, our primary concern is the best interests of the children. *See In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

## III. Analysis

We must first consider whether clear and convincing evidence supports terminating the mother's and the father's parental rights. As the mother and the father challenged grounds for termination under both section 232.116(d) and (h), we will address each section in turn.

We begin our analysis with the termination of the mother's and the father's parental rights to the youngest child, A.C., under section 232.116(1)(h). To terminate parental rights under section 232.116(1)(h), the court must find clear and convincing evidence that (1) the child is three years old or younger, (2) has been adjudicated a CINA, (3) has been removed from the parent's physical care for the requisite period of time (at least six months), and (4) cannot be returned to the parent's custody at the time of termination. *See Iowa Code* § 232.116(1)(h). It is beyond dispute that A.C. is younger than three years old, had been adjudicated a CINA, and had been removed from the parent's physical care for well beyond the requisite time. *See id.* § 232.116(1)(h)(1)–(3). Thus, we will consider whether there was clear and convincing evidence that A.C. could not be returned to the parent's care. *See id.* § 232.116(1)(h)(4).

To meet its burden to prove the child cannot be placed in the either parent's care, the State must present clear and convincing evidence the child is imminently likely to suffer an adjudicatory harm under the parent's care. See *id.* §§ 232.2(6)(c), .102(5)(a)(2), .116(1)(h); *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). The State need only show the child is likely to suffer an adjudicatory harm; it need not show that the circumstances leading to the original adjudication exist at the time of termination. See *A.M.S.*, 419 N.W.2d at 725.

Upon our de novo review of the entire record, we find clear and convincing evidence supports the juvenile court's finding that the child could not be returned to either the mother's or the father's care without subjecting the child to likely adjudicatory harm. The record is replete with evidence of substantial domestic violence between the mother and the father. Despite the many months of services designed to reduce such violence, both parents continue to carry out their violent, volatile relationship in front of the children and in violation of a direct court order. This violent relationship is likely to cause substantial emotional and psychological damage to this young child. Accordingly, we find clear and convincing evidence supports terminating the mother's and the father's parental rights to A.C. under section 232.116(1)(h).

Next, we consider whether clear and convincing evidence supports terminating the mother's parental rights to S.S. and the father's parental rights to S.S. and J.W. under section 232.116(1)(d). To establish statutory grounds for termination pursuant to section 232.116(1)(d), the State must show the court previously adjudicated the child as a child in need of assistance (CINA) after

“finding the child to have been physically or sexually abused or neglected as the result of the act or omissions of one or both parents, or the court has previously adjudicated a child who is member of the same family to be a CINA after such a finding.” The juvenile court may then order termination under section 232.116(1)(d), if, after the State offered services to the parent, “the circumstances that led to the adjudication continue to exist.” *In re D.W.*, 791 N.W.2d 703, 707.

Here, the juvenile court adjudicated S.S. and J.W. as children in need of assistance due, in part, to a risk of neglect based on ongoing domestic violence in the home. Reports of domestic violence in this case date back to June 2010. After many months of services designed to reduce the level of violence in the home, the parents continue to carry out their violent, toxic relationship in front of the impressionable young children. In January 2012, in an episode of violence carried out in front of the children, the father was arrested after forcing the mother to ground and choking her while the mother clawed at the father’s face. The record is clear that these episodes of violence were not isolated in nature. Even the communications in violation of the court’s no contact order documented a deep-seated volatile relationship with the children squarely in the middle. Just days after the termination hearing, the police were called to the father’s home on a report of a domestic disturbance. The ongoing domestic violence continues to place the children at risk of neglect despite many months of services designed to reduce that risk. Accordingly, we find clear and convincing evidence supports

terminating the mother's parental rights to S.S. and the father's parental rights to S.S. and J.W under section 232.116(1)(d).

Finally, we consider the father's argument that the parent-child bond precludes the termination of his parental rights under section 232.116(3)(c). Pursuant to section 232.116(3)(c), 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." 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), *overruled on other grounds by In re P.L.*, 778 N.W.2d 33, 39–49 (Iowa 2010). The court has the discretion, based on the unique circumstances of each case and the best interests of the child, to apply the factors in this section to save the parent-child relationship. See *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993), *overruled on other grounds by In re P.L.*, 778 N.W.2d at 39–49. 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.

Upon our de novo review, we find clear and convincing evidence does not support a finding that the termination would be detrimental to the children due to the asserted closeness of the parent-child relationship. The father continues to struggle with anger management issues and continues to display violent tendencies. His penchant for violence continues to place the children in

imminent danger, and their best interests are served by terminating his parental rights. Accordingly, we find no error in refusing to apply section 232.116(3)(c) to avoid termination.

**AFFIRMED ON BOTH APPEALS.**