

**IN THE COURT OF APPEALS OF IOWA**

No. 6-1046 / 06-1844  
Filed January 18, 2007

**IN THE INTEREST OF S.M.H.,  
Minor child,**

**T.H., Father,  
Appellant.**

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

A father appeals the district court's order terminating his parental rights.

**AFFIRMED.**

John T. Nemmers of Reynolds & Kenline, L.L.P., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Fred H. McCaw, County Attorney, and Christine Corken, Assistant County Attorney, for appellee State,

Jamie A. Splinter of the Splinter Law Office, Dubuque, guardian ad litem.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

**VOGEL, J.**

Thomas appeals from the district court's order that terminated his parental rights to his seven-year-old daughter, Savannah. Because we agree with the district court that the grounds for termination were established by clear and convincing evidence and termination is in Savannah's best interests, we affirm.

The Iowa Department of Human Services (DHS) first became involved with Savannah in May 2005 when concerns arose over Thomas's supervision of her, resulting in several instances of sexual abuse perpetrated upon Savannah by neighborhood children. A petition for Child in Need of Assistance (CINA) was filed in May based upon the supervision issues, although Savannah remained in Thomas's custody. DHS developed a case plan with Thomas and began services focusing on appropriate supervision of Savannah and establishing appropriate boundaries within her peer relationships. Adjudication was set for July 2005 but was continued by stipulation of the parties while an allegation of sexual abuse perpetrated by Thomas against Savannah was investigated.<sup>1</sup> Service providers documented concerns over Thomas's lack of progress in improving his ability to supervise Savannah. The day before the rescheduled adjudicatory hearing, Savannah was removed from Thomas's care because Thomas had been arrested for child endangerment for operating while intoxicated with Savannah as his passenger. In August, Savannah was adjudicated CINA, pursuant to Iowa Code section 232.2(6)(c)(2) (2005) (child is likely to suffer harm due to parent's failure to exercise care in supervising child).

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<sup>1</sup> The allegation was ultimately unfounded, but it was discovered that Thomas had four additional, unfounded molestation allegations against him involving Savannah while previously living in Illinois.

Savannah was placed in family foster care with the following services court-ordered to assist with reunification: parent skill development; individual therapy/counseling for Thomas and Savannah; mental health and substance abuse evaluation, and compliance with recommendations, for Thomas; referral and sexual abuse treatment for Savannah; family team meetings; and supervised visitation between Thomas and Savannah at DHS discretion. A psychological evaluation diagnosed Thomas with personality disorder with antisocial traits, but he failed to receive cognitive behavior therapy as ordered. Throughout the pendency of the case, Thomas exhibited resistance to services, failed to recognize the seriousness of the abuse perpetrated on Savannah, and did not accept responsibility for his lack of supervision of Savannah. The service providers attempted numerous times to refocus Thomas on improving his parenting skills and establishing proper parent-child boundaries. Unfortunately Thomas did not avail himself of most of the services offered and continued to shift blame onto others for his situation.

Supervised visitation began, occurring in four-to-eight-hour periods once or twice a week. Between adjudication in August 2005 and the termination hearing in October 2006, concerns persisted over Thomas's poor understanding of Savannah's emotional needs, his refusal to comply with services, and his resistance to take responsibility for her supervision. The district court entered its order in November 2006, terminating Thomas's parental rights to Savannah under Iowa Code section 232.116(1)(f) (child four or older, child CINA, removed

from home for twelve of last eighteen months, child cannot be returned home without risk of adjudicatory harm). Thomas appeals the termination order.

Our scope of review in termination cases is *de novo*. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

Thomas focuses on the reasons for Savannah's removal in his appeal as somehow not corresponding to, and therefore invalidating, the grounds for termination. Savannah was ultimately removed in an emergency fashion in August 2005, after Thomas drove intoxicated with her in the car. However, DHS involvement with the case began in May 2005 and Savannah's CINA adjudication later found that she suffered sexual abuse due to Thomas's lack of supervision prior to her removal. While Thomas's criminal activity prompted her immediate removal from his care, Thomas and Savannah received services based upon the supervision issues. As the case proceeded, other concerns came to light including Thomas's questionable behavior with Savannah, his mental health struggles, and his alcohol abuse. The district court was not limited by the circumstances of her emergency removal in determining whether parental rights should be terminated, but properly focused on the circumstances that led to adjudication in conjunction with the statutory considerations of Iowa Code § 232.116(1)-(3). Thomas was continually informed as to why Savannah could not

be returned to his care, was offered appropriate reunification services, and court ordered to comply.

We conclude the grounds for termination were met by clear and convincing evidence. At the time of hearing, little or no progress had been made by Thomas to address his responsibility for Savannah's adequate supervision to protect her from harm. Due to his refusal to cooperate with services, visitation remained supervised throughout the case.<sup>2</sup> Thomas remained combative with service providers and refused to acknowledge any problems with his supervision of Savannah. It is vital in a juvenile matter that a parent recognizes when a child has been victimized so that meaningful change can occur to protect the child in the future. *In re L.B.*, 530 N.W.2d 465, 468 (Iowa Ct. App. 1995); *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988). "A parent's failure to address his role in the abuse may hurt the parent's chances of regaining custody and care of their children." *In re C.H.*, 652 N.W.2d 144, 150 (Iowa 2002). It is clear in this case that Thomas made little effort to address his inadequacies in supervising Savannah. For these reasons, she could not be returned to him at the time of termination without the possibility of suffering further harm. Savannah is well-adjusted and receiving services in her new home to address the abuse she has suffered. She needs the stability, permanency, and protection that termination of Thomas's parental rights would provide. As recently discussed by our Supreme

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<sup>2</sup> Thomas argues that he requested and was granted by the court partially-supervised visitation in March 2006 and again in July 2006, which were later denied by DHS. We conclude, as the district court did that, when read as a whole, the orders expanding visitation presumed compliance and "moving forward" by Thomas with other services to address his mental health and substance abuse issues. Absent Thomas's meaningful participation in the services offered, DHS was within its authority to withhold expanded visitation.

Court, a child's safety and her need for a permanent home are the defining elements in a child's best interests. *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially). We affirm the termination as proven by the State and in Savannah's best interests.

**AFFIRMED.**