

**IN THE COURT OF APPEALS OF IOWA**

No. 6-358 / 06-0416

Filed May 10, 2006

**IN THE INTEREST OF S.M.B., Minor Child,**

**B.B., Mother,**  
Appellant,

**J.A.B., SR., Father,**  
Appellant.

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Appeal from the Iowa District Court for Linn County, Thomas M. Horan,  
Judge.

A mother and father appeal from the termination of their parental rights to  
their child. **AFFIRMED.**

Jacob R. Koller of Johnston & Nathanson, P.L.C., Cedar Rapids, for  
appellant-mother.

Ryan P. Tang of Law Office of Ryan P. Tang, P.C., Cedar Rapids, for  
appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Harold Denton, County Attorney, and Rebecca Belcher,  
Assistant County Attorney, for appellee.

Karla Wolff, Cedar Rapids, guardian ad litem for minor child.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

**EISENHAUER, J.**

A mother and father appeal from the termination of their parental rights to their child. They contend the State failed to prove the grounds for termination by clear and convincing evidence and that termination is not in the child's best interest. They further contend the State failed to make reasonable efforts to reunify them with their child. Finally, they contend the juvenile court abused its discretion in denying the mother's application for change of venue. We review these claims de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The mother and father's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(h) and (i) (2005). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(h) where:

- (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.

The parents do not dispute the first three elements of this section have been shown. They instead argue the State failed to prove by clear and convincing evidence the child cannot be returned to their care.

We conclude the grounds for termination pursuant to section 232.116(h) have been proven. Born in July 2002 with cocaine in her system, S.M.B. was adjudicated to be a child in need of assistance. After initially being returned to her mother's custody, she was again removed in August 2004. She has since remained in the custody of her mother's cousin. Both parents have extensive

histories of alcohol abuse. Additionally, the mother has a history of substance abuse. Although both parents have demonstrated periods of sobriety, they have a pattern of relapsing. This cycle leads to criminal behavior and the inability to care for a child. Although both parents claim to now be sober, their history indicates this sobriety is not permanent. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) (holding the future can be gleaned by a parent's past performance). To return the child to the custody of either parent would subject her to imminent danger to life or health.

We further conclude termination is in the child's best interest. The child has been in the custody of relatives for the past eighteen months. These relatives provide the child with a safe and stable home and she is bonded with them. Conversely, her parents have exposed her to drug abuse and violence.

Iowa Code section 232.116(3)(a) states that the court need not terminate parental rights if the child is in the legal custody of a relative. However, section 232.116(3)(a) is permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The juvenile court has the discretion to apply this section and not terminate parental rights based on the circumstances before it and the best interests of the children. *Id.* The court concluded termination is in the best interest of the children for the foregoing reasons, and we concur.

The parents next argue the State failed to make reasonable efforts to reunify them with their child. A challenge to the sufficiency of services should be raised in the course of the child in need of assistance proceedings. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). Because the parents failed to do so, we find this issue has not been preserved for our review.

Finally, the parents contend the district court abused its discretion in denying the mother's application for change of venue. We disagree. The court found that granting the change of venue one month prior to the termination proceeding would not be in the best interest of the child as it would prolong the matter. Although the mother claims she was unable to find transportation to Cedar Rapids after moving to Mason City, the move occurred in December 2004 and the mother personally appeared at all the hearings leading up to her application. We find no abuse of discretion.

**AFFIRMED.**