

**IN THE COURT OF APPEALS OF IOWA**

No. 6-568 / 06-0897

Filed July 26, 2006

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

**K.L., Grandfather,**  
Appellant,

**M.A., Mother,**  
Appellant.

---

Appeal from the Iowa District Court for Wapello County, William S. Owens,  
Associate Juvenile Judge.

A mother and maternal grandfather appeal the juvenile court's order  
terminating parental rights to a child. **AFFIRMED.**

Ryan Mitchell, Ottumwa, for appellant grandfather.

William Appel, Ottumwa, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Mark Tremmel, County Attorney, and Jason Helm, Assistant  
County Attorney, for appellee-State.

Shannon J. Woods and Gayla R. Harrison of Harrison, Moreland &  
Webber, P.C., Ottumwa, guardian ad litem for minor child.

Considered by Sackett, C.J., and Hecht and Vaitheswaran, JJ.

**PER CURIAM**

The juvenile court terminated the parental rights of the parents of twelve-year-old Dakota. His mother, Melissa, and maternal grandfather, Kenneth, have each filed a petition on appeal challenging the termination. Kenneth also contends that custody of the child should be placed with him. Dakota's biological father has not appealed. We affirm.

The mother contends (1) reasonable efforts were not made to reunify the family, (2) terminating the parental rights is not in the child's best interest, and (3) venue of the case should have been moved to another jurisdiction when the parties were no longer residing in Wapello County, Iowa.

The maternal grandfather contends (1) the juvenile court abused its discretion in denying his motion for a continuance, (2) custody should have been placed with him, (3) it was not in the child's best interest to terminate the parents' parental rights.

Our review in these cases is *de novo*. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the fact findings of the juvenile court, especially concerning the credibility of witnesses. *Id.*

On December 29, 2004, the Department of Human Services was alerted to a problem in Dakota's home. A child protection worker arriving at the home found that Dakota and his younger half-brother<sup>1</sup> were locked in separate upstairs bedrooms. There were bolts on the outside of each door, and it appeared that a bucket in each room was for the child's use as a toilet. Dakota's windows were caulked shut. Melissa contended that Dakota, who functioned at about the first

---

<sup>1</sup> The half-brother is in the custody of his biological father and is not involved in this appeal.

grade level, needed to be in the locked room for his protection and the protection of his half-brother. An order placing Dakota in the custody of the Department of Human Services was entered in early January of 2005. Dakota has remained in foster care ever since.

On May 22, 2006, the juvenile court terminated Melissa's parental rights under Iowa Code section 232.116(1)(f) (2005).<sup>2</sup> Neither appellant contends the State failed to prove by clear and convincing the statutory grounds for termination. On our review we find the grounds for terminating under this code section were proved by clear and convincing evidence.

We first address Kenneth's claim that a continuance should have been granted. A new social worker had been appointed to the case several months before the scheduled termination hearing and Kenneth felt the worker should

---

<sup>2</sup> Section 232.116. Grounds for termination

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

...

(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.

...

f. The court finds that all of the following have occurred:

(1) The child is four years of age or older.

(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 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.

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

have additional time to give the case a fresh look. We review for an abuse of discretion. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). The juvenile court did not abuse its discretion in denying the motion for continuance.

We next address Melissa's contention that the venue of the case should have been moved because she no longer lived in Wapello County. The child's father, attorney and guardian ad litem, the child, and his foster parents continue to live in Wapello County. We review for an abuse of discretion. *In re E.H., III*, 578 N.W.2d 243, 245-46 (Iowa 1998). The juvenile court did not abuse its discretion in refusing to move the matter from Wapello County.

We next address Melissa's contention that reasonable efforts were not made to reunify the family. This same challenge was made to this court in an appeal from a permanency order continuing Dakota's placement in foster care. In that unpublished opinion, *In re D.A.*, No. 05-1337 (Iowa Ct. App. Nov. 9, 2005), we noted the State's obligation to provide reasonable reunification services and said:

We find the State made reasonable efforts both to prevent the children's removal and to reunify the family. To prevent removal, the State provided family centered services, family preservation services, and over 120 hours of supported community living and respite care monthly. To promote reunification, the state provided Melissa a psychological evaluation and recommended individual therapy; it provided supervised visitation, both in the home and elsewhere; it provided family centered services and individual skill development; and provided mental health, behavioral, and school performance assistance to Dakota.

Melissa does not contend she made further requests for services nor does she reference what additional services should have been offered. Reasonable efforts to prevent the removal and to reunify the family have been made.

Melissa's last argument is that the termination is not in Dakota's interest. Termination of parental rights must be in best interest of the child; therefore, termination is not mandatory, even if statutory requisites for it are met. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996). We recognize Dakota spent considerable time in his mother's care. Melissa testified that Dakota told her during visits he wanted to come home. The State provided evidence from others that Dakota did not want to go back with his mother. The guardian ad litem argues, "Dakota is visibly afraid of the visits with his parents, and will verbalize his desire for 'no more visits,' without prompts . . . ." The record indicates that the child's foster parents, with whom Dakota has established a good relationship, are interested in adopting him and can provide a good home for him.

We have also considered the grandfather's contention that Dakota should have been placed with him. We recognize he did care for Dakota's half-brother<sup>3</sup> and he is retired and apparently can obtain housing adequate for Dakota's needs. However, there is insufficient evidence to support a finding that he would be an adequate custodian. We affirm the termination.

**AFFIRMED.**

---

<sup>3</sup> It appears that when he cared for the half-brother his wife, who is a registered nurse, also was living in the home, but apparently no longer is.