

**IN THE COURT OF APPEALS OF IOWA**

No. 7-174 / 07-0227

Filed April 11, 2007

**IN THE INTEREST OF K.W.R.,  
Minor Child,**

**T.E.R., Father,  
Appellant.**

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

T.E.R. appeals from the order terminating his parental rights. **AFFIRMED.**

Dewey P. Sloan, Jr., LeMars, for appellant father.

Martha McMinn, Sioux City, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Patrick Jennings, County Attorney, and David Dawson,  
Assistant County Attorney, for appellee State.

Joseph Kertels of the Juvenile Law Center, Sioux City, for minor child.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

**MAHAN, J.**

Thomas appeals the termination of his parental rights to his son, Kamdyn. Thomas contends there is insufficient evidence to support the court's statutory grounds for termination. He also claims he should have been granted an additional six months to continue the process towards reunification. We affirm.

**I. Background Facts and Proceedings**

Thomas is twenty-nine years old. He has a history of anger management problems and mental health issues. In June 2005 he was discharged from the military due to his mental illness. In July 2005 Kamdyn was born to Thomas and his wife, Cassandra. Kamdyn came to the attention of the Iowa Department of Human Services (DHS) three weeks later when Cassandra claimed Thomas abused her and sexually assaulted her in Kamdyn's presence. Kamdyn was removed on July 27, 2005. After the court issued a no-contact order, their relationship ended, and they have not lived together since.

On August 25, 2005, the court adjudicated Kamdyn a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b) (parent has physically abused or neglected child (or is imminently likely to do so), (c)(2) (child is likely to suffer harm due to parent's failure to exercise care in supervising child) and (n) (parent's mental capacity (or condition, or drug or alcohol abuse) results in child not receiving adequate care) (2005). Kamdyn was returned to Cassandra for a trial home visit, but was removed to foster family care on November 4, 2005, due to concerns about insufficient parenting.

The case permanency plan recommended that Thomas attend a batterer's education program, obtain mental health counseling and follow all

recommendations, maintain his sobriety, cooperate with service provided by DHS, and maintain gainful employment. During the pendency of these proceedings, Thomas has maintained his sobriety but has been very inconsistent with the other goals set forth in the plan.

In September 2005 Thomas received a mental health evaluation and was diagnosed with obsessive/compulsive disorder and an atypical personality with both schizotypal and compulsive traits. It was recommended that he receive on-going therapy and medication. Thomas did not take the prescribed medication and did not participate in therapy, claiming he did not have the funds for such treatment. In January 2006 he was provided another psychiatric assessment. He received a similar diagnosis, but refused even to try sample medication provided by the doctor. Thomas also did not complete the batterer's education program. His participation with family-oriented services was very sporadic, and he did not obtain gainful employment for nearly a year.

Kassandra eventually executed a voluntary consent to the termination of her parental rights. In October the State filed a petition to terminate both parents' rights to Kamdyn. At the review hearing, Thomas requested that the court give him six more months to improve his parenting skills. The court denied this request and terminated his parental rights pursuant to Iowa Code sections 232.116(1)(d) (child CINA for physical or sexual abuse (or neglect), circumstances continue despite receipt of services), (e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with child), and (h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home).

## II. Standard of Review

We review termination proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* The State must prove the grounds for termination by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the child. *Id.*

## III. Merits

On appeal, Thomas<sup>1</sup> contends the evidence does not support termination under sections 232.116(1)(d), (e), or (h). Because we find statutory grounds for termination under section 232.116(1)(h), we need not address the arguments pertaining to the other statutory grounds listed by the district court.<sup>2</sup> See *S.R.*, 600 N.W.2d at 64 (“When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.”).

Termination under section 232.116(1)(h) requires proof that Kamdyn is three or younger, has been adjudicated CINA, has been removed from his parents' care at least six of the last twelve months, and cannot be returned to the custody of his parents as provided in section 232.102. The first three elements were clearly proved and are not in dispute. Therefore, we need only address whether Kamdyn can presently be returned to Thomas's custody.

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<sup>1</sup> Kassandra is not a party to this appeal.

<sup>2</sup> Consequently, we need not address Thomas's arguments that (1) he maintained significant and meaningful contact, (2) he made reasonable efforts to resume care for Kamdyn, and (3) the circumstances that led to the CINA adjudication no longer exist.

Our de novo review of the record indicates Thomas has made little progress towards reunification. Thomas made no effort to treat his own mental health issues. At one point he indicated he could not obtain mental health services because of a delinquent medical bill. DHS paid this medical bill, but Thomas still failed to participate in treatment.

Thomas consistently participated in weekly two-hour supervised visitations where he fed and changed Kamdyn's diapers. Providers indicated that he cares for Kamdyn, but they also stated he did not make a genuine effort to assume the duties of a parent. During visitations he often talked on his cell phone and left the room. On multiple occasions he fell asleep during the visitation.

A breathing condition requires that Kamdyn use a nebulizer four times per day. Despite repeated requests from the provider, Thomas never learned how to use the nebulizer because he believed the breathing condition would "just go away with time." His lack of concern over his child's health demonstrates that he is not ready to care for his child. Thomas's past performance as a parent provides insight for his potential future performance. See *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006) ("[W]e look to the parent's past performance because it may indicate the quality of care the parent is capable of providing in the future.").

Upon our de novo review of the record, we find clear and convincing evidence that Kamdyn cannot be returned to his father's care at this time.

Thomas also contends the court should have given him six additional months to obtain the necessary parenting skills. He contends DHS did not allow him additional or unsupervised visitations, and this hampered his ability to demonstrate his parental skills. While it is true that service providers did not

recommend unsupervised visitation, the record is also void of any instance where Thomas asked for increased or unsupervised visitation. This parallels Thomas's lack of effort toward reunification in this case. The law demands a full measure of patience with troubled parents who attempt to remedy a lack of parenting skills; however a child need not endlessly await the maturity of his or her parents, especially once the statutory period has elapsed. *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987). The statutory period set forth in section 232.116(h) directs that six months is the point where the rights and needs of the child surpass the needs of the parents. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997) ("When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued."). Thomas was given fifteen months to prove that he was ready to assume a parental role. We find this was ample time and conclude the district court properly decided that granting additional time to Thomas would not have been in Kamdyn's best interests. See *A.C.*, 415 N.W.2d at 614 ("It is unnecessary to take from the children's future any more than is demanded by statute.").

Based upon the evidence and considering Kamdyn's best interests, we conclude the district court properly terminated Thomas's parental rights.

**AFFIRMED.**