

**IN THE COURT OF APPEALS OF IOWA**

No. 7-512 / 07-0909

Filed August 8, 2007

**IN THE INTEREST OF M.P., B.P., and S.P.,  
Minor Children,**

**A.S.P., Father,**  
Appellant,

**C.M.L., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Woodbury County, Brian J. Michaelson, Associate Juvenile Judge.

A mother and a father each appeal from a juvenile court order terminating their parental rights to three children. **AFFIRMED ON BOTH APPEALS.**

Robert J. Pierson, Sioux City, for appellant-father.

Craig Lane, Sioux City, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and Dewey Sloan, Assistant County Attorney

Michelle Dreibelbis, Sioux City, guardian ad litem for minor children.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

**MILLER, J.**

Christina and Aaron are the unmarried parents of Scott, Brooklyn, and Morgan (“the children”), who were five years, two years, and six months of age respectively at the time of a termination of parental rights hearing. In a May 2007 order the juvenile court terminated each parent’s parental rights to the children pursuant to Iowa Code sections 232.116(1)(d) (2007) (child or sibling previously adjudicated child in need of assistance (CINA) for physical or sexual abuse or neglect as result of acts or omissions of one or both parents, subsequent to the adjudication parents were offered or received services to correct circumstance which led to adjudication but circumstance continues to exist) and 232.116(1)(i) (child a CINA for physical or sexual abuse or neglect as a result of acts or omissions of one or both parents, abuse or neglect posed significant risk to life of child or constituted imminent danger to child, offer or receipt of services would not correct conditions which led to abuse or neglect within a reasonable time). Each parent appeals. We affirm on both appeals.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court’s findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

*In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Christina claims the State did not prove each of the elements of at least one of the two statutory grounds for termination relied on by the juvenile court. More specifically, she asserts the State did not prove the second element of

section 232.116(1)(d) and did not prove the third element of section 232.116(1)(i).

Aaron claims the State did not prove the statutory grounds for termination of his parental rights relied on by the juvenile court. More specifically, he contends he did not personally abuse or neglect any of the children, or knowingly permit Christina to do so; he was not present or in charge of supervision when injury to Scott occurred, when an injury to Morgan occurred, or when Christina failed to supervise Scott and Brooklyn; and when an injury to Morgan occurred he had done nothing wrong in leaving the children under the supervision of their grandmother. He also claims the State did not prove that a threat of harm to the children would remain if they are returned to his custody.

The same underlying facts and proceedings relate to the foregoing claims of both Christina and Aaron. We therefore proceed to address them together. “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. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We choose to focus on section 232.116(1)(d). A somewhat detailed recitation of the underlying facts and prior proceedings is necessary to explain our conclusion that the termination of both Christina’s and Aaron’s parental rights is proper.

In August 2001 Scott, then two months of age, sustained a head injury while in Christina’s care. There were concerns of a possible skull fracture, but the injury was ultimately determined to involve only bruising. Aaron had previously seen Christina at times shake Scott but had done nothing to prevent

such actions by her. Scott was removed from parental custody and placed in voluntary foster care. In late September 2001, he was returned to parental custody with several agencies providing in-home services.

In mid November 2001, the Iowa Department of Human Services (DHS) requested juvenile court intervention and a child in need of assistance petition concerning Scott was filed. Those actions were taken as a result of Christina yelling at Scott and throwing things in a highly emotional state. The DHS and service providers believed Christina to have serious mental health issues. A January 2002 psychosocial evaluation found Christina to have low average intellectual functioning with a full-scale IQ of 80, and found her likely to engage in maladaptive behaviors designed to control anxiety from which she suffered. The evaluator agreed with the concerns of others regarding Christina being left unsupervised with Scott. Those same concerns have continued throughout the succeeding investigations, evaluations, and cases involving various incidents and one or more of the children.

Scott was adjudicated a CINA in March 2002. Christina was provided prescribed medications for her mental health problems, but would not refill her prescription or take the medications and would not cooperate with visits. Both Christina and Aaron would not cooperate with services.

A June 2002 dispositional order placed Scott with Aaron, who asserted he was fully capable of caring for Scott. Christina's visitations with Scott were to be supervised. Aaron was unable to care for Scott without substantial assistance from service providers. Scott allowed Christina to have unapproved and unsupervised visitations with Scott. Christina began staying or living with Aaron.

As a result of Aaron's and Christina's violations of court orders, Scott was removed from Aaron in September 2002. Scott was placed with an aunt until July 2003. Neither Christina nor Aaron believed they needed services.

As of January 2003 Christina and Aaron seemed willing to comply with rules regarding supervision of visitation, and it appeared Christina was taking prescribed medication and doing better. Nevertheless, the therapist providing couples therapy recommended that Scott not be returned to Christina and Aaron and that their parental rights be terminated, believing that Christina's mental problems prevented her from appropriate parenting and that Aaron was unable or unwilling to follow plans made for Scott's safety.

Scott was returned to Aaron in early July 2003. The return was based in part on Scott's claim that he was separated from Christina. It appears his claim was untrue, as Christina became pregnant with Aaron's daughter, Brooklyn, at that time. Christina had been compliant with medications and to some extent had been participating in services. In the fall of 2003 Christina transitioned back into Aaron's home.

Brooklyn was born in April 2004. A petition seeking her adjudication as a CINA was filed in May 2004. By August 2004 Christina was again not taking prescribed medications. Aaron was ordered to observe to make certain that she did take her medications.

Brooklyn was adjudicated a CINA in September 2004. At that time it appeared that Christina was still not taking prescribed medications. Custody of Scott and Brooklyn was placed with both Aaron and Christina. Christina's unsupervised visitations with them were increased. Shortly thereafter Christina,

not focusing on her driving, was involved in an automobile accident with the two children in the vehicle with her.

Following the September 2004 return of custody Aaron and Christina failed or refused to participate in various required and available services. Both stopped attending couples therapy, and Christina stopped attending individual counseling. Concerns continued over Christina not taking prescribed medication and Aaron not observing to make certain that she did so.

In November 2004 Aaron's mother, who has been diagnosed with schizophrenia, arrived to visit. She was still "visiting" at the time of the March 2007 termination hearing.

In June 2005 a report of child neglect was "founded," with Christina as the perpetrator and Scott and Brooklyn the victims. The matter involved Christina having left three-year-old Scott and one-year-old Brooklyn home alone on more than one occasion.

Aaron, Christina, Scott, and Brooklyn moved to Forest City, in Winnebago County, in July 2005. The juvenile court in Woodbury County retained jurisdiction, with services provided in Winnebago County. In late January 2006 the court dismissed the CINA proceedings involving Scott and Brooklyn, doing so on the basis of reports that the family had been doing well and were utilizing local resources in Winnebago County. Shortly after the dismissal of the CINA proceedings in Woodbury County Aaron moved the family back to Woodbury County. Aaron and Christina did not then involve themselves in any of the previously offered and available services.

Morgan was born in September 2006. In early December she was admitted to the hospital with a mid-shaft, complete fracture of her right humerus, sustained while in the home with Christina and Aaron's mother. The injury was clearly the result of excessive force, knowingly applied. The children were once again removed from Aaron's and Christina's custody.

Aaron's mother asserted that Christina caused the injury to Morgan. Christina asserted that Aaron's mother caused the injury. Aaron and Christina had been fighting, and Christina and Aaron's mother had had an argument, all shortly before the injury occurred. Aaron apparently at least initially believed Christina caused the injury, as he, together with his step-mother and his mother, required her to leave the home. He allowed his mother to stay in the home during the resulting investigation, even though he subsequently stated that he had believed his mother might have caused the injury.

A report of child abuse was "founded," with Christina as the perpetrator and Morgan as the victim. Aaron insisted Christina had always been a good mother.

Aaron has a sister who is a party to a pending dissolution of marriage proceeding. She has a current boyfriend who is facing criminal charges for what is described in the record as "lewd acts with a minor." Aaron has allowed the sister and the boyfriend to move into and share the home he occupies with his mother.

Aaron's and Christina's relationship has involved ongoing domestic violence and incidents of neglect and abuse of their children. Christina suffers from serious mental health issues, including depression and anxiety, has low

frustration tolerance, and has problems with anger management. Although medication has been prescribed to help Christina deal with her problems, she has frequently for extended periods of time failed or refused to take the medication. She has failed or refused to participate in many ordered and available services. The children have not been safe while in her care. After five years of services she still could not keep the children safe from harm. As noted by the juvenile court, Christina has disobeyed court orders and “[i]t is highly doubtful that [she] would comply with services and orders of this court.” Upon our de novo review, we find the State proved by clear and convincing evidence both elements of the section 232.116(1)(d) grounds for termination of Christina’s parental rights to the children.

From the time of Scott’s head injury almost six years ago Aaron has been aware of Christina’s mental problems and the resulting fact the children are not safe in her care. Court orders have included numerous provisions designed to help assure that the children will be safe and secure. In violation of those orders Aaron has at times exposed the children to unsupervised visitation and other contacts with Christina. In violation of those orders he has failed or refused to monitor Christina’s medication regime by observing her take the medication to make certain she does so. Aaron has failed or refused to participate in various services designed to safely and permanently return the children to Christina and him or to him alone if necessary. Up to and even after Morgan’s injury and a resulting December 2006 petition for termination of parental rights he has continued to deny that Christina lacks the ability to parent the children and

assure their safety. Even after Morgan's injury Aaron continued to express a desire or intent to co-parent the children with Christina.

The history of this case demonstrates that, as noted by the juvenile court, Aaron lacks the judgment and ability to make the decisions necessary to safely parent the children. His continuing lack of judgment is most recently fully demonstrated by him allowing a person facing charges for molesting a minor to move into the home to which he proposes to return the children.

Aaron has been offered various services for over five years, and, when willing, has received some of those services during that time. We agree with the juvenile court that further services would not at this late time correct the circumstance which has on multiple occasions led to removal of the children from Aaron's custody. We conclude, as the juvenile court did, that the State proved by clear and convincing evidence both elements of the section 232.116(1)(d) grounds for termination of Aaron's parental rights to the children.

Christina claims termination of her parental rights is not in the children's best interest. The children have not been safe in her care. She has through neglect or abuse injured Scott and Morgan and put Brooklyn at risk of injury. The children have been removed from parental custody on more than one occasion. Christina has for years been unable or unwilling to effectively participate in services and remedy her parental deficiencies. There is very little, if any, bond between her and the children. We conclude termination of Christina's parental rights is in the children's best interest.

**AFFIRMED ON BOTH APPEALS.**