

**IN THE COURT OF APPEALS OF IOWA**

No. 7-530 / 07-1046  
Filed September 6, 2007

**IN THE INTEREST OF M.J., JR.,  
Minor Child,**

**M.J., Father,**  
Appellant,

**D.J., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Karla J. Fultz,  
Associate Juvenile Judge.

A mother and father appeal the juvenile court order terminating their  
parental rights. **AFFIRMED.**

William E. Sales III, Ankeny, for appellant father.

Todd E. Babich of Babich, Goldman, Cashatt & Renzo, P.C., Des Moines,  
for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, John Sarcone, County Attorney, and Annette Taylor, Assistant  
County Attorney, for appellee State.

Charles Fuson, Youth Law Center, Des Moines, guardian ad litem for  
minor child.

Considered by Huitink, P.J., and Baker, J., and Schechtman, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

**SCHECHTMAN, S.J.****I. Background Facts and Proceedings**

Michael and Debra are the parents of Mikey, born in 1996. The parents have a history of substance abuse and mental health problems. In 1999, Mikey was adjudicated to be a child in need of assistance (CINA), and removed from his parents' care. Eventually he was reunited with his parents. That case was closed in 2002.

Mikey was again removed from his parents' care in August 2005. Both parents had tested positive for methamphetamine. He was placed in foster care. Mikey was adjudicated a CINA pursuant to Iowa Code sections 232.2(6)(c)(2) (2005) (child is imminently likely to suffer harm due to parent's failure to exercise reasonable degree of care in supervision) and (n) (parent's drug abuse results in child not receiving adequate care). The parents were directed to attend substance abuse treatment and to provide drug tests.

The parents made progress dealing with their substance abuse problems. In January 2006, Mikey was returned to their care. He was removed a third time in June 2006, due to the parents' drug relapse. Mikey was placed with his great-aunt. On October 30, 2006, the juvenile court granted the State's request, under section 232.57(2), to waive the reasonable efforts requirement.

On November 28, 2006, the juvenile court entered a permanency order under section 232.104(2) placing Mikey in another planned living arrangement under the guardianship of his great-aunt. At that time Mikey's therapist did not recommend the termination of his parents' rights. The Iowa Department of

Human Services (DHS) also did not recommend termination, concluding the permanency order “would allow time for interested parties to evaluate the benefits and drawbacks of termination, adoption and guardianship to make the best decision for this child.”

In March 2007, Mikey’s therapist opined that in his professional judgment it would be in Mikey’s best interests to terminate the rights of his parents. The therapist deemed that Mikey had a sense of permanency and familial connection while living with his great-aunt. The DHS caseworker noted that Mikey seemed very stable residing with her. She expressed an interest in adopting the child.

The State then filed a petition seeking to terminate the parents’ rights. The juvenile court terminated the parental rights of Michael and Debra under sections 232.116(1)(b) (2007) (abandonment), (d) (child CINA for neglect, circumstances continue despite the receipt of services), and (l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time). On the issue of the child’s best interests, the court found Mikey needed the stability provided by termination and adoption. Michael and Debra each appeal.

## **II. Standard of Review**

The scope of review in termination cases is *de novo*. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). 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).

### **III. Permanency Order**

The parents claim they were denied procedural due process because a hearing was not held, pursuant to section 232.104(6), prior to modifying the permanency order to terminate their parental rights.<sup>1</sup> This issue was never considered by the juvenile court. When an issue is not addressed by the court, a party must file a motion to enlarge or amend pursuant to Iowa Rule of Civil Procedure 1.904(2) to preserve it for appeal. *In re N.W.E.*, 564 N.W.2d 451, 455-56 (Iowa Ct. App. 1997). Neither parent filed any post-hearing motions. We conclude this issue has not been preserved for our review. *See In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) (noting an issue may not be raised for the first time on appeal, even one of constitutional dimensions).

### **IV. Sufficiency of the Evidence**

The parents contend there is insufficient evidence in the record to support the termination of their parental rights under sections 232.116(1)(b), (d), or (l). On our de novo review of the record, we find clear and convincing evidence that the parents' rights should be terminated. The parents have a substantial history of substance abuse, and have not maintained a sober lifestyle. Despite being offered numerous services, the parents continued to use methamphetamine, which resulted in Mikey being removed from their home on three separate occasions. We have previously stated:

[I]n considering the impact of a drug addiction, we must consider the treatment history of the parent to gauge the likelihood the

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<sup>1</sup> The parents raise the same issues on appeal, and we will discuss their appeals together.

parent will be in a position to parent the child in the foreseeable future. Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.

*In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (citations omitted).

On the issue of abandonment, the parents provided Mikey with no emotional or financial support. There was little, if any, contact with him since the permanency hearing.

Our court has characterized abandonment as “giving up parental rights and responsibilities accompanied by an intent to forego them.” *In re Burney*, 259 N.W.2d 322, 324 (Iowa 1977). Its meaning was further refined in *In re Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981):

This affirmative duty encompasses more than financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child . . . Because a child needs more than a benefactor, parental duty requires that a parent exert himself to take and maintain a place of importance in the child's life.

(quoting *In re J.L.Z.*, 421 A.2d 1064, 1064-65 (Pa. 1980)).

Michael and Debra have tragically failed in their parental roles, with an intent to forego those responsibilities. The juvenile court appropriately determined the parents to have abandoned Mikey under section 232.116(1)(b) by clear and convincing evidence.

The termination of parental rights of Michael and Debra is in the child's best interests and is affirmed.

**AFFIRMED.**