

**IN THE COURT OF APPEALS OF IOWA**

No. 7-792 / 07-1472  
Filed October 24, 2007

**IN THE INTEREST OF D.D. and D.R.,  
Minor Children,**

**S.M.D., Mother,  
Appellant,**

**M.J.D., Father of D.D.,  
Appellant,**

**C.S.R., Father of D.R.,  
Appellant.**

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Appeal from the Iowa District Court for Linn County, Susan Flaherty,  
Associate Juvenile Judge.

Parents appeal from the order terminating their parental rights.

**AFFIRMED.**

Ronald L. Ricklefs, Cedar Rapids for appellant mother.

John J. Bishop, Cedar Rapids for appellant father of D.D.

Michael M. Lindeman, Cedar Rapids, for appellant father of D.R.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Harold Denton, County Attorney, and Kelly Kaufman, Assistant  
County Attorney, for appellee State.

Barbara Connolly, Cedar Rapids, for minor children.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

**HUITINK, P.J.****I. Background Facts and Prior Proceedings**

The family in this appeal is composed of five persons. The children are Derek, age ten, and Dakota, age eight. Shelley is the mother of both children. She is married to Matt, the father of Dakota. Shelley was formerly married to Chris, who is the father of Derek. Chris lived with the family during a portion of these proceedings.

Both children have special needs. Dakota has learning disabilities and delays in his speech. Derek is mentally retarded and has problems with his motor skills and balance. He also has seizures approximately once per month. Because of his poor balance and seizures, he wears a helmet when he is outside the family home.

This family has a long history with the Iowa Department of Human Services (DHS). Prior to 2003, there were five reported instances of abuse or neglect. On each occasion, the abuse was not founded, but services were recommended. The family did not follow through with services and maintained a very defensive posture about their ability to meet the needs of their children.

In January 2003 school officials contacted DHS when the children came to school with bumps, bruises, and scratches. Derek also had a cut on his ear that required eight stitches. Their parents were unable to explain the origin of these injuries. School officials also told DHS that they frequently cleaned the children because they came to school with animal feces and urine on their clothing. The boys were also intermittently afflicted with lice and fleas. A DHS investigator went to the family home and discovered the home was filthy, full of safety

hazards, and contained three large dogs and eleven cats. Multiple piles of animal feces were scattered throughout the house. Matt admitted that he had bruised one of the children during a severe spanking.

DHS filed a child in need of assistance (CINA) petition on January 6, 2003. The children were voluntarily placed in foster care until the removal hearing. At the March removal hearing, the court found the parents had made substantial efforts to clean the home. The court also accepted Matt's statement that he would not spank the children in this manner again. Ultimately, the court found there was not substantial evidence to support continued removal, and the children were returned to their parents' care.

On May 8, 2003, the parents stipulated that the children were in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c)(2), (g), and (e) (2003). However, the court allowed the children to continue to live with their parents. The family reluctantly cooperated with family services. Initially, DHS providers monitored the home numerous times per week, and the conditions of the home improved. However, when the providers cut back their visits with the family, the cleanliness conditions in the home rapidly deteriorated. School officials reported that the children came to school with poor hygiene and smelling of animal urine.

The parents were also becoming more uncooperative with DHS. They refused access to certain areas of the home. Shelly and Matthew yelled obscenities at a worker, and Matthew stated, "You don't want to make me mad because it won't be pretty." The providers reported that the family was not internalizing the skills taught in services.

After a contested modification hearing, the juvenile court ordered that the children be removed from their parents' care on March 2, 2005.<sup>1</sup> The parents were granted one hour of supervised visitation per week. Shelley's participation in visitation was fairly consistent, but Matt's attendance was very inconsistent. Chris visited Derek separately. His attendance was very consistent and he eventually progressed to semi-supervised visitations.

On May 22, 2006, Matt filed a formal request with the juvenile court asking for unsupervised visitation and visitation on the weekends. The juvenile court denied this request, noting that the parents were not fully participating in the parenting sessions and not demonstrating improved parenting skills. While DHS did not allow unsupervised visitations with Shelley and Matt, it did increase the length of visitation and change the visitation times to the weekends to accommodate Matt's work schedule.

The State filed a petition to terminate the parents' parental rights in July 2006. The court held a multiple-day hearing on the petition. Ultimately, the court terminated the parental rights of all three parents pursuant to Iowa Code section 232.116(1)(f) (2007). Each parent appeals separately.

## **II. Standard of Review**

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Grounds for termination must be proved by clear and convincing evidence, and our primary concern is the children's best interests. *Id.*

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<sup>1</sup> Our court affirmed the modification order in May 2005.

### **III. Merits**

#### **A. Statutory Grounds for Termination**

All three parents claim there were insufficient statutory grounds to terminate their parental rights under Iowa Code section 232.116(1)(f). Section (f) provides that parental rights can be terminated if there is clear and convincing evidence that the children are four years of age or older; the children have been adjudicated CINA; the children have been removed from the physical custody of their 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; and there is clear and convincing evidence that at the present time the children cannot be returned to the custody of the parents as provided in section 232.102. The evidence supporting the first three elements is not in dispute. The parties only dispute whether there is sufficient evidence to prove the children could not be returned to their care.

**Chris.** Our inquiry under section (f) is whether the children can be returned to the parent's care "at the present time." Chris testified that he was not able to provide for Derek's care at the time of the hearing. He indicated he did not have permanent housing, and he told the court he would not be able to care for Derek for at least the next six to twelve months. His position at the hearing was that he did not want his parental rights terminated and he wanted the children to be returned to Shelley and Matt. While the law demands a full measure of patience with a troubled parent who attempts to remedy a lack of parenting skill, *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987), it also establishes that termination should occur if the statutory time period has elapsed and the

parent is still unable to care for the child. See *in re M.Z.*, 481 N.W.2d 532, 536 (Iowa Ct. App. 1991). By his own admission, Chris was not ready to have Derek returned to his care at the time of the termination proceeding. We therefore affirm the termination of his parental rights under the statutory grounds set forth in section 232.116(1)(f).

***Shelley and Matt.*** Shelley and Matt maintain, as they have argued since the March 2005 removal, that their parental skills are sufficient and the children can be returned to their care. Matt raises the additional argument that he was not given the opportunity to prove that the children could be returned to his care. He argues DHS did not make reasonable efforts towards reunification because they did not allow unsupervised visitation.

We disagree with both arguments. Since the beginning of the CINA proceedings, Shelley and Matt have been unwilling to acknowledge their deficiencies in parenting skills. Their participation in parenting-skills classes has been unproductive because of their negative attitude towards the entire situation. Their actions during the supervised visitations and their testimony during the termination hearing also demonstrates that they have not internalized any new parenting skills and are unwilling to take direction from care providers. When the providers observed Shelley and Matt's interactions with the children during supervised visitation, they found Shelley and Matt were unable to relate to the emotional needs of the children. For example, on one occasion Dakota used the term "mom" to describe his foster mother. Shelley became very upset and Matt reprimanded Dakota by shouting in his face until Dakota apologized to Shelley. On other occasions, both parents dealt with behavioral problems by escalating

the situation, rather than using appropriate parenting skills. When Dakota returned from these supervised visitations, he exhibited behavioral problems that did not occur during other times of the week.

In light of Shelley's and Matt's impulsive actions, uncooperative attitude, and inability to appropriately respond to the emotional needs of their children, DHS refused to allow semi-supervised visitation, let alone a trial home placement. On the other hand, Chris participated in family-centered services, applied his new parenting skills during visitations, and had appropriate interactions with Derek. In turn, DHS allowed Chris to advance to semi-supervised visitations and suggested on multiple occasions that he take Derek out in the community during visitation. Chris chose not to do so because he feared that Shelley would be upset if she learned he had greater visitation privileges.

As evidenced by Chris's progression to semi-supervised visitations, DHS was not averse to anything less than supervised visitation. Shelley and Matt simply refused to cooperate and did not attempt to address their parenting deficiencies. When Matt requested that the court intervene to order unsupervised or semi-supervised visitation, the court rejected this request, noting the same problems as set forth above. However, DHS responded to the request and gave them a chance to prove their skills by granting the request for longer visits and extended weekend visitation.

It is vital in a juvenile matter that a parent recognizes when a child has been victimized so that meaningful change can occur to protect the child in the future. *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988). "A parent's failure to address his or her role in the abuse may hurt the parents' chances of regaining

custody and care of their children.” *In re C.H.*, 652 N.W.2d 144, 150 (Iowa 2002). Shelley and Matt had twenty months to learn new parenting skills and prove that they could provide for their children’s physical and emotional needs. While they made some progress by cleaning the family home and attending some parenting classes, they are still not able to provide for all of their children’s needs. Upon our de novo review of the record, we find clear and convincing evidence that the children cannot be returned to their parents’ care at this time. We also find the State has proved that DHS made reasonable efforts towards family reunification.

### **B. Best Interests**

Proof of a statutory ground for termination is not dispositive. We must also determine whether it is in the children’s best interests to terminate parental rights. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

While it is clear that the parents love their children, it is equally clear that they cannot now, or in the foreseeable future, provide them with a stable environment. Since removal, Derek and Dakota have lived in a loving and stable environment. As a result, numerous individuals report remarkable changes in their emotional and physical well-being. For example, Derek’s neurologist testified that he has seen striking improvements since Derek entered foster care. Derek has been acting at a higher level of function and his vocabulary has expanded. While Derek is still “profoundly delayed,” the neurologist stated that Derek had progressed by “leaps and bounds since being in foster care.” The neurologist attributed these improvements to his new environment.



As recently noted by our supreme court, a child's safety and need for a permanent home are the defining elements in the child's best interests. *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially). These children have waited more than twenty months for their parents to both learn and utilize appropriate parenting skills. They should not be forced to wait any longer. See *A.C.*, 415 N.W.2d at 613 ("The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems."); *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."). These children are adoptable, and we find it is in their best interests to terminate their parents' parental rights so that they can have permanency and the chance to grow in a stable and secure environment.

Accordingly, we affirm the termination of Shelley's, Matt's, and Chris's parental rights.

**AFFIRMED.**