

**IN THE COURT OF APPEALS OF IOWA**

No. 7-877 / 07-1709  
Filed November 29, 2007

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

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

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

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

A mother and father appeal from the termination of the parental rights to  
their daughter. **AFFIRMED.**

Lorraine Machacek, Cedar Rapids, for appellant mother.

Robert Kimm, Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, Harold Denton, County Attorney, and Lance Heeren, Assistant  
County Attorney, for appellee State.

Cory Spethof Krug Law Firm, P.L.C., Cedar Rapids, guardian ad litem for  
minor child.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

**VOGEL, P.J.**

Anna and David are the parents of Avalon, who was born in May of 2004. The family first came to the attention of the Iowa Department of Human Services (DHS) almost immediately after Avalon's birth. Avalon was born eight weeks premature and placed in a neonatal incubator. Even though not yet scheduled to be released from the hospital, Anna and David apparently intended to remove Avalon from the incubator and take her from the hospital. DHS obtained an order preventing her parents from removing Anna against medical advice. This incident resulted in a founded report of denial of critical care against both parents. Avalon was released to her parents' care upon her later discharge from the hospital.

In mid-December 2005, the family was investigated after Anna assaulted her mother while in the presence of Avalon. Anna was arrested and Avalon was left in the care of her grandmother. Avalon was removed from her parents' custody later that month when Anna again was arrested for assaulting her mother. Avalon was thereafter adjudicated to be in need of assistance on grounds of lack of supervision. In March of 2007, after both parents continued to struggle with substance abuse issues, the State filed a petition seeking to terminate Anna's and David's parental rights to Avalon. Following a hearing on that petition, the court granted the State's request and terminated their rights pursuant to Iowa Code section 232.116(1)(h) (2007). Both Anna and David appeal from this order.

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern is the best interests of the child. *In re C.B.*,

611 N.W.2d 489, 492 (Iowa 2000). The grounds for termination must be proved by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000).

We first address the contention, asserted by both parents, that the juvenile court judge erred in refusing to recuse herself from this case. In support of this position, they argue that the judge who rejected suggestions to extend permanency for an additional six months, and who directed that the State file the termination petition, should not be the same judge who later presided over the termination hearing.

The burden of showing grounds for recusal is substantial, on the party seeking recusal, and we will not overturn the trial judge's decision absent an abuse of discretion. *State v. Farni*, 325 N.W.2d 107, 110 (Iowa 1982). Actual prejudice must be shown before a recusal is necessary. *In re C.W.*, 522 N.W.2d 113, 117 (Iowa Ct. App. 1994). The appearance of impropriety is not sufficient to merit recusal. *In re A.B.*, 445 N.W.2d 783, 784 (Iowa 1989).

We discern no abuse of discretion in the court's refusal to recuse itself. The Iowa Code clearly allows a judge to direct the county attorney to file a termination petition. Iowa Code § 232.58(3)(c). The Code does not additionally require that judge to then step away from the case by virtue of that order. Furthermore, neither Anna nor David can articulate any evidence of actual prejudice.

We next address and reject Anna's contention that the State did not prove by clear and convincing evidence that Avalon could not be returned to her custody. See Iowa Code section 232.116(1)(h)(4). In particular she maintains she has progressed enough in drug treatment, acquired the appropriate

parenting skills, and addressed her mental health issues sufficient to warrant return of her daughter. Our de novo review of the record reveals a history replete with substance abuse, failed attempts at treatment, invalid drug tests due to apparent tampering, assaultive behavior, and questionable mental health. There is no indication Anna had exhibited any real willingness to address the personal issues that led to Avalon's removal from her care in the first place. We affirm the juvenile court on this ground.

Anna further asserts the termination of their parental rights is not in Avalon's best interests. We disagree for reasons similar to those already expressed in this opinion. In addition, Avalon is a special needs child who requires an extra degree of patience and greater insight as to her care. We are not convinced that Anna can minister to those specialized needs on a full-time basis. Avalon is adoptable and cannot be forced to wait for her parents as they struggle to address their own troubling issues.

Finally, David argues the court should have given him more time to comply with the case plan and that it could have placed Avalon with a maternal grandmother as guardian. We disagree on both counts. First, there is no indication any additional time would have brought Avalon any closer to reunification with her father. David, who was incarcerated for a substantial period during the pendency of this case, failed multiple drug tests and showed evidence of having tampered with inconclusive tests almost until the eve of trial in this matter. As DHS was involved with, and providing services to, this family almost since Avalon's birth, David was allowed more than sufficient time to prove his ability to safely parent his daughter. Furthermore, the record does not

indicate any intention or desire on the maternal grandmother's part to become Avalon's guardian. We therefore affirm the juvenile court's order.

**AFFIRMED.**