

**IN THE COURT OF APPEALS OF IOWA**

No. 8-097 / 07-2136  
Filed February 13, 2008

**IN THE INTEREST OF D.R., Minor Child,**

**K.B.M., Father,**  
Appellant,

**Y.M.R., Mother,**  
Appellant.

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

A father and mother appeal from a juvenile court order terminating their  
parental rights to one child. **AFFIRMED.**

Delmer D. Werner, Cedar Rapids, for appellant-father.

Charles Hallberg of Hallberg, Jacobsen, Johnson & Viner, P.L.C., Cedar  
Rapids, for appellant-mother.

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

Karla Wolff, Cedar Rapids, guardian ad litem for minor child.

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

**SACKETT, C.J.**

The juvenile court terminated the parental rights of Yvette and Kevin to their child born September 9, 2006, under Iowa Code section 232.116(1)(g) (2007).<sup>1</sup> Both parents appeal, contending the juvenile court should not have granted the State's motion to waive the State's responsibility to make reasonable efforts to reunify them with their child. Yvette also contends the State failed to show termination was in the child's best interest. Kevin argues certain of the juvenile court's findings are not supported by clear and convincing evidence. We affirm.

**SCOPE OF REVIEW.** Our review of child-in-need-of-assistance proceedings is de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). We review the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the juvenile court's factual findings but are not bound by them. *In re E.H. III*, 578 N.W.2d 243, 248 (Iowa 1998).

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978);

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<sup>1</sup> Iowa Code section 232.116(1)(g) provides in relevant part:

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

g. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

*Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). When the juvenile court terminates a parent's rights, we affirm if clear and convincing evidence supports the termination under the cited statutory provision. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The State has the burden of proving the allegations by clear and convincing evidence. "Clear and convincing evidence" is evidence leaving "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002) (quoting *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983)).

**WAIVER OF REASONABLE EFFORTS.** On August 22, 2007, the State filed an application for waiver of reasonable efforts, contending the child had been found to be a child in need of assistance, he was removed from his mother's custody on July 25, 2007, and placed in the temporary custody with the Iowa Department of Human Services for purposes of foster family care, and Yvette and Devin's parental rights had previously been terminated pursuant to Iowa Code section 232.116 with respect to five other children who were members of the same family. The State contended that the offer or receipt of services would not within a reasonable period of time be likely to correct the conditions that led to the removal of this child from his mother's care. Kevin resisted the motion, contending he had recently been released from incarceration and wished to be considered for placement of the child. He contended he believed with reasonable services he would be able to care for the child in a reasonable amount of time.

The juvenile court waived reasonable efforts on September 13, 2007, finding that this was the sixth child born to these parents and the parents had lost permanent custody of the other five older children in three separate termination of parental rights cases. The court then set out the extensive services the Iowa Department of Human Services has offered this family over an eight-year period. The court waived reasonable efforts pursuant to section 232.102(12)(c),<sup>2</sup> finding clear and convincing evidence that the parents' parental rights had been terminated under section 232.116 with respect to the other five children and that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions that led to the child's removal.

The State contends that time for appeal from this order has passed and no notice of appeal can be found. The State also contends that reasonable services were offered to the family. We assume without deciding that error was preserved. The findings of the juvenile court on this issue are supported by clear and convincing evidence. The parents' arguments on this issue find no support in the record.

**BEST INTEREST OF CHILD.** Yvette contends that termination is not in the child's best interest.

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<sup>2</sup> Iowa Code section 232.102(12)(c) provides:

12. If the court determines by clear and convincing evidence that aggravated circumstances exist, with written findings of fact based upon evidence in the record, the court may waive the requirement for making reasonable efforts. The existence of aggravated circumstances is indicated by any of the following:

....  
c. The parent's parental rights have been terminated under section 232.116 with respect to another child who is a member of the same family, and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child's removal.

Under section 232.116(3)(c), the juvenile court may in determining whether to terminate parental rights consider “clear and convincing evidence that the termination would be detrimental to the child due to the closeness of the parent-child relationship.” These parents have had a large number of services over an extensive period and while there may have been small limited successes the record shows they do not have the stability to care for this child. They have not bonded with the child. There is no clear and convincing evidence that termination would be detrimental to this child due to the closeness of the parent-child relation.

**KEVIN'S CHALLENGES.** Kevin does not contend that grounds for termination under 232.116(1)(g) were not proved by clear and convincing evidence. Rather, he advances a series of arguments contending, among other things, that the State failed to show by clear and convincing evidence (1) domestic abuse, (2) that Yvette was unemployed for a significant period of time, and (3) that Yvette left the child with inappropriate care givers and did not comply with certain evaluations and counseling. He further contends he was not offered services. We have considered his arguments but we find that the grounds for termination were proved by clear and convincing evidence. Consequently, we affirm.

**AFFIRMED.**