

**IN THE COURT OF APPEALS OF IOWA**

No. 8-170 / 08-0036  
Filed March 26, 2008

**IN THE INTEREST OF W.L.,  
Minor Child,**

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

**T.L.L., Father,**  
Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

A father appeals from the termination of his parental rights. **AFFIRMED.**

David Zellhoefer of Zellhoefer Law office, Waterloo, for appellant mother.

Dennis Guernsey, Waterloo, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven Halbach, Assistant County Attorney, for appellee State.

Michael Lanigan, Waterloo, for minor child.

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

**VAITHESWARAN, J.**

A father appeals the termination of his parental rights to his son. We affirm.

***I. Background Facts and Proceedings***

Wyatt, born in 2005, was removed from his parents' home in August 2006 after his father, Terry, tested positive for methamphetamine in his system. Child-in-need-of-assistance proceedings were initiated. Wyatt remained in foster care throughout the proceedings. The district court eventually terminated Terry's parental rights to Wyatt on two grounds. See Iowa Code § 232.116(1)(g) (2007) (requiring proof of several elements including proof that "the parent continues to lack the ability or willingness to respond to services which would correct the situation" and "an additional period of rehabilitation would not correct the situation.") and (h) (requiring proof of several elements including proof that the child could not be returned to the parent's custody). On appeal from that ruling, Terry contends: (1) the record lacks clear and convincing evidence to support termination under the two grounds cited by the district court, and (2) termination should have been deferred for six months.

Our review is de novo. Iowa R. App. P. 6.4. We may affirm if we find clear and convincing evidence to support either of the cited grounds. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We find clear and convincing evidence to establish that Wyatt could not be returned to Terry's custody. See Iowa Code § 232.116(1)(h).

***II. Iowa Code section 232.116(1)(h)***

The Department of Human Services identified several expectations of Terry, if he wished to reunify with Wyatt. One was to learn proper parenting

skills. An in-home service provider met with the family once or twice a week to assist with this goal. She reported that she “taught skills associated with knowing how to recognize the limitations of a two year old and the steps to take to prevent conflicts.” After months of furnishing these services, she reported Terry “did not demonstrate any recognition of a problem.” She testified,

There’s times that Terry doesn’t understand Wyatt’s two and he’s learning independence. He will try to make him do things that he doesn’t want to do. Wyatt is now becoming more verbal and can say no or don’t do that or—and kind of lets him know, but prior to him becoming verbal they are—Wyatt would cry and Terry would not cue into that.

She concluded Terry was receptive but “inconsistent” in implementing parenting skills.

The service provider conceded that Terry demonstrated certain parenting strengths. She testified that “[d]uring most visits, he does well entertaining and interacting with Wyatt. He does show lots of affection towards him with hugs and kisses and holding, and I, again, believe that he loves Wyatt.” The provider also acknowledged that Terry displayed these strengths on a regular basis without any type of prompting. She opined, however, that Wyatt could not be returned to Terry’s care without supervision, given his inconsistencies in parenting.

This opinion was seconded by a Department of Human Services employee. She testified Terry lacked follow-through with some of the services. She explained that Terry loved to play with Wyatt, but at times he took that too far.

Both the service provider and the Department employee also expressed concern about Terry’s past substance abuse. This brings us to the Department’s

second expectation, to “discontinue the use of illegal substances.” There is no question Terry made progress towards this goal; he completed a substance-abuse evaluation in December 2006 and provided negative drug tests for several months. However, in April 2007, Terry relapsed on methamphetamine. After the positive drug screen, Terry was evaluated by a behavioral services provider, who recounted that Terry used methamphetamine because he was depressed over the loss of other children. See *In re A.M.*, No. 07-0645 (Iowa Ct. App. June 13, 2007) (affirming termination of Terry’s parental rights to other children).

Commendably, there is no evidence that Terry continued his drug use after April 2007. For six months preceding the termination hearing, he tested negative for the presence of drugs. Additionally, he testified he attended a twelve-step program until a month before the termination hearing, when his new job schedule precluded attendance. That was the only treatment recommended by the behavioral services provider who evaluated him after his 2007 relapse. While a Department employee testified that Terry may have forged the signatures of a facilitator who was charged with verifying his attendance at the twelve-step program, the employee pointed to no evidence of additional relapses.

In the end, we are not convinced Terry’s past substance abuse would alone have been sufficient to terminate his parental rights to Wyatt, given his significant progress toward sobriety. However, in combination with his parenting deficiencies, we conclude the record contains clear and convincing evidence to support termination of his parental rights under section 232.116(1)(h).

In reaching this conclusion, we recognize that a couples counselor who worked with Terry and his wife, Maria, was not in favor of termination. He began seeing them in late October 2006, just two months after Wyatt was removed from their care. At the termination hearing in October 2007, the counselor testified the couple had regularly attended appointments since July 2007. He stated, "Terry's always back the next week, unless he is working, or they have missed one session when they had a visit with their children they couldn't reschedule." He described Terry's progress in relationship-building with his wife as "exceptional." He testified, "He's much more willing to trust me specifically, and also to trust Maria."

The counselor also stated Terry was much more accepting of his "options in life" and "much more realistic about what he can do." He concluded,

I do believe they can handle being parents to one child. I believe they will need support in knowing the normal responses for a child, you know, what does a child at age two do, what do they do at age three, what is normal. They both care for their children a great deal and not just Wyatt but for all the children. They want what's best for their children. They've been very clear about that.

This positive assessment of Terry's progress does not alter the fact that Terry was not in a position to have Wyatt returned to his care at the time of the termination hearing. The couples counselor essentially conceded this fact, stating the parents were "going to need a great deal of parenting support and education from someone." He also noted that Terry had not addressed mental health issues, including "negative symptoms" associated with conduct disorder. He explained that Terry had relied on Maria to "jump-start" him into a positive mode. While Maria testified she and Terry had a much more balanced and

supportive relationship than in the past, she had her own drug addiction to address. Given the qualifications to the counselor's recommendation based on Terry's continued need of support services and his failure to obtain individual counseling, we conclude the recommendation does not mandate a different result.

### ***III. Deferral of Termination***

Terry next contends the district court should have deferred termination to allow him time to achieve Department expectations, with continued supportive services. See Iowa Code § 232.104(2)(b). We assume without deciding that error was preserved on this issue. In light of Terry's progress, his request for a deferral is appealing. As the couples counselor noted, Terry had learning disabilities that required a specific type of instruction that, if provided, produced results. He stated:

[I]f you can explain things in the way that Terry can learn, he has some severe learning disabilities so you have to explain it in a way that he can understand it, but if you can do that, then he will do very well. In the last three months particularly we've seen a great deal of improvement with him and have seen him, I guess, able to remain very calm and that's something Terry didn't use to do very well.

This testimony augured in favor of granting additional time for reunification, but a countervailing consideration was the length of time Terry had already been receiving services. As we noted in our prior opinion, the Department began furnishing services to address his parenting and substance abuse issues in 2005. *In re A.M.*, No. 07-0645. Those services continued through the latter part of 2007. Given the statutory time frames for reunification or termination, we conclude a further extension of time was not warranted.

We affirm the termination of Terry's parental rights to Wyatt.

**AFFIRMED.**