

**IN THE COURT OF APPEALS OF IOWA**

No. 8-379 / 08-0606  
Filed May 29, 2008

**IN THE INTEREST OF D.A.K.,  
Minor Child,**

**S.E.W., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Wapello County, William S. Owens,  
Associate Juvenile Judge.

A mother appeals from the juvenile court's order terminating her parental  
rights to her child. **AFFIRMED.**

Jeffrey R. Logan of Curran Law Office, Ottumwa, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Mark Tremmel, County Attorney, and Seth Harrington,  
Assistant County Attorney, for appellee State.

Mary Krafka of Krafka Law Office, Ottumwa, for minor child.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

**HUITINK, J.**

S.E.W., a mother, appeals from the juvenile court's order terminating her parental rights to her child, D.A.K. S.E.W. claims insufficient evidence exists to terminate her parental rights under Iowa Code section 232.116(1)(h) (2007). Upon our de novo review, we affirm. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

**I. Background Facts and Proceedings**

D.A.K., who was born on November 27, 2006, came to the attention of the Iowa Department of Human Services (DHS) in December 2006 as a result of ongoing concerns relating to S.E.W.'s substance abuse problems and arrest for possession of marijuana, domestic violence in the home, and the prior removal of two of D.A.K.'s half siblings from the home for testing positive for marijuana and methamphetamine. DHS applied for and obtained a temporary ex parte removal order, and D.A.K. was placed in foster care. Subsequently, S.E.W. tested positive for methamphetamine.

On December 15, 2006, the State filed a child in need of assistance (CINA) petition under sections 232.2(6)(c)(2) and (n) (2005). The juvenile court on February 12, 2007, adjudicated D.A.K. CINA under these sections and ordered compliance with services, including substance abuse evaluation and treatment and supervised visitation. On August 17, 2007, the State filed a termination of parental rights petition under sections 232.116(1)(e), (g), (h), (k), and (l) (2007). The termination hearing was held on November 26, 2007, and the juvenile court terminated S.E.W.'s parental rights to D.A.K. on March 25, 2008, under section 232.116(1)(h).

## II. Substantial Evidence

The State must prove the statutory ground for termination by clear and convincing evidence. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989). Under section 232.116(1)(h), a parent's rights may be terminated if all of the following exist:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 292.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

The only issue is whether substantial evidence supports the fourth element.

The juvenile court found, and we agree, D.A.K. could not be returned to S.E.W.'s custody at the time of the termination hearing. Although she was ordered to undergo substance abuse evaluation and treatment, S.E.W. did neither despite her documented, ongoing substance abuse issues. We have long recognized parents with chronic, unresolved substance abuse problems present a danger to their children. *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993). In addition, S.E.W. only sporadically complied with other services, specifically supervised visitation. Indeed, after March 2007, S.E.W. failed to show up for her weekly visitation with D.A.K. In August 2007, S.E.W. moved to Indiana. Although S.E.W. claims she currently has stable housing, employment, and a support system in Indiana, her claims are unverifiable. Furthermore, given her history of a transient lifestyle, i.e., lack of stable housing and employment, it is unlikely that

any current stability will continue. Moreover, S.E.W.'s parental rights were terminated to one of D.A.K.'s half siblings, and the other half sibling was permanently placed with her father. Finally, S.E.W. acknowledged at the termination hearing that D.A.K. cannot be returned to her custody at the present time. Therefore, we conclude sufficient evidence exists to terminate S.E.W.'s parental rights to D.A.K. under section 232.116(1)(h).

In addition to meeting the statutory requirements, the termination must be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). However, because S.E.W. does not argue that termination is not in D.A.K.'s best interests, this issue has been waived. See Iowa R. App. P. 6.14(1)(c).

We accordingly affirm the juvenile court's decision terminating S.E.W.'s parental rights to D.A.K.

**AFFIRMED.**