

**IN THE COURT OF APPEALS OF IOWA**

No. 8-803 / 08-1275  
Filed October 1, 2008

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

**E.H.F., Father,**  
Appellant,

**A.A., Minor Child,**  
Appellant.

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Appeal from the Iowa District Court for Scott County, Mary Howes, District Associate Judge.

A father appeals a juvenile court decision declining to terminate the parental rights of a child's mother. **REVERSED AND REMANDED.**

Lauren Phelps, Bettendorf, for appellant father.

Carrie Coyle, Davenport, for appellee mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Michael J. Walton, County Attorney, and Gerda Lane, Assistant County Attorney, for appellee State.

Jennifer Olsen, Davenport, for minor child.

Considered by Mahan, P.J., and Vaitheswaran and Doyle, JJ.

**VAITHESWARAN, J.**

A father appeals a juvenile court order declining to terminate the parental rights of a child's mother. We reverse and remand.

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

A.A., born in 2004, is the child of Mike and Nicole. Nicole had a relationship with Mike. Nicole informed Mike she was pregnant, but paternity was not established until A.A. was one-and-a-half years old. At that time, Mike sought attorney assistance in obtaining visitation with A.A. Shortly thereafter, he was assaulted. He believed there was a connection between the assault and his efforts to obtain visitation, so he curtailed those efforts.

In 2006, the Department of Human Services was informed that A.A. showed bruising near her left eye and below her right cheek bone. The agency took no action at that time.

Less than a month later, A.A. participated in the marriage ceremony of her mother and a man named Clayton. Pictures of A.A. taken at the ceremony revealed severe bruising to both sides of her face, including her cheeks, ear area, and sides of her chin. The Department again became involved.

Clayton admitted to holding the child down, striking her and forcing her to lie down. The State charged him with child endangerment. Clayton pled guilty and was placed in a residential correctional facility.

Meanwhile, A.A. was removed from Nicole's care but was returned ten days later, with the proviso that Nicole have no contact with Clayton. That proviso was later removed.

Clayton returned to Nicole's home after his release from the correctional facility. Less than two weeks later, A.A. sustained a severe burn to her left hand. Nicole did not seek medical attention for nine days. When she did, she reported that A.A. had placed her hand under a hot water tap. The physician who examined A.A. reported that the burn pattern "was not consistent with the scenario given of a developmentally intact child simply accidentally having her hand in a hot water faucet stream." While the physician acknowledged that the burn could have been caused by a hot liquid, she noted that "[m]ost children have the ability to reflexively remove their hands so that while there would have been some injury expected, burning to this extent would not be expected from that history if the child had been able to withdraw her hand." She continued,

It is inconceivable to me how family members could be aware of a burn injury of this magnitude to their child and choose to attempt to take care of this at home on their own. It was evident by Mom's history that she clearly knew this was a significant injury from the start by recognizing that there was significant blistering immediately.

A.A. was again placed in foster care. The State charged Nicole with child endangerment for failing to seek medical attention immediately. She pled guilty and testified she received a deferred sentence. At this point, no one implicated Clayton in the abuse.

As these events were unfolding, A.A.'s father, Mike, expressed an interest in caring for A.A. The Department investigated Mike and his fiancée and began a series of visits to acquaint A.A. with them. A.A. was moved to Mike's home in June 2007 and remained there through the termination hearing ten months later.

A.A. exercised weekly supervised visitation with both Nicole and Clayton. At around the same time, A.A. began consistently saying that Clayton was the person who burned her hand. She also called him “mean” and expressed fear of him. Visits with him were suspended.

Eventually, A.A.’s guardian ad litem petitioned to terminate Nicole’s parental rights to A.A. Following a termination hearing, the juvenile court found that Nicole’s story of how A.A.’s hand was burned “seem[ed] unlikely” to the court. The court then stated:

Nicole, cannot be given custody of [A.A.], based on her lack of ability to put [A.A.’s] needs first. She does not protect the child, lies about the child’s injuries and does not get the child needed medical attention.

The Court concluded, “the child cannot be returned to her mother because her safety cannot be assured while she is in her mother’s care.”

Notwithstanding this conclusion, the court found

clear and convincing evidence under Iowa Code Section 232.116(3) that termination of parental rights at this point in [A.A.’s] life at the age of four and Nicole being her primary care giver for three years would be detrimental to the child at this time due to the closeness of the parent child bond that exists between her and Nicole.

The court further found that, “under Iowa Code Section 232.116(3)(a) that a relative has legal custody, her father, and thus a termination need not be ordered.” The court dismissed the termination petition.

Mike appealed. He raises several grounds for reversal, only one of which we need address: whether the child’s best interests are served by termination. Our review is de novo. Iowa R. App. P. 6.4.

## **II. Best Interests**

The primary consideration in a termination proceeding is the child's best interests. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Those best interests may warrant deferral of termination under certain circumstances. Iowa Code § 232.116(3) (2007). This is not one of those circumstances.

A.A. was severely abused by Clayton while in the care of her mother. Nicole overlooked this abuse, failed to seek medical attention when additional abuse occurred, and chose to continue her relationship with Clayton even after it was clear that his presence in the home was inimical to A.A.'s well-being. While a Department social worker conceded there was a "strong attachment" between Nicole and A.A., she concluded A.A. was "still in need of protection from her mom and from Clayton."

A care coordinator similarly testified that A.A. had a "strong bond" with her mother during supervised visits, but stated Nicole was not able to advocate for herself and her children. She noted that Clayton had shown his temper during some visits and, when his behavior became inappropriate, Nicole did not intervene.

A court-appointed special advocate also recommended termination of Nicole's parental rights. He noted that both Clayton and Nicole pled guilty to child endangerment and he expressed concern about A.A.'s safety if they were allowed unsupervised visits with the child.

Finally, Nicole testified that she intended to remain with Clayton. When asked about A.A.'s disclosures that Clayton was the person who burned her hand, she stated, "I don't know why she would be saying something like that. I

do know that she is fearful of Clayton, if he raises his voice and stuff.” When asked if there was any other reason A.A. might be fearful of Clayton, she responded, “I don’t think so.” She also acknowledged A.A. was comfortable in her father’s home.

We are left with the following untenable scenario: A.A. was not to be returned to her mother in the imminent or long-term future, and A.A.’s father, with whom she had lived for close to a year, was left to wonder whether A.A. could move past the turmoil of her early childhood. We conclude deferral of termination was not warranted under these circumstances. *C.B.*, 611 N.W.2d at 495 (stating “termination proceedings must be viewed with a sense of urgency”).

We reverse the dismissal of the termination petition and remand for entry of an order terminating Nicole’s parental rights to A.A.

**REVERSED AND REMANDED.**