

**IN THE COURT OF APPEALS OF IOWA**

No. 8-903 / 08-1519  
Filed November 13, 2008

**IN THE INTEREST OF A.O. and A.O.,  
Minor Children,**

**C.M.G., Mother,  
Appellant,**

**E.O., Father,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

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

Thomas P. Graves of Graves Law Firm, P.C., West Des Moines, for appellant mother.

Jon Garner, Des Moines, guardian ad litem for appellant mother.

Cory F. Gourley of Gourley, Rehkemper & Lindholm, P.L.C., Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Jennifer Galloway, Assistant County Attorney, for appellee.

Kimberly Ayotte, Des Moines, guardian ad litem for minor children.

Heard by Sackett, C.J., and Eisenhauer and Doyle, JJ.

**EISENHAUER, J.**

A mother and father appeal the termination of their parental rights to their twin sons, born in April 2007. The father contends the State failed to prove the grounds for termination by clear and convincing evidence and failed to make reasonable efforts to reunite him with the children. The mother contends termination is not in the children's best interest. Both parents contend termination is not warranted because the children have been placed with a relative. We review their claims de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The children were removed from their parents' care in June 2007, after the mother caused non-accidental injuries that left one of the children unresponsive with bilateral subdural hematomas. The mother pled guilty to criminal charges arising from the incident and was placed on probation. The children were placed in the care of their paternal grandparents, with whom they remain. The father was allowed to spend a great deal of time with his sons in the hope that he could be reunited with them. However, the father demonstrated that his relationship with the mother was of primary importance, refusing to recognize the risk she presented to her children.

The district court terminated the parents' rights to their children pursuant to Iowa Code sections 232.116(1)(d), (h), and (i) (2007). The mother's parental rights were also terminated pursuant to section 232.116(1)(n). The father's appeal only contends termination was not warranted pursuant to sections 232.116(1)(e) and (f), arguing specifically that the State failed to prove the

children could not be returned to his custody as provided in section 232.102. We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

Only section 232.116(1)(h) requires proof the children cannot be returned to the parent's care as provided in section 232.102. Assuming the father intended to appeal termination of his parental rights on this ground, he does not make argument with respect to sections 232.116(1)(d) and (i). Accordingly, he has not preserved error on and termination is affirmed under these sections.

The father next contends reasonable efforts were not made to reunite him with his children. He argues the State failed to prove reasonable efforts were made when "he requested return of the children at the permanency hearing but was denied" and failed to prove "he lacks the ability or willingness to respond to services which would correct the situation." However, at the permanency hearing the social worker testified, "I was asked if he would be ready to take care of the children . . . now or soon, the answer to that would be no, in my opinion." The in-home worker testified she would have concerns about the father's ability to parent the children without court supervision. At the end of the hearing, the court listed the following reasonable efforts that had been made:

family time unrestricted for father; supervised for mother; medication management; relative placements; psychological evaluations of both parents; individual therapy for mother; family team meetings; protective day care ordered; post-removal conference; in-home services; medical care; Easter Seals; CPA investigation; Visiting Nurse Services; Early Access Services.

The court then stated,

Not implementing the 90-day transition does not constitute a lack of reasonable efforts. . . . The parents prefer to blame others for the problems rather than addressing their own issues or concerns about the father's long haul commitment to parent his sons. The progress of both parents in this case has been limited, and the father's choices undercut his testimony that he does not believe [the mother] should be, could be, ever be, around the children.

Given the evidence before us, we conclude reasonable efforts were made to reunite the father and his children.

Both parents contend termination is not necessary because the children are in a relative placement. Section 232.116(3)(a) provides that the juvenile court may decide not to terminate a parent's rights if a relative has legal custody of the children. This section is permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). "It is within the sound discretion of the juvenile court, based upon the unique circumstances before it and the best interests of the child, whether to apply this section." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

We conclude the court did not abuse its discretion in terminating the parents' rights to their children. In finding termination was in the children's best interest, the court cited the months, "if not years of therapy" the mother would need "to gain the insight necessary to safely parent children of tender years." It further noted, "[w]hether that would be effective is speculative at best." With regard to the father, the court noted his "clear preference to maintain his relationship with [the mother]" at the expense of a relationship with his children. The court then found,

If I fail to terminate [the father's] parental rights, these children will be without permanency. They will remain in their grandparents'

custody with a father who may or may not be involved in their lives, who may or may not be able to protect them, who may or may not continue active involvement in their lives, who may or may not become able to be a full time single parent. The ambiguity of the situation does not constitute the permanency my Supreme Court mandates.

These findings are supported by the record. Because the children's best interest requires termination of parental rights, we affirm.

**AFFIRMED.**