

**IN THE COURT OF APPEALS OF IOWA**

No. 9-036 / 08-1969  
Filed February 4, 2009

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

**W.E.T., Father,**  
Appellant,

**L.J., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Scott County, John G. Mullen,  
Associate Juvenile Judge.

A mother and father appeal from the order terminating their parental  
rights. **AFFIRMED.**

Jean Capdevila, Davenport, for appellant-father.

Timothy J. Tupper, Davenport, for appellant-mother.

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

Barbara Maness, Davenport, attorney and guardian ad litem for minor  
child.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

**EISENHAUER, J.**

A mother and father appeal from the termination of their parental rights to their child. They contend the court erred in waiving the reasonable efforts requirement. They further contend the State failed to prove the grounds for termination by clear and convincing evidence. We review their claims de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The child was born drug-affected in December 2007, testing positive for cocaine. The child was removed from the mother's care and adjudicated in need of assistance pursuant to Iowa Code section 232.2(6)(o) (2007). At the time of the child's birth, the father was in jail.

The mother has seven other children, none of whom are in her care. Her parental rights to two children have been previously terminated. The father was the parent of one of the two, and his rights were likewise terminated. The mother has been receiving services from the Department of Human Services (DHS) since 1999. The father also has received services for much of that time as well.

The State, through DHS, has an obligation to make reasonable efforts to reunite parents with children. Iowa Code § 232.102(7). Recognizing there are cases where it may be futile to offer services to parents, the Iowa juvenile code was amended in 1998 to permit the juvenile court to waive reasonable efforts when aggravated circumstances exist. Iowa Code § 232.102(12). One such aggravated circumstance is when the parent's 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 that the offer or receipt of

services would not be likely within a reasonable time to correct the conditions that led to the child's removal. Iowa Code § 232.102(12)(c).

The child was removed from the parents' care because the mother "demonstrated she is unable to meet the basic needs of her children. . . . She has an extensive criminal history, long-term chronic drug abuse, unstable and inadequate housing, and history of child abuse and neglect." At the time of the termination hearing she was again in jail. In its order waiving reasonable efforts, the court made the following findings:

8. That parental rights for both of these parents have been terminated by this Court as to two other children primarily due to parental substance abuse, domestic violence, unstable high risk lifestyle and poor parenting. In the past the parents have made a minimal effort to cooperate with rehabilitative, remedial or treatment services. That continues to be the case since the initiation of this case. The mother has yet to participate in any services. Her whereabouts are generally unknown. There has been a domestic violence incident between the parents as recently as February 2008. The mother has only visited with her child one or two times since the birth of the child. The father has made somewhat better effort. Since his release from jail, he has been employed. The Court is now advised that he has two jobs. He is still living with his mother but is working to gather the resources so that he can provide his own housing. While the father's efforts are laudable as far as they go, he has not made any effort to address the significant issues relating to substance abuse and domestic violence. He has visited regularly with the child and he has a very comfortable, nurturing style with the child. He seems to be eager to learn and to interact with the child appropriately. He enjoys contact with the child and seems to be eager to parent. Despite the father's efforts, when you consider the wholesale failure of both parents to address the issue of domestic violence and substance abuse in the past, the Court is not satisfied that more services and more time is going to effectively resolve the adjudicatory harm now.

The court expanded on its findings in its order enlarging and amending the findings.

The court was impressed with the father's efforts to obtain and maintain employment. The father appears to be very responsible in that regard. His testimony was that he had two jobs and was very actively seeking and maintaining employment. He appears to be a good employee. While the issue is important to his own sustenance, it does not begin to address the two major issues in the case, which are the substance abuse and the domestic violence. The father's efforts at stability are important. However, without commitment to a safe, sober, responsible, crime-free and violence-free lifestyle, these children cannot be placed with the father.

Even more telling is the mother's wholesale failure to do anything with the case plan. Her intention to move in with the father so he can provide her home and sustenance is a concern. Her intent and presumably their intent is that they will be together as a couple. He is going to provide shelter and support. That all is very concerning when neither one of them has addressed the issues that will enable them to remain stable, sober and safe within this relationship.

Although on review we are not bound by them, "we give weight to the juvenile court's findings of fact because the juvenile court has had the unique opportunity to hear and observe the witnesses firsthand." *In re S.V.*, 395 N.W.2d 666, 668 (Iowa Ct. App. 1986). The State has the burden of proving by clear and convincing evidence the existence of aggravated circumstances justifying waiver of reasonable efforts to preserve and unify the family. Iowa Code § 232 .102(12).

We conclude the State has proved by clear and convincing evidence that the offer or receipt of services would not be likely within a reasonable time to correct the conditions that led to the child's removal. After nearly a decade of having services offered to her, the mother has failed to make any progress, and did not avail herself of the services offered to her in this case. Continuing to offer the mother services would not resolve the risk of adjudicatory harm to the child if returned to the mother's care. On this basis, we conclude termination was also

appropriate pursuant to section 232.116(1)(h) (child three years of age or younger, adjudicated CINA, out of the home six of the last twelve months, and the child cannot be returned to the parent's care as provided in section 232.102).

The father argues the basis for removal was not his substance abuse or any ongoing domestic violence, but the mother's substance abuse. He notes that following his release from jail, he made immediate efforts to secure stability. However, there was only three weeks between the father's release and the waiver of reasonable efforts hearing. He argues he was making progress to correct the conditions that led to the child's removal.

Assuming without deciding that reasonable efforts should not have been waived, we may still conclude termination is appropriate. That is because the reasonable efforts requirement is not viewed as a strict substantive requirement of termination. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Instead, the scope of the efforts by the DHS to reunify parent and child after removal impacts the burden of proving those elements of termination that require reunification efforts. *Id.* The State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent. *Id.*

The father's parental rights were terminated pursuant to sections 232.116(h) and (i). 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). There is no dispute the first three elements of section 232.116(1)(h) have been proved.

The mother and father have a relationship that is marked by domestic violence. They engaged in domestic violence as recently as February 2008. The

father has not received adequate treatment to address the issue of domestic violence. However, he has continued his relationship with the mother. He is a convicted sex offender. The father also has substance abuse issues that have not been addressed. Coupled with his continued relationship with the mother, who has not received treatment for her own substance abuse issues, the father's prospects for sobriety are dim. Despite the order waiving reasonable efforts, DHS provided father with visitation twice a week. However, in October 2008 he began missing so many visits his visitation was reduced to once a week. We conclude there is clear and convincing evidence the child cannot be placed in the father's care without exposing the child to some harm that would justify a CINA adjudication. Iowa Code § 232.116(1)(h)(4). Because the elements of section 232.116(1)(h) have been proved, we affirm the father's termination.

We affirm the order terminating the mother and father's parental rights to their child.

**AFFIRMED.**