

**IN THE COURT OF APPEALS OF IOWA**

No. 9-1030 / 09-1725  
Filed January 22, 2010

**IN THE INTEREST OF H.Y.,  
Minor Child,**

**M.A.J., Father,  
Appellant.**

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Appeal from the Iowa District Court for Clinton County, Phillip J. Tabor,  
District Associate Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

Matthew Noel of Blair & Fitzsimmons, P.C., Dubuque, for appellant father.

Carrie Coyle, Davenport, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, Mike Wolf, County Attorney, and Ross Barlow, Assistant  
County Attorney, for appellee State.

Edward Kross, Clinton, for minor child.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

**MANSFIELD, J.**

M.A.J., the father of H.Y., appeals a juvenile court order terminating his parental rights to her pursuant to Iowa Code sections 232.116(1)(d) and (i) (2009). On appeal, M.A.J. asserts the State failed to prove by clear and convincing evidence that the child cannot be returned to his care. See Iowa Code § 232.116(f)(4). Because this is not an actual statutory ground upon which M.A.J.'s parental rights were terminated, we do not need to address M.A.J.'s claim. See Iowa Rs. App. P. 6.201(1)(d), 6.1401–Form 5 (requiring that the legal issues presented for appeal be stated by the appellant). Nevertheless, from our de novo review of the record, we still find clear and convincing evidence to support the termination of M.A.J.'s parental rights on the grounds that were relied upon by the juvenile court. Accordingly, for either of these reasons, we affirm.

M.A.J. is the father and J.Y. is the mother of H.Y., born in October 2003. M.A.J. and J.Y. were in an on-again, off-again relationship that ended in late 2008. According to M.A.J.,

I just couldn't tolerate what was going on anymore and needed to get away and let her mess up on her own and stop taking care of everything and backing her up and—and let stuff take—you know, events turn over just so this stuff can happen or whatever. I knew it wouldn't be long.

On May 9, 2009, the Iowa Department of Human Services (DHS) received notification that H.Y. and her two half-brothers (also children of J.Y.) were being subjected to severe neglect and extremely unsanitary conditions. At approximately 11:15 p.m. on May 9, police were called to J.Y.'s apartment complex where they found H.Y. playing in the parking lot unattended, without shoes, and in soiled clothing. Upon further investigation, the police learned that

J.Y. had left H.Y. and her two half-brothers in the care of their maternal aunt and her boyfriend, who were both highly intoxicated. J.Y.'s apartment was found to be in complete disarray with clothing, cigarette butts and ashes, and numerous alcohol containers strewn throughout the apartment. Spoiled and rotting food was also found all over the kitchen. The police also discovered H.Y.'s two-year-old half-brother in a crib in a bedroom wearing no clothing and no diaper, with the air-conditioner on, and a fan blowing on him. One of the officers described the child as very cold to the touch.

The children were immediately removed from the home and placed in family foster care. In foster care, H.Y. was found to have behavioral problems, including hoarding food, inappropriate language, and inappropriate sexual behaviors. H.Y. also had a serious lice infestation and some developmental issues.

On July 8, 2009, H.Y. and her half-brothers were adjudicated children in need of assistance (CINA) under Iowa Code sections 232.2(6)(c)(2) and (n). At this time, DHS began providing various services to both M.A.J. and J.Y. M.A.J. received drug testing, substance abuse treatment, mental health counseling, parenting skills counseling, and family team meetings.

During this case, M.A.J. has struggled with both mental health and substance abuse issues. M.A.J. has been diagnosed with anxiety and major depression. Although M.A.J. takes several medications to manage these issues, when he begins to feel overwhelmed, he responds by running away. During this case, M.A.J. ran away twice, once for three days and once for ten days.

M.A.J., who has a history of marijuana, methamphetamine, and cocaine use, as well as prior drug convictions, also struggled with substance abuse. In July 2009, M.A.J. tested positive for cocaine and immediately went to New Directions, a drug treatment center. However, in September 2009, M.A.J. was hospitalized for two days after he was found unresponsive from drug intoxication. For two days, M.A.J. lay unconscious in the critical care unit. While at the hospital, M.A.J. again tested positive for cocaine. According to M.A.J., despite being on several medications warning of the dangers of alcohol use, he went to a local bar to have a couple of drinks. M.A.J. maintains that while he was at the bar, someone slipped cocaine into his beverage. In October 2009, M.A.J. was unsuccessfully discharged from his drug treatment for noncompliance.

On October 1, 2009, the State filed a petition seeking to terminate the parental rights to H.Y. and her half-brothers. A termination hearing was held on November 2, 2009. The following day, the juvenile court entered an order terminating parental rights. M.A.J. has appealed.<sup>1</sup>

We review proceedings for the termination of parental rights *de novo*. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the juvenile court's factual findings, but are not bound by them. *Id.* The State must prove the grounds for termination by clear and convincing evidence. *Id.* "Clear and convincing evidence" means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. *In re C.B.*, 611

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<sup>1</sup> By the time of the termination hearing, J.Y. was incarcerated in Missouri. Her parental rights were terminated by a separate juvenile court order, and she has not appealed.

N.W.2d 489, 492 (Iowa 2000). The paramount consideration in termination proceedings is the best interests of the child. *Id.*

In this case, M.A.J.'s parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d) (child previously adjudicated CINA due to abuse or neglect, parents offered or received services to correct the circumstance that led to the adjudication, circumstance continues to exist) and 232.116(1)(i) (child meets the definition of CINA based on abuse or neglect by one or both parents, abuse or neglect posed a significant risk to the life of the child or imminent danger to the child, services would not correct the conditions that led to the abuse or neglect of the child within a reasonable period of time). M.A.J. argues, however, that termination occurred pursuant to section 232.116(1)(f), and urges that the juvenile court erred in finding that H.Y. cannot be returned to his custody at the present time. Although we could find that M.A.J. has waived any appeal as to sections 232.116(1)(d) or (i), which were the actual bases for termination, see Iowa Rs. App. P. 6.201(1)(d), 6.1401–Form 5, we nonetheless elect to reach the merits of this appeal.

No serious dispute exists that H.Y. had been neglected and had been adjudicated CINA, that the neglect was an imminent danger to the child, and that M.A.J. was offered and received services to correct the circumstance that led to the adjudication. See Iowa Code §§ 232.116(1)(d), (i). We also agree that clear and convincing evidence shows the circumstances that led to the adjudication continue to exist, and that services would not correct the conditions that led to the abuse or neglect within a reasonable period of time. See *id.*

M.A.J. has a long history of difficulties with substance abuse. At the time of the termination hearing, M.A.J. continued to struggle with those issues. Just six weeks before the termination hearing, he found himself in the critical care unit of the hospital. While M.A.J. claims someone put cocaine in his drink, there is no independent support for this claim. In any event, due to the opiates that he consumes for his back problems, M.A.J. should not be drinking at all but continues to do so regularly. M.A.J. was unsuccessfully discharged from drug treatment. See *In re D.E.D.*, 476 N.W.2d 737, 738 (Iowa Ct. App. 1991) (“Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.”).

In addition, when overwhelmed, M.A.J. has responded by running away. For example, during this case, because J.Y. had been allegedly stalking him, M.A.J. ran over to Illinois for ten days, without notifying DHS or leaving a number at which he could be reached. As M.A.J. put it, “I did go to get away.” M.A.J. also disappeared another time for three days. At times, M.A.J. shut off his phone and cancelled visits. As a result, he has demonstrated no ability to handle parenting beyond the short-term. See *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (stating parenting “must be constant, responsible, and reliable”).

To his credit, M.A.J.’s interactions with J.Y. are appropriate, and he did address DHS’s concerns about the inadequacy of his housing. However, from our review of the record, we agree with the juvenile court’s observation that

the substance abuse treatment in this case has failed and . . . his mental health treatment . . . has not improved his ability to deal with

his depression or his ability not to be overwhelmed, especially by the needs of an active five-year-old child.

As the DHS case manager put it,

I want to be clear that [M.A.J.'s] biggest issue is that he gets very, very easily overwhelmed and he—he'll flee. He'll run away. But he forgets what he left . . . . He's got to deal with the issue appropriately so it doesn't affect the little—his—his child.

Therefore, we conclude there is sufficient evidence in the record to support the statutory grounds for termination of M.A.J.'s parental rights.

In addition to meeting the statutory requirements, the termination must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). We must reasonably limit the time for parents to be in a position to assume care of their children because “patience with parents can soon translate into intolerable hardship for the children.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). “Children simply cannot wait for responsible parenting.” *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). After careful consideration of the entire record, we conclude it is in the child's best interests to terminate the parental rights of M.A.J.

Accordingly, we affirm the juvenile court's decision terminating M.A.J.'s parental rights to H.Y.

**AFFIRMED.**