

**IN THE COURT OF APPEALS OF IOWA**

No. 9-200 / 09-0205  
Filed April 8, 2009

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

**E.L.A., Jr., Father,**  
Appellant,

**M.T., Mother,**  
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.

**AFFIRMED.**

Dawn M. Bowman of Bowman Law Office, Pleasantville, for appellant father.

Nancy A.S. Trotter, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee State.

Paul White of Des Moines Public Defender's Office, Des Moines, for minor child.

Considered by Sackett, C.J., and Potterfield and Mansfield, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

On January 13, 2008, the Iowa Department of Human Services (DHS) received complaints of physical abuse of a child, N.A., who was under the age of one at the time. The informant reported seeing bruises on N.A.'s body. The informant told DHS that N.A.'s father, E.A., had abused the child. Another informant also reported seeing bruises on the child.

On February 3, 2008, N.A. had an injury on her forehead that looked like a rug burn. E.A. stated that he had used his foot to scoot the baby across the floor. Another informant reported to DHS that he had seen E.A. yank N.A. by her arms and slam her down multiple times. He also reported that E.A. yelled at the child. E.A. provided a drug screen on February 14, 2008, that tested positive for marijuana.

On March 8, 2008, N.A. was temporarily removed from the custody of E.A. and the mother of the child, M.T. During the removal, bruising was discovered on the child's temple on her forehead. A witness reported that E.A. had forcefully pulled N.A. out of her swing, causing her to hit her head on the bar of the swing. Other people with knowledge also reported that E.A. was rough with the baby, yanking her out of her swing and slamming her into her crib. Founded child abuse reports resulted from the incidents in January, February, and March.

On March 17, 2008, the juvenile court entered a removal order, placing the child in the temporary custody of DHS. She has remained in foster care since then. On April 8, 2008, the court adjudicated the child to be a child in need of assistance due to "unresolved physical injury concerns and safety issues and

perhaps mental health and substance abuse issues.” The family case plan recommended that E.A. and M.T. provide consistent, clean drug screens; comply with substance abuse evaluations; comply with mental health treatment; and comply with individual therapy. In addition, the case plan recommended that E.A. attend anger management classes and that M.T. attend domestic violence awareness classes.

After a dispositional hearing and three review hearings, the State filed a petition to terminate the parental rights of E.A. and M.T. on November 13, 2008. After a hearing, the juvenile court terminated the parental rights of E.A. and M.T. on January 23, 2009, pursuant to Iowa Code section 232.116(1)(d) and (h) (2007). Both parents appeal, arguing the juvenile court erred in its findings. M.T. also argues that termination is not in the child’s best interests.

## **II. Standard of Review**

We review a termination of parental rights *de novo*. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the child. *Id.*

## **III. Termination of E.A.’s Parental Rights**

Though the juvenile court terminated M.T. and E.A.’s parental rights on two statutory grounds, we need only find that termination is appropriate on one ground to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

We agree with the juvenile court that clear and convincing evidence supported termination of E.A.’s parental rights pursuant to section 232.116(1)(h). This section provides that termination is appropriate when: (1) the child is three

years of age or younger; (2) the child has been adjudicated a child in need of assistance; (3) the child has been removed from the physical custody of the child's parents for the last six consecutive months; and (4) there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents. Iowa Code § 232.116(1)(h). The first three elements are not disputed.

As to the fourth element, the State presented clear and convincing evidence that N.A. cannot be returned to the custody of E.A. at this time. E.A. refused to participate in anger management, arguing that he was addressing this problem with his therapist. He did not complete substance abuse treatment. When his first substance abuse report recommended treatment, he called the evaluator and made threats, asking that the report be changed. E.A. failed to provide consistent drug screens. He missed visits with his child. He did not have a stable residence for his family. E.A. has made very little effort to meet the recommendations in the family case plan.

E.A. insisted that he did not have an anger management problem unless he was provoked. He continued to use physical discipline during supervised visitation. An in-home worker that worked with E.A. testified that E.A. had taken minimal responsibility for harming N.A. in the past. The DHS caseworker working with E.A. reported that he repeatedly said he would not change. When a parent is incapable of changing, termination is necessary. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995). E.A.'s past behavior suggests that N.A. would be in danger if returned to his care. "The future can be gleaned from evidence of the parents' past performance and motivations." *In re T.B.*, 604 N.W.2d 660, 662

(Iowa 2000). The State has established by clear and convincing evidence that the child cannot be returned to E.A.

#### **IV. Termination of M.T.'s Parental Rights**

We also find the State presented clear and convincing evidence that termination of M.T.'s parental rights was proper pursuant to section 232.116(1)(h). Despite the three founded child abuse reports against E.A., M.T. intends to continue a relationship with him. She understood that this relationship may affect her ability to maintain her parental rights to N.A. She testified that E.A. had always been a good father and that the founded child abuse reports were based on injuries that were not intentional. M.T. also denied that E.A. had anger management issues.

The in-home worker testified that M.T. displayed good parenting skills. However, she also testified that M.T. justified E.A.'s use of physical discipline, saying he had not hurt N.A. that badly. The DHS caseworker reported that M.T. "continues to show a lack of insight into how [E.A.'s] temper has affected [N.A.]" It is vital that the parents acknowledge and recognize the abuse before any meaningful change can occur. *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988). Because E.A. repeatedly stated he would not change, we believe he presents a threat to N.A. M.T.'s inability to acknowledge this threat puts N.A. at risk. Because of M.T.'s inability to provide for her child's safety, we find that N.A. cannot be returned to her mother's custody at this time.

Even if M.T. is bonded with the child and able to provide care, nurturance, suitable housing, and financial support for her family, as she argues, we find that her inability to provide for N.A.'s safety supports the juvenile court's finding that

termination of M.T.'s parental rights is in the best interests of the child. "A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Further, M.T. missed multiple visits with the child, admitted to using marijuana, missed several mental health appointments, and failed to provide consistent drug screens, even when they were free. It is in N.A.'s best interests that M.T. and E.A.'s parental rights be terminated

**AFFIRMED.**