

IN THE COURT OF APPEALS OF IOWA

No. 9-313 / 09-0369

Filed May 29, 2009

**IN THE INTEREST OF C.L.W.,
Minor Child,**

**P.H.W., Father,
Appellant,**

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

Appeal from the Iowa District Court for Buchanan County, Daniel L. Block,
Associate Juvenile Judge.

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

A.J. Flickinger of Craig, Wilson & Flickinger, Independence, for appellant
mother.

James Peters, Independence, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Allan W. Vanderhart, County Attorney, and Karl Moorman,
Assistant County Attorney, for appellee, State.

Linnea Nicol, Juvenile Public Defender, Waterloo, for minor child.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

VOGEL, J.

Jessica and Paul separately appeal from the district court's order terminating their parental rights to C.L.W. (born July 2008) pursuant to Iowa Code section 232.116(1)(d) and (h) (2007). They assert there was not clear and convincing evidence to support the district court's finding that reasonable efforts were offered to achieve reunification. We affirm.

We review termination of parental rights cases *de novo*. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Grounds for termination must be proved by clear and convincing evidence and our primary concern is the child's best interests. *Id.* C.L.W. was removed from her parents' care shortly after her birth. She was adjudicated in need of assistance on October 27, 2008 under section 232.2(6)(c)(2). Jessica has been diagnosed with depressive disorder and anti-social personality disorder, and is unable to show that she has the ability to parent. She is easily angered, frustrated, and aggressive toward C.L.W., and has been arrested for domestic assault against Paul. Paul has also not demonstrated an ability to care for C.L.W. He has not shown that he is able to remove himself from Jessica and put C.L.W.'s needs above his own.

Jessica and Paul's parental rights were terminated to another child, J.W., in June 2008. Based on their lack of progress with services offered previously with J.W., and again after C.L.W.'s removal, an order waiving reasonable efforts was entered on December 22, 2008 pursuant to Iowa Code section 232.102(12). At the hearing for waiver of reasonable efforts, the district court took judicial

notice of all CINA documents pertaining to J.W.¹ In both the order waiving reasonable efforts and the termination order, the court found that services had been consistently provided since September 2007, including therapy and skill development, supervised visitation, outpatient mental health services, parent-child evaluation, relative home placement, individual counseling, and couple's counseling. Despite this, the district court found that concerns preventing reunification still existed, stating, "[the parents] have not utilized the services offered or been able to demonstrate that they are capable of meeting the needs for the child."

Although both Jessica and Paul assert that the State has not made reasonable efforts to achieve family reunification, we agree with the district court that "despite numerous services being offered to the parents, most of the concerns which led to the child's removal continue to exist." Because of problems that occurred during joint visitations with C.L.W., Paul argues that he was entitled to couple's counseling with Jessica during those visitations. However, due to their continued fighting and inability to make progress in couple's counseling outside of visitations, the court found that engaging in couple's counseling during visitations with C.L.W. would not improve the situation. Visits never progressed past supervised.

¹ Jessica also argues that during the hearing for waiver of reasonable efforts, the court erred in considering evidence from the prior termination. We find no error as evidence of past behavior, including receipt of services and lack of compliance or progress may be received in a subsequent action regarding another child. *In re Adkins*, 298 N.W.2d 273, 277-78 (Iowa 1980) (stating that it is permissible for the trial court in a termination proceeding to judicially notice the prior CINA case, including the evidence).

To determine what is in the best interests of the child, evidence of the parents' past performance is the best indicator of the quality of future care for the child. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). There is clear and convincing evidence that substantial progress has not been made due to the parents' lack of compliance with the services offered. C.L.W. is in need of a safe and permanent home, and has done well in relative placement. *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (stating children's safety and their need for a permanent home are the defining elements in determining a child's best interests). Upon our de novo review of the record, we agree with the district court that it is in C.L.W.'s best interests that the parental rights of Jessica and Paul are terminated.

AFFIRMED.