

**IN THE COURT OF APPEALS OF IOWA**

No. 9-356 / 09-0411  
Filed May 29, 2009

**IN THE INTEREST OF M.H., D.P., and D.H.,  
Minor Children,**

**R.E.H., Father,  
Appellant.**

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Appeal from the Iowa District Court for Cerro Gordo County, Colleen D. Weiland, Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

Jacqueline R. Conway of Heiny, McManigal, Duffy, Stambaugh & Anderson, P.L.C., Mason City, for appellant father.

Laurie J. Pederson of Pederson Law Firm, Rockford, for appellee mother.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, Paul L. Martin, County Attorney, and Shawn Showers, Assistant County Attorney, for appellee State.

Kristen N. Ollenberg, Mason City, for minor children.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

**MAHAN, P.J.**

Randy appeals the district court's order terminating his parental rights to his seven-year-old daughter, M.H.; six-year-old son, D.P.; and four-year-old son, D.H. We affirm.

**I. Background Facts and Proceedings.**

M.H., D.P., and D.H. are the children of Randy and Nan.<sup>1</sup> This case came to the attention of the Iowa Department of Human Services (DHS) in May 2007, when the children were removed from the parents' home as a result of a denial of critical care, and D.P.'s and D.H.'s positive hair stat tests disclosed the presence of methamphetamine in their bodies.<sup>2</sup> The children were placed in family foster care with a foster family who had adopted Nan's older daughter several years earlier. On June 8, 2007, the children were adjudicated children in need of assistance (CINA) and placement was continued in family foster care. A case permanency plan was adopted, and the parents were offered numerous services to reduce or eliminate the adjudicatory harms present in the home.

Randy participated in DHS services and, although he was guarded and resistant to substance abuse services, he completed a substance abuse evaluation and class. Randy continually denied any drug use throughout this time period, yet he had numerous and ongoing positive drug screen tests. Randy initially refused home visits, claiming his home was not ready for the children. In early January 2008, his home was approved for the children and he

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<sup>1</sup> The parental rights of Nan were also terminated, but she does not appeal. Nan has been incarcerated during the majority of these proceedings.

<sup>2</sup> At that time, Nan's parental rights with respect to M.H. had been terminated in Minnesota, and M.H. was in Randy's custody. At the time of removal in May 2007, however, M.H. and Randy were living primarily with Nan, D.P., and D.H.

received family safety risk and permanency services. The children were moved to a foster family in Mason City, to make visits with Randy easier because his work required him to travel to different locations outside of the city. Eventually, Randy took employment positions in Kansas and Illinois, requiring significant travel to visit the children. His twice weekly supervised visits were reduced to one visit per week.

Randy never requested the children be returned to his care, and he made little improvements to his parenting skills and the safety of his home. Furthermore, due to his employment relocations and travel, Randy was not able to comply with DHS drug tests. He attempted to produce his own independent drug tests from Kansas and Illinois, but DHS did not find those tests reliable, because they were conducted on Randy's own timing, rather than randomly.

On September 24, 2008, the State filed a termination petition. After a contested hearing, the court terminated Randy's parental rights on March 2, 2009, pursuant to Iowa Code section 232.116(1)(f) (2007). Randy now appeals.

## **II. Scope and Standard of Review.**

We review 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. Issues on Appeal.**

#### **A. Reasonable Efforts.**

Randy argues the court erred in finding the State made reasonable efforts to eliminate the need for continued removal and to return the children to parental care. Specifically, Randy claims DHS failed to give Randy a full measure of patience, delivered only “cookie cutter services” not tailored to fit Randy’s needs, and resisted Randy’s requests for accommodation.

Most of Randy’s complaints arise from DHS’s efforts to accommodate his employment. Randy received DHS services for over one and a half years prior to the termination hearing, including FSRP services, parent skill development, visitation, drug and alcohol testing, mental health services, and supervision by DHS. In the midst of these proceedings, Randy accepted a job in Kansas. He also travelled for work around the Mason City area, sometimes driving an hour or more for visitation. At the time of termination, Randy worked in Peoria, Illinois. Apparently, Randy took different jobs despite the negative impact they had on his visitation with the children and his ability to participate in random drug tests. He reduced his visits with the children from twice per week to once per week.

Of significant importance is the fact that Randy’s employment relocations and travel requirements made adequate drug testing challenging, if not impossible. As the juvenile court noted:

Randy’s employment situation is also a barrier to reunification with the children at the present time. He regularly works in another state and/or does not return to Mason City during the week. Randy does not have realistic plans as to how to care for the children in this scenario, and the plans he does have involve delegating his caretaking responsibilities to other persons. Randy testified that he

might work closer to home in order to have the children returned to him, but his actions during these proceedings belie his statements. Additionally, Randy has made clear to service providers that he is willing to move the children for his employment purposes. If he does so, DHS will not be able to monitor or provide services to his family.

Although Randy lined up drug testing on his own through independent testing facilities (and the results of most, if not all, of these tests were negative), the tests were taken when and where Randy decided. The tests were not random. DHS and the juvenile court properly determined such self-administered drug tests were unsatisfactory. Randy's lack of compliance with DHS-approved drug tests is disturbing, particularly because the main issue keeping Randy from his children is his habitual drug use.

Upon our review, we find the State made reasonable efforts to eliminate the need for the children's continued removal from Randy's home. The State does not have a responsibility to fully accommodate visitation and drug testing to someone who is voluntarily working and residing in another state. We affirm as to this issue.

**B. Clear and Convincing Evidence.**

Under section 232.116(1)(f), parental rights may be terminated if the court finds by clear and convincing evidence (1) the children are four years of age or older; (2) the children have been adjudicated children in need of assistance; (3) the children have been removed from the physical custody of their parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days; and (4) the children cannot be returned to the custody of their parents at the present time.

Randy argues the court erred in finding the children cannot be immediately returned to his care. He contends the State failed to prove by clear and convincing evidence that the children would suffer further adjudicatory harm if returned to his care.

Randy has been involved with DHS since May 2007 when the children were removed from his care. Randy initially refused home visits, claiming his home was not ready for the children. It was not until early January 2008 that his home was approved for the children. Throughout these proceedings, he has not requested the children be returned to his care. He has not had any unsupervised visits with the children. He was visiting with the children twice per week, but has since reduced the visits to once per week. As the juvenile court stated:

The children cannot be returned to Randy until their safety and caretaking has been established. While Randy has a home for the children, service providers' testimony has established that some safety risks exist there. This status is consistent with Randy's history of housing with M.H.; at the time of the initial DHS involvement in this matter, Randy's home had a number of safety, health and hygiene hazards. Randy also demonstrated questionable living practices when the Freedom County (Minnesota) Department of Human Services was involved with this family six years ago. Randy's parenting skills show that he is not yet ready to assume unmonitored responsibilities for the children. Service providers have specific goals for his parenting skills that Randy has not yet reached. He has not had supervised or overnight visits with the children. At the present time, the children cannot safely return to his custody.

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The court further finds and concludes that Randy's use of illegal substances has not been adequately addressed. The court questions the reliability of Randy's proffered drug screen results, as he did not show that sampling was monitored and as they were produced on his own timing, rather than randomly. The evidence also shows that Randy goes to some length to hide, distort or give excuses for positive tests or admitted instances of using. Until DHS

can verify that Randy is abstinent from drug use, the children cannot be safely returned to him.

We agree. There continue to be major concerns about Randy's drug use, parenting skills, accountability, and lack of responsibility for the harms he places on the children. The children have been out of his care for nearly two years. Randy has not consistently and sufficiently accessed services offered to him, nor has he demonstrated significant improvement over many months of services. The record clearly supports Randy's inability to provide a safe environment for the children. Returning the children to Randy's home is not an option. We find clear and convincing evidence supports termination of Randy's parental rights under section 232.116(1)(f), and we affirm on this issue.

### **C. Best Interests.**

Randy also argues termination of his parental rights is not in the best interests of the children. Although Randy clearly loves the children and the children are bonded to him and look forward to their visits, Randy has many issues to address and improve on before he could safely and effectively parent the children. As the juvenile court stated:

[This] court agrees with service providers' assessment that if this court does not terminate parental rights now, then the family will once again repeat the pattern of critical care denial established before and since the Minnesota termination and services. Past performance of a parent may be indicative of the quality of future care the parent is capable of providing. Randy's past performance shows that he is able and willing to respond with the minimal results necessary to reunify with his child(ren) and get services terminated, and then to return to drug use, delegation of childcare to Nan, and a lifestyle that poses safety and health risks to his child(ren).

....  
[I]t is not detrimental to the children's interests to terminate . . . Randy's parental rights. . . . The children do have a bond with

Randy, but he cannot safely resume their custody at this time. The children's need for permanency and stability outweighs the bond they have with Randy.

We are convinced M.H.'s, D.P.'s, and D.H.'s interests are best served by terminating Randy's parental rights and continuing the children's placements in safe and stable homes. By the time of the termination hearing, the children had been removed from Randy's care for nearly two years. Randy has many unresolved substance abuse, responsibility, and parenting issues, and the children have suffered a long history of trauma while in his care. The law demands patience to allow parents to remedy their deficiencies, but that time must be limited because the delay may translate into intolerable hardship for the children. *In re C.D.*, 524 N.W.2d 432, 435 (Iowa Ct. App. 1994). There is no reason to further delay the children the permanency they need and deserve. We find termination of Randy's parental rights is in M.H.'s, D.P.'s, and D.H.'s best interests.

**AFFIRMED.**