

**IN THE COURT OF APPEALS OF IOWA**

No. 1-289 / 11-0341  
Filed April 27, 2011

**IN THE INTEREST OF T.T.M., B.B.M. JR.,  
B.R.M., and M.J.M.,  
Minor Children,**

**R.E.M., Father,  
Appellant,**

**K.D., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

A mother and father appeal from the termination of their parental rights to their children. **AFFIRMED.**

John Daniels, Sioux City, for appellant-father.

Martha McMinn, Sioux City, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and Dewey Sloan, Assistant County Attorney, for appellee.

John Polifka, Sioux City, attorney and guardian ad litem for minor children.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

**TABOR, J.**

Parents Katharina and Robert separately appeal the juvenile court's order terminating their rights to four children: T.M. (born 2007), R.M. (born 2006), B.M. (born 2005), and M.M. (born 2003). The parents contend that termination was improper because they have done everything required of them by the Department of Human Services (DHS). Although these parents have addressed some of the issues that led to their son and three daughters being adjudicated as children in need of assistance (CINA), both the father and mother fail to recognize that they subjected their children to serious abuse and neglect, which has affected their emotional and social development. We find the sentiments of the Court Appointed Special Advocate (CASA) to be especially potent:

On January 16, 2011, I spent an hour with Robert and Kathy following a family visit. I attempted to emphasize my concern for the well-being of the children, and my concerns about them getting the children back. Their response was to blame others, and try to minimize the seriousness of the abuse and neglect that occurred. They gave no indication of sorrow or regret. For me, this meeting snuffed out any hope I had that they were capable of the major awakening that I felt would be required to reunify with their children.

After our de novo review of the record, we share the CASA's concern that the parents are unable or unwilling to recognize the harm they caused their children. Because Robert and Katharina will not be able to parent these children effectively without such insight, we affirm the terminations.

The DHS removed these children from their Sioux City home in December 2009 after finding that the parents were physically abusing Robert's teenaged son, D.M.<sup>1</sup>, as well as then six-year-old, M.M. Fifteen-year-old D.M. told investigators that his father had beaten him with his fists multiple times a day since he was ten years old. His stepmother, Katharina, would strike him with a clothes hanger or a belt. D.M. also revealed that his stepmother regularly woke him up at two or three in the morning, forcing him make coffee and breakfast for his father and lay out his clothes before he left for work. Investigators also learned that M.M. suffered physical injuries when her parents struck her with a belt.

The DHS additionally determined that the parents had denied critical care and failed to provide proper supervision for the younger children. At the time of their removal, all four children were "dirty, smelled and all had a severe case of head lice." The DHS report chronicled the deplorable conditions endured by the children:

The children's bedroom was of great concern. This worker observed only two mattresses in the children's bedroom. There were no sheets and no blankets. There were mouse droppings on the children's floor. In addition this worker observed locks on the exterior of the children's doors.

The report also noted that the children's bedroom "reeked of urine."

The juvenile court adjudicated the children as CINA on February 1, 2010, citing the physical and emotional abuse in the home, neglect of the children,

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<sup>1</sup> D.M. is not a subject of this termination case. The record indicates that he is currently living with his mother in Washington State and doing well in that placement.

unsafe living conditions, and Robert's anger management issues. The juvenile court found the following:

By the time of the dispositional hearing on March 31, 2010, the children had become more vocal about things that were going on in the home. [D.M.] spoke of physical abuse on a daily basis and being teased by Robert and Katharina about his weight. The children talked about being locked in their rooms and not being allowed to go to the bathroom, as well as having the windows to their rooms nailed shut so they could not climb out onto the roof.

On September 8, 2010, the Woodbury County Attorney's Office filed a petition to terminate the parental rights of Robert and Katharina to their four younger children. The juvenile court heard evidence on February 1, 2011, and issued its termination ruling on February 16, 2011. The juvenile court based its termination decision for all four children on Iowa Code sections 232.116(1)(d) (child CINA for physical or sexual abuse or neglect, circumstances continue despite receipt of services) and (g)<sup>2</sup> (2009) (child CINA, parental rights terminated to another child in same family, parents continues to lack ability or willingness to respond to services). The court also found clear and convincing evidence to terminate the parents rights to T.M. based on section 232.116(1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home) and to the three older children based on section 232.116(1)(f) (child four or older, adjudicated CINA, removed

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<sup>2</sup> This ground applies only to the mother because in 2004 a court in Washington State terminated her parental rights to an older daughter, who did not have the same father as the four children involved in this case. The basis of the termination was the child's failure to thrive. See *In re C.W.*, 522 N.W.2d 113, 116 (Iowa Ct. App. 1994) (rejecting the argument by a mother that her children by one father were not in the same family as her children by another father).

from home for twelve of last eighteen months, and child cannot be returned home).

We review orders terminating parental rights *de novo*. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). When the district court terminates on more than one statutory ground, we may affirm if we find sufficient proof to support any of the sections cited by the district court. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996) *overruled on other grounds by In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010).

The parents claim that they have met the requirements set by the DHS. Katharina states that she has obtained suitable housing and has participated in substance abuse and counseling requested by the caseworkers. Robert asserts that he “did what he was asked to do to control his anger, receive counseling and therapy and [has been] clean from substance abuse (since 5/5/10).”

The record supports the parents’ assertions that they have complied with many recommendations made by the DHS. But their supervised visits with the children have been fraught with tension and strife. The children “continuously hear the parents argue and sometimes get into very heated arguments—or with profanity and yelling.” During a July 19, 2010 visitation, Robert told Katharina—in front of the children and social worker—that she was “dumber than a box of fucking rocks.” When the argument escalated, the workers started to usher the children out of the house and Katharina told them that the DHS was “trying to keep you kids from us” and “they never want you to come home.” The DHS

social worker Tami Divis testified that hearing their parents argue took an emotional toll on the children.

Case coordinator Laura Heth, who supervised visits with the parents, testified that the parents did not display a sense of urgency about reunification with their children until the county attorney filed the termination petition:

There's been a lot of questions of what should I do, what can I do to get my—to make sure that this doesn't happen. And it's like they've just used it as a checklist to make sure that the things that we've asked to be done be done, but it doesn't really internalize. It is a whole different thing than just to do it, to use it in their everyday life, to use it in their parenting with the children.

The father's hostile reactions during visitations indicate that he has not internalized the anger management counseling he had been receiving. The parents told Heth that they were separating a few weeks before the termination hearing. During a January 13, 2011 visit, Heth asked Robert where he would be living following the separation. He responded: “[I]gnorant fucking people always asking stupid fucking questions.”

The juvenile court aptly concluded from this evidence: “Robert’s behaviors, even in a supervised/structured setting, can be appalling. Query, what would happen to these children should the interactions not be supervised?” The juvenile court also determined that Katharina only professed to separate from Robert in hopes that they would “keep the kids.” Robert was frequently at her home after the separation and she acknowledged that she would not be able to shield the children from their father.

We find the State offered clear and convincing evidence that the children could not be safely returned to the custody of either parent at the present time

and that the circumstances that led to the CINA adjudication continued to exist despite the parents' receipt of services. See Iowa Code § 232.116(1)(d), (f), (g), (h). Children cannot be returned to parents who continue to deny their responsibility for the conditions leading to removal and who are unable or unwilling to internalize or implement parenting skills offered by the DHS. See *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). Katharina and Robert have taken some steps to better their situations, but have not acknowledged how they endangered their children through abuse and neglect and have not forged the skills necessary to prevent that situation from recurring.

Katharina complains on appeal that the DHS never implemented the CASA's recommendation for unsupervised visits. Heth testified that she felt uncomfortable allowing the mother unsupervised time with the children. Although Katharina improved in her use of appropriate discipline, case workers observed that the mother still expressed frustration with the children and resisted carrying through with restrictions on the children's behavior imposed by the foster family or case workers. Heth also had justifiable doubts that Katharina would maintain her separation from Robert, and was concerned about the children's unsupervised exposure to their father's angry outbursts. Having independently reviewed this evidence, we do not believe that the DHS denied the mother reasonable efforts for reunification. See *In re A.S.*, 743 N.W.2d 865, 869 (Iowa Ct. App. 2007) (finding no denial of reasonable services based on informed decision by DHS not to grant unsupervised visitation).

Finally, Robert asserts termination of his parental rights is not in the children's best interests. Even if a statutory ground for termination is met, a decision to terminate must be in the best interest of a child—based on the criteria in Iowa Code section 232.116(2). *P.L.*, 778 N.W.2d at 37, 40 (requiring consideration of the children's safety, the best placement for furthering their long-term nurturing and growth, and their physical, mental, and emotional condition and needs).

Robert contends the older daughters, M.M. and B.M., have told the CASA that they want to return home. Because these children are under ten years of age, any objection they may have to the termination would not fall under the statutory considerations at Iowa Code section 232.116(3)(b). Moreover, M.M. and B.M. have discussed with their foster parents the disturbing memory of being locked in their rooms by their parents before their removal. Seven-year-old M.M. has problems with stealing and lying, takes medication for Attention Deficit/Hyperactivity Disorder, and attends therapy. Six-year-old B.M. needs remedial help in speech and school work. Five-year-old R.M. has told his foster mother he does not want to attend visits with his parents. R.M. acts out with extreme aggression toward other children, has threatened to kill his caretakers and sisters, and is very sensitive to even mild correction. Three-year-old T.M. has dreams about being physically abused. We agree with the juvenile court's assessment that the best interests of these children would be served by "placing them in a stable environment free of Robert's controlling violence manifested through physical and emotional abuse, free of the volatile/dysfunctional



relationship between Katharina and Robert, and free of Robert and Katharina's general neglect of these children." We conclude termination of parental rights was in the children's best interests.

**AFFIRMED.**