

**IN THE COURT OF APPEALS OF IOWA**

No. 1-923 / 11-1726  
Filed December 7, 2011

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

**K.H., Father,**  
Appellant,

**A.G., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Wapello County, William S. Owens,  
Associate Juvenile Judge.

A mother and father separately appeal from the order terminating their  
parental rights to their son. **AFFIRMED AS TO KEVIN; APPEAL DISMISSED  
AS TO ANGELA.**

Mary Baird Krafka of Krafka Law Office, Ottumwa, for appellant father.

Sarah L. Wenke of Wenke Law Office, Ottumwa, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Lisa Holl, County Attorney, and Seth J. Harrington, Assistant  
County Attorney, for appellee State.

Robert E. Breckenridge of Breckenridge Law Office, Ottumwa, attorney  
and guardian ad litem for minor child.

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

**VOGEL, J.**

Kevin and Angela separately appeal the termination of their parental rights to K.H., born in February 2005. We dismiss Angela's appeal as she only advances facts related to Kevin's relationship with K.H. Kevin only asserts that his bond with K.H. should preclude termination. We find K.H.'s need for permanency overcomes any bond he may have with his father, and affirm the termination of Kevin's parental rights.

**I. Background Facts and Proceedings**

The Iowa Department of Human Services (DHS) became involved with this family in October 2009, after an incident of domestic assault between Kevin and Angela.<sup>1</sup> DHS was also concerned with Kevin's and Angela's history of abusing alcohol, illegal drugs, and prescription drugs. Kevin and Angela admitted there were times they were both intoxicated while K.H. was in their care. Both also struggle with mental health issues.

K.H. was removed from the home in October 2009, and adjudicated a child in need of assistance (CINA) on December 8, 2009, under Iowa Code section 232.2(6)(c)(2) and (n) (2009).

On June 4, 2010, Angela was charged with operating while intoxicated (second offense). On October 4, 2010, Angela was sentenced to 120 days in the Polk County Jail. She was released on January 26, 2011, but sent back to jail

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<sup>1</sup> DHS was previously involved with this family for denial of critical care from February 2, 2007, to December 18, 2008. During this time, K.H. lived with two different foster families. Services were deemed successful, and K.H. was returned to Kevin and Angela's care.

approximately two weeks later for violating the terms of her probation. She was sentenced to two years of incarceration.

Kevin's visits with K.H. were reduced from twice a week to once a week, due to his lack of attendance at visits and his inability to maintain sobriety. He has been in and out of treatment. Care coordinator Jo Ellen Stewart Martin, stated that she "never received or observed any written confirmation that Kevin has successfully completed substance abuse treatment." She also expressed concerns about Kevin's mental health issues, stating that to her knowledge, he had not received any consistent therapy.

On October 7, 2011, Kevin's and Angela's parental rights were terminated under Iowa Code section 232.116(1)(f) (child four years of age or older, adjudicated CINA, removed from physical custody of parents at least twelve of last eighteen months, or the last twelve consecutive months and any trial placement less than thirty days, child cannot be returned to parents' custody) (2011). Kevin and Angela separately appeal.

## **II. Standard of Review**

Our review of termination of parental rights proceedings is de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

## **III. Analysis**

Kevin and Angela do not appeal the grounds for termination under Iowa Code section 232.116(1) or (2), but only argue that termination of their parental rights was not in K.H.'s best interest due to the closeness of the parent-child relationship between Kevin and K.H. Iowa Code § 232.116(3). It is a general principal in termination of parental rights proceedings that "each parent's parental

rights are separate adjudications, both factually and legally.” *In re D.G.*, 704 N.W.2d 454, 459 (Iowa Ct. App. 2005). For this reason, each parent needs to advance his or her own reasons on appeal as to why their parental rights should not be terminated. *Id.* at 460. Angela only argues facts pertinent to Kevin to support her assertion that the strong bond shared by Kevin and K.H. should preclude termination of *her* parental rights. We therefore dismiss Angela’s appeal. *See id.* (dismissing the mother’s appeal as to an issue where the mother failed to advance her own facts and reasons, separate from those asserted by the father, regarding why termination was not in the children’s best interests).

Kevin does not challenge the grounds for termination but asserts his close bond with K.H., as outlined in Iowa Code section 232.116(3), precludes the termination of his parental rights. *D.W.*, 791 N.W.2d at 706–07. In this case, the most relevant factor is whether “[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.” Iowa Code § 232.116(3)(c). We do not find such evidence exists here. While Kevin loves and is bonded to his son, “our consideration must center on whether the child will be disadvantaged by termination, and whether the disadvantage overcomes [Kevin’s] inability to provide for [K.H.’s] needs.” *D.W.*, 791 N.W.2d at 709. Central to this analysis is always the best interests of the child. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). The defining elements in assessing child’s best interests are the child’s safety and need for a permanent home. *Id.* at 802 (Cady, J., concurring specially). During his short life, K.H. has been placed with his half-brother, his

maternal grandparents, and three different foster families, during two separate removal periods.<sup>2</sup> As the district court observed:

K.H. has been in out of home placement since on or about October 29, 2009. There is simply no credible evidence presented to suggest additional time would allow K.H. to be returned to a parental home. K.H. is a child who is in need of permanency. It is not in his best interests to make him wait even one additional day for the permanency he deserves.

On our de novo review, we find that termination of Kevin's parental rights is in K.H.'s best interest because K.H.'s safety, as well as his need for permanency, will be best served by termination, in spite of the bond with Kevin. Kevin's infrequent and inconsistent visitation with K.H. does not provide clear and convincing evidence of a strong bond or relationship between Kevin and K.H. that can overcome any disadvantages of termination. As the district court noted, K.H. needs permanency now, and cannot wait for responsible parenting. *Id.* at 800 (majority). We affirm.

**AFFIRMED AS TO KEVIN; APPEAL DISMISSED AS TO ANGELA.**

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<sup>2</sup> During the first removal period, K.H. was placed with two different foster families. During the current removal period, K.H. was first placed with his half-brother, then his maternal grandparents, and finally a foster family.