

**IN THE COURT OF APPEALS OF IOWA**

No. 6-885 / 06-1426  
Filed November 30, 2006

**IN THE INTEREST OF D.M., M.W., W.F, and A.S.,  
Minor Children,**

**T.R., Father,**  
Appellant,

**R.W., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Scott County, John G. Mullen,  
District Associate Judge.

A mother and a father each appeal from a juvenile court order terminating  
their parental rights. **AFFIRMED ON BOTH APPEALS.**

James G. Sothmann, Davenport, for appellant-father.

Martha McCall Whitmer, Davenport, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, William E. Davis, County Attorney, and Gerda Lane, Assistant  
County Attorney, for appellee.

John Molyneaux, Davenport, for father of A.S.

Dana Copell, Davenport, guardian ad litem for minor children.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**MILLER, J.**

Rachel is the mother of four-year-old Donovan, three-year-old Megan, two-year-old Alayna, and one-year-old Warren. Terrance is Warren's father. Rachel and Terrance appeal from an August 2006 juvenile court order terminating Rachel's parental rights to the four children and Terrance's parental rights to Warren. The order also terminated the parental rights of Donovan's and Megan's father, and the parental rights of Alayna's father, but they have not appealed. We affirm on both appeals.

Services to Rachel began in September 2004 because her mother was concerned the children were not receiving proper supervision and the Iowa Department of Human Services (DHS) was aware of prior neglect and abuse of Rachel's children. A subsequent investigation resulted in a February 2005 founded report of physical abuse of Donovan by an unknown person. Donovan had been in the exclusive care of Rachel and her paramour, Terrance, at the time of the abuse. In March 2005 Terrance, by whom Rachel later gave birth to Warren, was found to have physically abused Donovan and Megan in an incident separate from the one that had led to the February finding.

The State filed child in need of assistance (CINA) petitions regarding Donovan, Megan, and Alayna. Rachel voluntarily placed the three children in their maternal grandmother's care. The three children were adjudicated CINA in May 2005, and the juvenile court ordered them placed in the custody of their maternal grandmother. Problems constituting grounds for the adjudication and custody orders were physical abuse of the children; lack of supervision, as the small children would wake up and remain unattended while Rachel continued to

sleep; Rachel being without a stable residence and housing; and Rachel's failure or refusal to regularly take medications prescribed for her depression.

In August 2005 the children were placed in foster care as their maternal grandmother had difficulty in caring for them. Later in August Rachel gave birth to Warren, who was initially placed in voluntary foster care, and in November 2005 was subsequently adjudicated a CINA and placed in the custody of the DHS. He has thereafter remained in DHS custody and foster care placement. A September 2005 dispositional order placed Donovan, Megan, and Alayna in the custody of the DHS for placement in foster care, where they have thereafter remained. Shortly after Warren's birth Terrance was sent to prison for his physical abuse of Donovan and Megan. He was released from prison in mid-April 2006.

In May 2006 the State filed petitions seeking termination of the parental rights of all of the parents of all four children. Following hearing the juvenile court terminated Rachel's parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), (f) (Donovan), and (h) (Megan, Alayna, and Warren) (2005), and terminated Terrance's parental rights to Warren pursuant to sections 232.116(1)(b), (d), (e), and (h). Rachel and Terrance appeal.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

*In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

On appeal Rachel seeks reversal of only that part of the termination order that terminated her parental rights to Donovan and Megan, and Terrance seeks reversal of the termination of his parental rights to Warren. Each claims the State did not prove the statutory grounds for termination relied on by the juvenile court. When the trial court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the statutory provisions in order to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). Concerning Rachel's appeal we choose to focus on sections 232.116(1)(f) (Donovan), and (h) (Megan). As to Terrance's appeal, we choose to focus on section 232.116(1)(h).

Concerning the provisions upon which we focus, Rachel claims the State did not prove that Donovan and Megan could not be returned to her. As to this issue Terrance merely "joins in the same arguments and supporting legal authority . . . submitted in the mother's brief . . . in support of his own appeal." The State asserts Terrance has thus not preserved error on this issue. Although the absence of any statement of the issue, any argument, and any citation of authority more correctly may constitute a waiver of the issue, see Iowa R. App. P. 6.14(1)(c), we choose to address Terrance's claim as well as Rachel's on this issue.

These claims implicate the fourth and final element of sections 232.116(1)(f) and (h), which require the State to prove the children cannot be returned to the parents because the children remain in need of assistance as defined by section 232.2(6). *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). The threat of probable harm will justify termination of parental rights, and

the perceived harm need not be the one that supported the child's initial removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

The juvenile court found, in part:

Mother has been unable to resolve the adjudicatory harm. Her living situation is tenuous, unstable, and dependent upon others. She has no income and has resisted all efforts to find employment. While she says she has a job or access to the job, the fact of the matter is that is not true, and she has not made any serious effort to find employment. In her testimony, it is clear that she is now dependent upon Terrance [ ] for his financial support. She has mental health issues but has made no serious effort to address these. She is not receiving any specific mental health counseling or services. She says she is taking medications provided by a general practitioner for her depression. This is not true. They told the Department of Human Services that they gave her a 30-day supply in March 2006 and have not seen her since. Mother's reliance on Terrance [ ] for support is tenuous and inappropriate in terms of her reunification with her children. He was the person who physically abused Donovan and Megan. He has refused to complete the Batterer's Education Program and he has refused to participate in any alternative services to address the anger. He has refused to address substance abuse issues and is known to have been drinking since release from prison. In fact, he admitted that he was drinking. Donovan, in particular, holds extreme anger towards his mother and fear of Terrance [ ] because of the abuse. Mother's relationship before resuming a relationship with Terrance [ ] was with Chad [ ]. This relationship was volatile and violent. The mother insisted on Chad being involved in services and participating in reunification effort with her. Donovan's reaction was anger and fearful. This caused a rift in the relationship between Donovan and the mother and he is not visiting with the mother because of that rift. Mother had given consent to termination of parental rights as to Warren and Alayna. She later withdrew that, but she has not visited with either of those children since December 2005. The only child that she visits now is Megan. Megan is aggressive towards her mother and the mother has difficulty providing appropriate structure, supervision, and safety for Megan.

The court concluded that the children could not be safely returned to the custody of Rachel or Terrance. It found that if placed in their custody the children would

be subject to a high risk of physical abuse, neglect, emotional abuse, failure of supervision, and failure to provide necessities.

The juvenile court's findings and conclusion are fully supported by the record, and upon our de novo review we concur in them and adopt them as our own. We affirm the juvenile court's determination that the State proved by clear and convincing evidence the grounds for termination of Rachel's parental rights to Donovan pursuant to section 232.116(1)(f) and Rachel's and Terrance's parental rights to Megan pursuant to section 232.116(1)(h).

Rachel claims termination of her parental rights was improper because the juvenile court "refused to fully evaluate the suitability of a prior relative placement and rejected modification of disposition at the Permanency Hearing." Terrance appears to make the same claim. As part of her supporting legal authority for this issue, Rachel cites Iowa Code sections 232.116(3)(a) and (c). These provisions respectively allow the juvenile court the discretion to decline otherwise appropriate termination when (1) a relative has custody of the child, and (2) termination would be detrimental to the child due to the closeness of the parent-child relationship. However, no issue related to either of these two provisions was addressed or passed upon by the juvenile court or pursued by way of post-ruling motion. We conclude no error was preserved regarding either of these two provisions.

In March 2006 the children's maternal grandmother was allowed to intervene in the underlying CINA case to seek placement of the four children with her when permanency was to be considered. She thereafter filed a motion to modify the prior dispositional order and have the three oldest children placed in

her physical custody.<sup>1</sup> Following a permanency hearing, in May 2006 the juvenile court found that for numerous reasons long-term placement with the maternal grandmother would be inappropriate and that termination and the intended adoption of the four children by the older children's present foster parents was in the best interest of the children. It adopted a permanency plan calling for termination and for adoption by the foster parents; ordered that the children remain in their current foster home consistent with the permanency plan, thus rejecting the maternal grandmother's request that the children be placed with her; and discharged the maternal grandmother as an intervenor.

The State points out that the motion to modify the dispositional order was the maternal grandmother's motion, and that she did not appeal the denial of her motion or her discharge from the case. The State asserts that because it was the maternal grandmother who sought modification of the dispositional order to place the children with her, Rachel and Terrance do not have standing to claim the juvenile court erred in denying that motion. We agree, and do not further consider this claim of error.

We conclude that statutory grounds for termination pursuant to sections 232.116(1)(f) and (h) were proved by clear and convincing evidence, termination of parental rights is in the best interest of the children, and that other claims of juvenile court error were not preserved, are without merit, or the appellants are without standing to assert them. We therefore affirm the judgment of the juvenile court.

**AFFIRMED ON BOTH APPEALS.**

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<sup>1</sup> The DHS, which had legal custody of Warren, had earlier placed him in foster care with her.