

**IN THE COURT OF APPEALS OF IOWA**

No. 8-807 / 08-1279  
Filed October 15, 2008

**IN THE INTEREST OF A.M.J.,  
Minor Child,**

**M.J., Father,  
Appellant,**

**C.R.P., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Marion County, Terry L. Wilson,  
District Associate Judge.

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

Edward Bull of Bull Law Office, P.C., Des Moines, for appellant-father.

Doug Eicholz, Indianola, for appellant-mother

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Terry E. Rachels, County Attorney, and Melissa Clarke,  
Assistant County Attorney, for appellee.

Terri Beukelman, Pella, guardian ad litem for minor child.

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

**MILLER, J.**

The mother and the father of A.J., who was born in early November 2007, appeal separately from an early August 2008 juvenile court order terminating their respective parental rights to A.J. We affirm on both appeals.

A.J.'s mother and father have never been married. A.J. was removed from his parents' physical custody by juvenile court order when A.J. and his mother were discharged from the hospital two days after A.J.'s birth. The reasons for removal from A.J.'s mother included her mental illness and her dangerous behaviors toward a one-half sibling of A.J.'s. The sibling was approximately one year old at the time of A.J.'s removal, had earlier been removed from the mother, and was subject to a child in need of assistance (CINA) proceeding in juvenile court. A.J.'s removal from his father was due to the father's use of illegal controlled substances.

Upon removal, A.J. was placed in the legal custody of the Iowa Department of Human Services (DHS) for placement in family foster care. He has thereafter remained in DHS custody, placed with one foster family.

The juvenile court adjudicated A.J. a CINA in early January 2008, pursuant to Iowa Code section 232.2(6)(n) (2007) (child whose parent's mental condition, or drug abuse, results in child not receiving adequate care). In early May 2008 the State filed a petition seeking termination of the mother's parental rights pursuant to Iowa Code sections 232.116(1)(e) (child adjudicated CINA, child removed from parents at least six consecutive months, parent has not maintained significant and meaningful contact with child during the six months)

and (h) (child three or younger, adjudicated CINA, removed from parents at least six of last twelve months, cannot be returned at present time without remaining a CINA). The petition sought termination of the father's parental rights pursuant to sections 232.116(1)(h) and (l) (child adjudicated CINA; parent has severe, chronic substance abuse problem, and presents danger to self or others; parent's prognosis indicates child cannot be returned to parent within reasonable period of time). A hearing was scheduled for early July, but continued to late July. Following the hearing the juvenile court entered detailed findings of fact, conclusions of law, and an order terminating the parents' respective parental rights. It terminated the mother's parental rights pursuant to sections 232.116(1)(e) and (h). It terminated the father's parental rights pursuant to section 232.116(1)(h), finding the State had not proved grounds for also terminating his rights pursuant section 232.116(1)(l). Both parents 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).

Each parent claims the State did not prove the statutory grounds relied on by the juvenile court for termination. At the time of the termination trial A.J. was almost nine months of age, had been adjudicated CINA, and had been removed from his parents for almost nine months. The only elements reasonably in dispute are the last element of sections 232.116(1)(e) and (h).

The case permanency plan required the mother, among other things, to participate in a mental health evaluation and any recommended treatment. It required the father, among other things, to participate in a substance abuse evaluation and any recommended treatment. The plan required both parents to regularly and consistently attend scheduled visitations with A.J.; secure and maintain a safe, stable residence; and secure and maintain employment. Services were offered to allow the parents to comply with and satisfy these requirements.

The mother has been diagnosed as suffering from, among other things, bipolar affective disorder. She did secure a mental health evaluation. The evaluation recommended ongoing mental health counseling, individual counseling, medication monitoring, and intensive case management services. The mother made one or two appointments for counseling, thus demonstrating her recognition of the need for follow through on treatment requirements, but did not make or keep any subsequent appointments. She did, through counsel, request help in acquiring case management services. The DHS identified a provider and referred the mother to that provider, but the mother failed or refused to follow through.

In January 2008 the mother engaged in disruptive behavior and threats, resulting in her visitations with A.J. being suspended until she provided documentation demonstrating she was receiving mental health treatment and taking her medication on a regular and consistent basis. She has provided no such documentation, and has refused to provide releases that have been

requested. She has not had visitation with A.J. since January 2008, and apparently has had no contact with the DHS or service providers, other than at court hearings, since January 2008.

The mother has not acquired a safe residence, listing the father's "box number" as her address and stating the day before the termination hearing that she was "living on the streets." She has never secured any employment.

The mother argues that if A.J. cannot be returned to her at the present time, and if she has failed to maintain contact with him, such is the result of the DHS not assisting her in obtaining meaningful treatment for her mental health problems, including a failure to assist her in funding necessary treatment. To the contrary, the record shows that a mental health evaluation was ordered and provided, no request was made for funding that the mother now implies was needed, and the lack of any necessary treatment was the result of a failure or refusal on the part of the mother to follow through.

We agree with the juvenile court that the mother failed to maintain significant and meaningful contact with A.J., that A.J. could not be returned to her without being subject to the threat of abuse or neglect, and that the State proved the grounds for termination of her parental rights pursuant to sections 232.116(1)(e) and (f).

The question of whether A.J. could be returned to the father at the time of the termination hearing is somewhat closer. The evidence shows that the father had reasonable and adequate parenting skills, and had a healthy relationship and reasonable bond with A.J. However, the primary concern related to the

father that led to A.J.'s adjudication remained unresolved. Further, several other factors demonstrate that A.J. could not be returned to the father at the time of the termination hearing.

A.J. was removed from his father because of the father's substance abuse. The father was to undergo a substance abuse evaluation and follow through with any recommended treatment. He participated in the evaluation and began recommended treatment. Shortly thereafter he stopped attending scheduled appointments. He has thereafter failed or refused to further participate, asserting at different times various reasons, including lack of money, conflict with work, and others. The father continued his substance abuse for over four months after A.J. was removed, until less than two months before the termination petition was filed.

Until the termination petition was filed the father was inconsistent and irregular in attending scheduled visitations with A.J. He has had three different residences since A.J. was removed, and was at one time briefly homeless. His current residence is a "camper" that he rents from his employer. The camper is located in a machine shed on the employer's premises. Although the camper is adequate for the father's needs, he acknowledges that it is at best yet another temporary residence.

Since A.J.'s removal the father was at one time unemployed and has had two different jobs. His current job involves laying telephone cable and is seasonal and temporary. It at times requires him to be absent from the state for days at a time. The father has no child care plans for A.J. if returned to him.

Although A.J.'s mother has severe unresolved mental health problems, A.J.'s father hopes to reunite with her. He recognizes that if A.J. were returned to him reunification with the mother would present grave risks to A.J. under present circumstances. He nevertheless hopes to do so whenever possible.

The fourth element of section 232.116(1)(h) is met when the child cannot be returned to the parent without remaining a CINA. *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 removal. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). We agree with the juvenile court that A.J. could not be returned to his father at the time of the termination hearing without being subject to the threat of harm that would render him a CINA, and that the State thus proved the grounds for termination of the father's parental rights pursuant to section 232.116(1)(h).

Each parent claims the juvenile court erred in determining that the State had made reasonable efforts to eliminate the need for A.J.'s removal from their home. The mother repeats the argument that the DHS did nothing to assist her in obtaining counseling or treatment, an argument we have rejected above.

The father argues that the DHS did not provide him a monthly calendar showing when his visitations were scheduled. The DHS acknowledged that the father had made such a request, and that although it had provided calendars for some months it had not done so for every month. However, the evidence shows, and the juvenile court found, that during months a calendar was supplied the father failed to regularly attend visits, and that despite the lack of a calendar

during the last three months before the termination hearing (the three months since the termination petition was filed) the father nevertheless regularly attended visits. Any complained-of failure by the DHS thus resulted in no prejudice to the father, does not constitute a meaningful failure to make reasonable efforts, and serves as no basis to avoid termination if otherwise appropriate.

Each parent claims the juvenile court erred in determining that termination of that parent's parental rights was in A.J.'s best interest. The father relatedly claims the court erred in not granting an extension to permanency under section 232.104(2)(b).

Even if the statutory requirements for termination are met, a decision to terminate must still be in the best interest of a child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

A.J. has been removed from his parents for all but the first two days of his life. At the time of the termination hearing the mother had serious mental health issues for which she had not been receiving treatment, had not seen A.J. for six months, and in all likelihood had little or no bond with him. The father had an untreated history of substance abuse, had only recently had regular visitations, and had a somewhat unstable residence and employment. The father's income was barely sufficient to pay rent for the camper he lived in and child support for his two children from a former marriage, leaving nothing to support himself, much less support a small child such as A.J. The father had no child care arrangement or plan. A.J. had lived his entire life in a foster home, was thriving, and was



bonded to his foster parents, who intended to adopt him if parental rights were terminated.

The father has been described as cooperative and easy to work with. He argues that it is probable A.J. could be returned to him within six months if permanency was delayed for that time pursuant to section 232.104(2)(b). However, in deciding what is best for a child we look to a parent's past performance as it may indicate the quality of care a parent is capable of providing in the future. *In re L.L.*, 549 N.W.2d 489, 493-94 (Iowa 1990). The father had almost nine months to be prepared to have A.J. returned, but at the time of the termination hearing was not in the position to have him returned.

When the statutory grounds for termination of parental rights have been proved, termination is generally in the best interest of a child. *See generally In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990); *see also In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa Ct. App. 1992). "Long-term foster care is not preferred to termination of parental rights." *In re R.L.*, 541 N.W.2d 900, 903 (Iowa Ct. App. 1995). Neither parent was ready to have A.J. returned at the time of the termination hearing, and it appeared that neither would be for the reasonably foreseeable future. Termination will provide A.J. with the opportunity for the safety, security, and permanency that A.J. needs and deserves. We agree with the juvenile court that termination of both parents' parental rights is in A.J.'s best interest.

We affirm the judgment of the juvenile court.

**AFFIRMED ON BOTH APPEALS.**