

**IN THE COURT OF APPEALS OF IOWA**

No. 2-758 / 12-1235  
Filed September 6, 2012

**IN THE INTEREST OF E.W.,  
Minor Child,**

**L.W., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Louise Jacobs,  
District Associate Judge.

A mother appeals the termination of her parental rights to her child.

**AFFIRMED.**

Nathaniel A. Tagtow of Pargulski, Hauser & Clarke, P.L.C., Des Moines,  
for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney  
General, John Sarcone, County Attorney, and Faye Jenkins, Assistant County  
Attorney, for appellee.

Considered by Vogel, P.J., Danilson and Mullins, JJ.

**DANILSON, J.**

A mother, Lattice, appeals the termination of her parental rights to her child. Because the State has made reasonable efforts of reunification; and because there is clear and convincing evidence supporting termination under Iowa Code section 232.116(1)(h) (2011), termination is in the child's best interests, and no factor serves to preclude termination, we affirm.

**I. Background Facts and Proceedings.**

Lattice became involved with the Department of Human Services (DHS) in 2007 as a result of a founded child abuse assessment of denial of critical care, failure to provide proper supervision, after she left her three children with an improper caretaker for an extended period of time. She had a fourth child who also became involved in the juvenile court proceedings.<sup>1</sup> Despite numerous services provided to her, Lattice's parental rights to the three older children were terminated in August 2008. Her rights to the fourth child were terminated in May 2009.

Lattice gave birth to E.W. in November 2010 at twenty-five weeks gestation.<sup>2</sup> E.W. weighed just over one pound. He remained in the hospital until March 1, 2011, when he was discharged with significant health issues, including a hole in his heart, and a cleft lip and palate. The hospital noted concerns about

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<sup>1</sup> Lattice was diagnosed with Mental Retardation (MR) as a child. She receives social security disability income.

<sup>2</sup> E.W.'s father did not participate in services, consistently denying paternity. However, he attended the permanency hearing and agreed to undergo paternity testing because he did not want to have a record of termination of parental rights if E.W. was not, in fact, his child. Testing confirmed he was E.W.'s biological father. He does not appeal the termination of his parental rights.

the mother's ability to care for E.W., but discharged the child to her care with support services to be offered. One week later, Latice called for emergency assistance due to E.W. vomiting and choking.

On March 14, upon a report that Latice had left E.W. with an unsuitable caregiver,<sup>3</sup> an order of temporary removal was filed and E.W. was removed from his mother's care. The State filed a petition to have E.W. adjudicated a child in need of assistance (CINA), alleging "the mother is reportedly MR; suffers from depression; she has used inappropriate caretakers to watch this child[;] and she is essentially homeless." The petition also noted the prior terminations of her parental rights and that those children came to the attention of the juvenile court "due to exposure to neglect." E.W. was placed in foster care.

On April 20, 2011, in an uncontested proceeding, E.W. was adjudicated a CINA. The juvenile court found the mother had mental health issues, a history of medication non-compliance, unstable housing, prior termination of parental rights, and a recent criminal mischief charge. The court ordered E.W. to remain in out-of-home placement. The adjudication order stated reasonable efforts had been made to eliminate the need for removal, including: visitation, Family Safety, Risk, and Permanency (FSRP) services, prior juvenile court proceedings and services, bus tokens, Visiting Nurses Services (VNS), mental health counseling, and foster family.

The initial case plan entered on April 21 noted that E.W. was "medically fragile" and due to his age and medical condition "it is imperative that Latice visits

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<sup>3</sup> The caregiver was Latice's mother, a woman with "significant drug history as well as prior DHS involvement."

[E.W.] with regularity” to establish a strong bond. It was also noted that “Latice had not visited [E.W.] in the past two weeks” and was homeless. Under the plan, Latice was to visit E.W. as scheduled and she was not to book other appointments on days she was scheduled to visit him. Latice was also to work to obtain housing; obtain a medical evaluation to determine if she was diabetic, and follow resulting doctor’s orders; have a mental health evaluation, and follow all recommendations from the evaluation; and participate in DHS services.

E.W. remained in foster care following a May 12, 2011 disposition order. Latice had missed six of eight supervised visits with E.W. between April 19 and May 12. Again the court noted reasonable efforts were being made.

Latice did not regularly attend scheduled visits the remainder of May and June. The July 15 progress report observed:

Latice has found housing for herself and is working on managing her medical needs both physical and mental. Latice would like to wait on addressing her mental health needs due to being overwhelmed with other appointments for medical and criminal issues. Latice has not been making it to every supervised visit with [E.W.] due to scheduling appointments during visitation times or not being present when worker arrives; she also misses medical appointments for [E.W.] as well. During the few visits, Latice appears interested in [E.W.’s] needs.

The August 15 progress report notes two cancelled visits. The September 15 progress report indicates Latice “holds and interacts” with E.W. during visits, but often is not prepared—having no diapers, wipes, or formula. Also noted was Latice’s frequent phone use during visits.

DHS case worker, Marie Mure, submitted a case plan for an October 2011 review hearing in which she observed that she met with Latice once or twice a

month for the previous six months and at each visit they discussed visitation, medical appointments, and Latice's other concerns. She noted E.W. had numerous medical issues.<sup>4</sup> While E.W. was behind about three and a half months developmentally due to his premature birth, he "is doing a great job catching up." Ms. Mure writes:

I have tried to explain to Latice that it is important for her to make her scheduled visits with [E.W.] and to attend his medical appointments. Latice double books herself some days and misses her scheduled appointments. I have volunteered a calendar for her to use but she states she has one already. I know the FSRP worker Jennifer Leo writes down her visits and medical appointments for her as well.

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Latice is scheduled to visit [E.W.] on Tuesday and Thursday for about 2 hours. To date Latice has averaged about one visit a week. This worker, the FSRP worker [Jennifer Leon of Children and Families of Iowa], the Parent Partner, and CASA worker have all tried to impress upon Latice the importance of making her visits with [E.W.]

The CASA worker submitted a report for the October hearing outlining E.W.'s medical condition and stating, "I am not sure Latice understands [E.W.'s] medical conditions and needs." Latice's mental health counselor, Kristen Eekhoff, submitted a letter dated October 17 to Ms. Mure, noting she began seeing Latice on June 24, after which Latice had four additional sessions and missed or cancelled on seven other dates. Ms. Eekhoff expressed concern due to Latice's "lack of commitment to therapy."

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<sup>4</sup> E.W. had a cleft palate and lip, a hole in his heart that may need to be repaired, and needed a hearing aid in his right ear. There were also concerns regarding his urethra being mispositioned, as well as concerns regarding his liver and kidneys. Ms. Mure indicated upcoming surgeries to repair of E.W.'s cleft lip and palate, and to correct his urethra hole.

In its October 26, 2011 review order, the juvenile court continued the out-of-home placement, noting the mother was not completely consistent with visitation. The court ruled the mother needed to demonstrate an understanding of the child's medical challenges. Services to be provided included bus tokens or pass; attachment assessment and dyadic therapy as recommended; and that the mother undergo I.Q. and mental health evaluation. Ms. Leon noted in her November 15, 2011 progress report that at this October 26 court hearing, the "[p]arties agreed to an extension for reunification along with getting adult services and possibly an attachment assessment completed. Judge Jacobs discussed with Latice about attending visits if she was worried about [E.W.] being bonded to her."

In her February 24, 2012 case plan, Ms. Mure noted Latice had a psychological/social evaluation with Ms. Eekhoff, which indicated Latice had a "simple adjustment disorder with anxiety and depression." An attachment assessment and IQ testing had been scheduled. Ms. Mure recommended the termination of Latice's parental rights. It was Ms. Mure's belief that Latice "has not gained any insight into the serious medical needs of her son"; does not attend all of his medical appointments; and "[d]ue to her inconsistent attendance at visits and medical appointments this worker cannot override [E.W.'s] need for permanency."

A permanency hearing was held on March 2, 2012. The juvenile court noted "less than consistent participation in services by mother." The court found the mother continued to have unresolved mental health issues, and was unable

to provide a safe and secure environment for her child. The court noted reasonable efforts had been made to eliminate the need for removal and that no additional services were requested by any party. On March 14, the State filed a petition to terminate the mother's parental rights.

Ms. Leon's April 15, 2012 case progress report indicates a family functional assessment was originally conducted in April 2011 and reevaluated in April. Results included that "Lattice is just starting to appropriately parent during visits"; she "has been attending visits on a more regular basis . . . however, it is unknown if the [parent-child] bond is developing"; and "[d]ue to Lattice's mental health and disability, neglect continues to be a concern."

An attachment assessment was conducted by social worker, Kellie Patterson, during which Lattice reported "a history of having difficulty controlling her anger and experiencing depression and cited instances when she had taken pills or cut herself in attempt to commit suicide." In her April 19, 2012 assessment report, Ms. Patterson observes:

[The mother] appears to have an adequate attachment to her son [E.W.] as evidenced by his interactions with her during the observation. He engaged in attachment behavior such as showing his mother toys, engaging her in eye contact, display of enjoyment during the observation, responding to her praise by clapping for himself, and accepting emotional nurturance from his mother. [Lattice] displayed attachment behavior such as attuning to his emotional state, engaging in eye contact with him, engaging [E.W.] with positive facial expressions, and expressions of physical affection. . . . It is clear that [mother and son] have this attachment because of the duration of this case.

Ms. Patterson reported that standardized assessment tools were given to the mother to complete, but were not returned. She observed that a psychological evaluation (including IQ testing) would “yield invaluable information” for the court.

The termination hearing was held on April 25. Social worker Jessica O’Brien testified<sup>5</sup> it was DHS’s recommendation that the mother’s parental rights be terminated due to the continued concern that Latice could not parent E.W. safely despite services being offered throughout these CINA proceedings and prior proceedings. She expressed concern about Latice’s apparent inability to understand E.W.’s medical issues and failure to consistently attend his medical appointments. She noted Latice’s difficulty meeting her own physical and mental health needs and that she had not moved beyond supervised visitation. Ms. O’Brien acknowledged Latice had shown some improvement over the last month or two, but did not believe an additional extension of services would result in the child being returned to her care. Ms. O’Brien reported E.W. was doing well in the care of his foster family, who were prepared to adopt him.

Ms. Leon testified that she provided supervision for visits and that Latice was currently scheduled for one, two-hour supervised visit per week. She acknowledged Latice was attending visits more regularly since the March hearing and was actively engaged with E.W. during visits. Ms. Leon noted Latice was doing somewhat better in coming to visits prepared with necessary supplies such as snacks and diapers. She testified there was a “slight bond” between mother and child.

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<sup>5</sup> Ms. Mure was on leave at the time of hearing. Ms. O’Brien testified she was recently assigned as the DHS supervisor in this case.



Latice introduced as an exhibit a letter from her current therapist, Kelly Kinney, dated April 20, 2012. Ms. Kinney stated Latice had been seen on January 13 and “denied any current mental health issues.” Latice had attended two other sessions, one in February and one in March. Ms. Kinney stated Latice was scheduled for psychological testing on May 21, and for psychiatric evaluation on May 30.

Latice testified she was attending therapy; had completed parenting classes in March 2012; had recently obtained housing; and was attending all visits with E.W. She stated she was unable to attend several appointments, including IQ testing due to lack of transportation; she contended Ms. Mure had failed to get bus tokens to her. She also testified, however, she had not asked Ms. Leon for bus tokens. And when her counsel asked her, “Is there anything you’ve asked help for from DHS that they haven’t helped you with?” Latice answered, “No.” She stated she was able to care for E.W. if returned to her. She also stated that if given a six-month extension, she could consistently attend visitation and therapy. Latice planned to attend the appointments scheduled for psychological testing and psychiatric evaluation. Latice testified she had no mental health issues, but had them in the past.

On June 25, 2012, the juvenile court ordered Latice’s parental rights be terminated pursuant to Iowa Code section 232.116(1)(d), (e), (g), (h), and (i) (2011). The court found,

The child’s safety is the Court’s primary consideration. There are ongoing concerns about the safety of the child if returned to the care and custody of either parent. It is clear that they are unable to meet the child’s medical needs. The child needs a long-

term commitment by an adult who can be appropriately nurturing, supportive of his growth and development, and who can appropriately meet his physical, mental, and emotional needs. The child is currently placed with a family that meets such criteria while the child's biological parents cannot meet such criteria.

The mother now appeals.

## **II. Standard of Review.**

We conduct a *de novo* review of termination of parental rights proceedings. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

## **III. Analysis.**

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the

court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

**A. Grounds for Termination.**

When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the juvenile court's order on any ground we find supported by the record. *D.W.*, 791 N.W.2d at 707. Section 232.116(1)(h) provides that termination may be ordered when there is clear and convincing evidence a child under three years of age who has been adjudicated a CINA and removed from the parent's care for the last six consecutive months cannot be returned to the parent's custody at the time of the termination hearing. Iowa Code § 232.116(1)(h).

The mother argues there is not sufficient evidence that the child could not be returned to her care presently. We disagree. Latice has not progressed beyond supervised visits in more than thirteen months. She only began consistently attending visits in the few months before the termination hearing, and only after the visits were changed to once per week. She has not shown an ability to arrange for needed transportation, which would be critical in light of E.W.'s medical needs, which include a number of doctor's appointments. Whether she will not, or cannot, we must consider her inability to provide necessary care. See *D.W.*, 791 N.W.2d at 708-09 (“[W]e recognize that lower mental functioning alone is not sufficient grounds for termination, in this case it is a contributing factor to [the parent's] inability to provide a safe and stable home for [the child.]”).

**B. Factors in Termination.**

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interests, this court's primary considerations are "the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." *Id.* Factors we consider include "[w]hether the parent's ability to provide the needs of the child is affected by the parents' mental capacity," and "whether the child has become integrated into the foster family" and whether the foster family is able and willing to adopt. See Iowa Code § 232.116(2).

The mother is not able to provide for the child's long-term nurturing and growth. E.W. is in a preadoptive placement. Ms. Patterson, who conducted the attachment assessment, observed that E.W. and the foster parents were "well bonded and that [E.W.'s] ability to engage in attachment behavior is due to their care. Given this, it would be deleterious to remove him from their care and would absolutely set [E.W.] back in terms of his psychological and physical development even further." We conclude termination is in the child's best interests.

**C. Exceptions or Factors against Termination.**

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In*

*re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). Even acknowledging E.W. has an “adequate attachment” with the mother, it is not such a close relationship that we would place him in further limbo. We conclude no exception or factor in section 232.116(3) applies to make termination unnecessary.

**D. Reasonable efforts.**

Latice argues that as of the October permanency hearing, DHS stated reunification was no longer the goal, which constituted a failure to make reasonable efforts of reunification. She contends the juvenile court erred in failing to provide an additional six months for her to work toward reunification.

We first observe that as of October, E.W. had been out of the mother’s care for more than six months and, consequently, the six-month statutory period provided for in section 232.116(1)(h) had passed. Latice, effectively, was given an extension of time to seek reunification. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (“Once the limitation period lapses, termination proceedings must be viewed with a sense of urgency.”).

Latice has been informed repeatedly of the importance of consistent contact with E.W. Yet, her efforts to attend visitation and meet the court’s expectations did not become consistent until the final month or two before the April 2012 termination hearing. She was ordered to obtain a mental health

evaluation as early as April 2011, but had not done so as of the April 2012 termination hearing. She testified she intended to attend the May 2012 psychological testing and psychiatric evaluation. Her efforts are simply too late. See *C.B.*, 611 N.W.2d at 495 (“Time is a critical element. A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting.”).

The mother has received numerous services for an extended period during these—and prior—juvenile court proceedings. There were no additional services requested. We reject her claim of lack of reasonable efforts. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999) (“While the State has the obligation to provide reasonable reunification services, the Mother had the obligation to demand other, different or additional services prior to the termination hearing.”).

#### **IV. Conclusion.**

There is clear and convincing evidence that grounds for termination exist under section 232.116(1)(h), termination of parental rights is in the child’s best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm termination of the mother’s parental rights.

**AFFIRMED.**