

**IN THE COURT OF APPEALS OF IOWA**

No. 7-246 / 07-0226  
Filed April 25, 2007

**IN THE INTEREST OF J.P.,  
Minor Child,**

**M.M.A., Mother,  
Appellant,**

**J.A.P., Father,  
Appellant.**

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Appeal from the Iowa District Court for Warren County, Kevin Parker,  
District Associate Judge.

A mother and father appeal the district court's order terminating their  
parental rights to their minor child. **AFFIRMED.**

Jeffrey Mains, Des Moines, for appellant mother.

William Sales, Ankeny, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Bryan Tingle, County Attorney and Alyssa Kenville, Assistant  
County Attorney, for appellee.

Patricia Notch, Norwalk, for the minor child.

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

**VOGEL, J.**

M.A. and J.A.P., mother and father of J.P., appeal the district court's order terminating their parental rights. Upon our de novo review, *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006), we affirm.

J.P. was removed from her mother's care in June 2005 due to the mother's methamphetamine use and physical abuse of J.P. She was adjudicated a child in need of assistance (CINA) in July 2005, pursuant to Iowa Code sections 232.2(6)(b) (parent has physically abused or neglected child); (c)(2) (child is likely to suffer harm due to parent's failure to exercise care in supervising child); and (n) (parent's mental capacity or condition, or drug or alcohol abuse, results in child not receiving adequate care). J.P. was placed in the care of her maternal grandmother, and services were provided by the Iowa Department of Human Services (DHS) to both the mother and father to address their substance abuse problems. Both parents were resistant and generally noncompliant. Termination of parental rights was ordered by the district court in January 2007, and both parents appeal.

The grounds for termination must be proven by clear and convincing evidence. *J.E.*, 723 N.W.2d at 798. We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by these findings. Iowa R. App. P. 6.14(g). Our overriding concern in such cases is always the best interests of the child. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001).

The father argues that the district court erred in terminating his parental rights because he did not receive notice of the CINA proceedings. He did,

however, receive notice of the termination hearing. Iowa Code section 232.88 provides that “reasonable notice” for CINA adjudicatory hearings is governed by the process of section 232.37, which includes personal service by the sheriff or by certified mail when determined by the court that personal service is impracticable. These procedures also allow the State to dispense with notice if “the court finds that a reasonably diligent effort has been made to notify the child's parent, guardian, or custodian, and the effort was unavailing.” *Id.* § 232.38.

The record reflects that personal service of process for the CINA petition was attempted at least eight times in mid-July 2005 by the Polk County Sheriff's office at the last known address of the father in Des Moines.<sup>1</sup> When these attempts were not successful, the CINA adjudication hearing proceeded and the resulting order was mailed to the father at the same address. It appears that this mailing was returned as undeliverable, and the State did not attempt to effect notice by other means, such as publication. However, the father was aware of the involvement by the State, as DHS did contact him by telephone in late June 2005 as part of its intake process. Prior to the adjudicatory hearing, additional phone contacts were made by DHS, including conversations regarding the investigation of the CINA allegations and offers of a substance abuse evaluation. Subsequent to the adjudication, DHS offered the father supervised visitation and other services. In the fifteen months between adjudication and the filing of the termination petition, the father was incarcerated for drug crimes much of the time.

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<sup>1</sup> The father admitted at the termination hearing that he was residing at this address at the time service was attempted.

When he was not incarcerated he failed to provide DHS current contact information despite repeated requests. Although it does not appear that the statutory procedures for notice of the CINA adjudicatory, dispositional, or permanency review hearings were strictly complied with by the State, we conclude that the lack of formal notice does not undermine the subsequent termination of his parental rights. The father did receive notice of the termination petition and hearing, was present, and was represented by counsel. See *In re M.L.M.*, 464 N.W.2d 688, 689 (Iowa Ct. App. 1990) (upholding termination where father received notice of termination proceeding but not of prior CINA proceeding); *In re J.F.*, 386 N.W.2d 149, 151-152 (Iowa Ct. App. 1986) (noting father who learned of CINA proceedings independently had waived right to later have dispositional order vacated).

The father had considerable personal contact with DHS, was informed of the status of the adjudication and disposition, and was offered services to comply with the case plan for reunification. At the termination hearing, he admitted that he knew he should have obtained legal counsel during the pendency of the CINA case. Under these facts, the father has never challenged the adjudication or disposition. We conclude formal notice or service of process under section 232.88 to the father of the CINA case was waived and did not hinder the court from proceeding with termination of his parental rights.

Both parents argue the district court erred in finding clear and convincing evidence to support termination.<sup>2</sup> In order to affirm a termination of parental rights, we need only find grounds sufficient to terminate under one of the statutory grounds the district court cited. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999). While the termination order could have been more clearly delineated as to which grounds were found for which parent, we conclude the evidence supports termination under section 232.116(1)(f) (child CINA, parent has a substance abuse problem, child cannot be returned within a reasonable time). Neither M.A. nor J.A.P. took advantage of services that were made available to them during the pendency of this case. Both parents failed to submit regularly to drug screening or drug evaluation and counseling, both continued to use illegal substances, and the father even spent a considerable time during the case incarcerated on drug or related charges. At the time of termination, neither parent was able to assume care of J.P. after each failed to comply with or only made belated attempts to access services, never progressing beyond supervised visitation. “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). In making a permanency determination, the child’s need for security, stability, and permanence in her young life must come first. *In re C.D.*, 509 N.W.2d 509, 513 (Iowa Ct. App. 1993). The record reflects clear and convincing evidence supporting termination and that it is in J.P.’s best interests to sever the

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<sup>2</sup> The mother does not have standing to assert error regarding the father’s notice issue. We also conclude as meritless her argument that termination of her rights was not independently sought but only a result of the termination of the father’s rights. The mother also failed to request additional services during the course of the case, thereby waiving her reasonable efforts argument. *In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000).

parental rights of M.A. and J.A.P. We affirm termination of both M.A. and J.A.P.'s parental rights.

**AFFIRMED.**