

**IN THE COURT OF APPEALS OF IOWA**

No. 7-249 / 07-0338

Filed May 23, 2007

**IN THE INTEREST OF H.C. and J.K., JR.,  
Minor Children,**

**J.K., SR., Father,  
Appellant,**

**A.C., Mother,  
Appellant.**

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

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

Ryan J. Mitchell of Orsborn, Bauerle, Milani, Grothe & Mitchell, L.L.P.,  
Ottumwa, for appellant-father.

Michael O. Carpenter of Webber, Gaumer & Emanuel, P.C., Ottumwa, for  
appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Timothy Schott, County Attorney, and Seth Harrington,  
Assistant County Attorney, for appellee.

Joni Keith of Keith Law Firm, Ottumwa, guardian ad litem for minor  
children.

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

**MILLER, J.**

Amy is the mother, and James Sr. (James) is the father, of seven-year-old James Jr. (Jimmy) and six-year-old Hunter (collectively “the children”). Amy and James each appeal from a juvenile court order terminating their parental rights to the children. We affirm on both appeals.

The children came to the attention of the Iowa Department of Human Services (DHS) in mid-2004 based on a report that Amy had been using illegal drugs in the presence of the children. Drug testing showed that Jimmy had been exposed to methamphetamine. A child abuse investigation resulted in a “founded” report for denial of critical care with Amy as the perpetrator and the children as the victims. The children began living with James.

The State filed a child in need of assistance (CINA) petition and in September 2004 the children were adjudicated CINA pursuant to Iowa Code sections 232.2(6)(c)(2) (2003) (failure of parent to supervise) and (o) (child’s body contains illegal drug as a result of acts or omissions of parent). The juvenile court placed the legal custody of the children with James and they continued to reside with him, a status that continued after a November 2004 dispositional hearing.

In mid-November 2004 James filed a document asserting he was “no longer using drugs.” In mid-December 2004, however, the juvenile court ordered the children, as well as two younger children of James and his wife, removed from James and his wife and placed in the temporary custody of the DHS for suitable placement in the home of a relative, family foster care, shelter care, or other appropriate care taker. The removal occurred as a result of James melting

amphetamine medication prescribed for one of his children or himself, injecting it into himself, falling downstairs, and driving to the hospital accompanied by two of his younger children while he was under the influence of drugs. When law enforcement personnel contacted James's wife at her and James's home, she was under the influence of Xanax. Drug paraphernalia was in open drawers within reach of the small children. During the period of almost two years between their December 2004 removal and the conclusion of the termination of parental rights hearing the children have remained in foster care.

After over a year of offering and providing a variety of services, the State filed a petition for termination of parental rights in January 2006 and an amended petition in March 2006. The juvenile court held a hearing on several dates, and later received an agreed-to evidentiary deposition. The court thereafter filed lengthy and detailed findings of fact, conclusions of law, and an order terminating parental rights. The court terminated Amy's parental rights pursuant to Iowa Code section 232.116(1)(f) (2005) (children four or older, adjudicated CINA, removed from parents at least twelve of last eighteen months, cannot be returned at present time). It terminated James's parental rights pursuant to Iowa Code sections 232.116(1)(f) and (g) (children adjudicated CINA, parent's parental rights to another child previously terminated, parent unable or unwilling to respond to services, additional period of rehabilitation would not correct the situation). Amy and James each 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).

Amy first claims: “The trial court improperly placed the burden of proof on mother to show that the children could be returned to her custody.” We disagree.

Amy bases this claim on the following emphasized part of one sentence from the juvenile court’s “Conclusions of Law” that reads as follows:

The children have been removed for more than 18-months, and *there is no credible evidence to suggest that the children could be returned home in the reasonably foreseeable future.*

(Emphasis added.)

The juvenile court made lengthy and detailed findings of fact, some of which we summarize hereafter in dealing with the other issue Amy raises on appeal, and which we find fully support its finding and ultimate conclusion that the children could not be returned to Amy at the time of the termination hearing. In its ruling the juvenile court’s above-quoted conclusion of law is shortly preceded by this conclusion of law: “That the burden of proof is upon the Petitioner by clear and convincing evidence.” Later in its conclusions of law the juvenile court reiterates or re-emphasizes the point, concluding: “That facts sufficient to establish the grounds for termination of the parental rights of Amy [ ], as mother of the children . . . , have been established by clear and convincing evidence.”

The emphasized portion of the sentence in question must be viewed, not in isolation but in the context of the juvenile court’s entire ruling. When we do so we find nothing to support this claim of error.

Amy also claims: “The State has failed to prove by clear and convincing evidence that the child (sic) could not be returned to the custody of Amy [ ].”

Amy, twenty-three years of age at the time of the termination hearing, began using drugs at age twelve. She gave birth to Jimmy at age sixteen, moved in with Dustin at age seventeen, gave birth to Hunter, and later married Dustin who is not the father of either of the children. She continued to reside with Dustin, exposing the children to him, after he was accused of indecent contact with a child. Dustin was convicted of that crime in mid-2004. Amy remains married to Dustin. There is concern the children may have been subjected to sexual abuse in the same time frame that Dustin had indecent contact with another child.

Hunter tested positive for THC (tetrahydrocannabinol) at birth. In mid-2004 Jimmy tested positive for exposure to methamphetamine. Services were offered to Amy, James, and the children from the time CINA proceedings began in mid-2004. Juvenile court CINA hearings, including adjudication, disposition, temporary removal, review, and permanency, were held between September 2004 and December 2005 inclusive. Amy did not attend.

Amy gave birth to a daughter in late November 2005. The person Amy thought to be the father is not the father. Amy belatedly began to avail herself of some services at about the time her daughter was born. In mid-January 2006 Amy's two-month-old daughter was found to have multiple, bi-lateral, non-accidental rib fractures, resulting from application of force and consistent with someone squeezing her. The infant was placed in foster care, where she

remained at the time of the termination hearing. A “founded” report for denial of critical care and physical abuse resulted.

Amy’s claim of error implicates the fourth element of section 232.116(1)(f), whether the children could be returned to her custody at the time of the termination hearing. The fourth element is met when the evidence shows the children cannot be returned because they 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 children’s initial removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

Amy has not had contact with the children since July 2004. Despite legitimate and continuing concerns about her lengthy history of substance abuse, her exposure of the children to illegal drugs, and her relationship with sexual perpetrators, she failed or refused to avail herself of necessary and available services until the end of 2005. Then, in January and February 2006 new and additional concerns arose with the physical abuse of her infant daughter. We agree with the juvenile court that at the time of the termination hearing the children could not be returned to Amy without being subject to the threat of harm in the form of abuse or neglect that would cause them to remain children in need of assistance. We therefore conclude the State has proved the fourth element of section 232.116(1)(f) and affirm the termination of Amy’s parental rights.

James first claims: “Clear and convincing evidence does not exist in the record to support termination of parental rights where father has cooperated with

court ordered services.”<sup>1</sup> The State has in its response to James’s petition on appeal succinctly yet comprehensively summarized the evidence relevant to this issue. We therefore quote from that document, with citations to the record omitted.

The boys were placed with their father in June 2004. The boys were adjudicated to be children in need of assistance in September 2004 and were continued in the care of the father in November 2004. In December 2004, the children were removed from the care of the father. At that time, it was discovered that when authorities went to the home, they found drug paraphernalia in opened drawers within reach of the children. The father’s wife admitted to abusing prescription medications. The father himself admitted to taking his children’s medications and injecting into himself. The father’s wife admitted to drug use since May 2004. The father was incarcerated for child endangerment and sentenced to two years in prison. In December 2005, he had been placed in residential facilities and granted supervised visitation. At the time of the termination hearing, he was in transitional housing. His probation will continue to 2007.

Although the father has cooperated with the services available to him, he has not been in an unsupervised setting. There is not enough evidence to show that the father could remain stable and safe after the termination of Juvenile Court involvement. The DHS believed that relapse was likely. The father has at least a thirty-year history of substance abuse and he has a criminal history that includes burglary and drug related charges. He also has a history of domestic violence against two women. The Juvenile Court properly concluded that the father had a long history of substance abuse and criminal activities. Although he was showing progress, this had happened before and was revealed to be deceptive. The father’s [recent] use of his son’s name to obtain cable services demonstrated that the father’s deception continued. The children could not be safely returned to the father’s care at the time of the termination hearing. Further, with the father’s history, the children could not be returned to his care in the reasonably foreseeable future.

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

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<sup>1</sup> We recognize that James has made progress in employment, education, and drug treatment over the period of more than one year immediately preceding the termination hearing.

provisions in order to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). As to James's appeal, we choose to focus on section 232.116(1)(f). We agree with the position of the State, as quoted above, and find the State has proved grounds to terminate James's parental rights under section 232.116(1)(f).

James also claims: "Termination of parental rights is not in the children's best interest." We disagree.

Many of the facts that demonstrate the children could not be returned to James at the time of the termination hearing also suggest that termination of his parental rights is in their best interest. Other facts support and lead to that conclusion. The children have had behavioral problems, and have been prescribed medications for those problems.<sup>2</sup> The problems include attention deficit/hyperactivity disorder, post-traumatic stress disorder, and sexually acting out. The children require vigilant supervision and need stability after years of chaotic, unstable life. The children have been removed from James for over one and one-half years.<sup>3</sup> James's parental rights to two other children were terminated in January 2006. There is not an observable substantial bond between James and the children. We conclude termination of James's parental rights is in the children's best interest in order that they may acquire the security, stability, and permanency they need and deserve.

**AFFIRMED ON BOTH APPEALS.**

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<sup>2</sup> One of the children is no longer being medicated, and the other was off medication for the summer.

<sup>3</sup> In fact, James has lived with Jimmy only about one year of Jimmy's life and has lived with Hunter only about one-half year of his life.