

**IN THE COURT OF APPEALS OF IOWA**

No. 8-507 / 08-0788  
Filed July 16, 2008

**IN THE INTEREST OF A.W., Jr.,  
Minor Child,**

**A.W., Jr., Minor Child,  
Appellant.**

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

The attorney and guardian ad litem for the child appeals the juvenile  
court's order denying the State's petition to terminate parental rights.

**REVERSED AND REMANDED.**

Michelle R. Saveraid of the Youth Law Center, Des Moines, for appellant  
minor child.

Joey T. Hoover of Kragnes & Associates, P.C., Des Moines, for father.

Jesse A. Macro Jr., Des Moines, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
County Attorney, John P. Sarcone, County Attorney, and Corey McClure,  
Assistant County Attorney, for appellee State.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

**MAHAN, J.**

The attorney and guardian ad litem for the child appeals the juvenile court's order denying the State's petition to terminate the parental rights of Alex and Jasmine with regard to their two-year-old son, A.W. We reverse and remand with directions.

**I. Background Facts and Prior Proceedings**

Alex and Jasmine have a long history of abusing illegal substances. In July 2005 Jasmine's parental rights were terminated in regard to her son, C.W., primarily due to her use of illegal substances, her mental instability, and domestic violence in the family home. A.W. was born to Jasmine and Alex in March 2006. The Iowa Department of Human Services (DHS) became involved in June 2007 when both parents were sent to jail because of a domestic altercation. A.W. began to spend less and less time with his parents. By October A.W. was staying with his great-grandmother for weeks at a time. On October 19, 2007, the State filed a petition contending A.W. was a child in need of assistance (CINA). The State also asked the court to issue a temporary order removing A.W. from his parents' care.

On October 24, 2007, the matter came before the juvenile court for a contested removal hearing. The court noted that Jasmine admitted to using marijuana and methamphetamine and that she was homeless. The court also noted that Alex admitted he was not in a position to care for A.W. The court ordered that A.W. be removed and placed with his maternal great-grandmother due to "exposure to illegal drugs" and "neglect/physical abuse due to domestic violence."

On November 6, 2007, A.W. was adjudicated CINA pursuant to Iowa Code sections 232.2(6)(c)(2) (child is likely to suffer harm due to parent's failure to exercise care in supervising child) and (n) (parent's mental condition and/or drug abuse results in child not receiving adequate care) (2007). The court ordered that A.W. remain in his great-grandmother's care. Shortly thereafter, Alex and Jasmine moved to Colorado.

On December 5 the court held a CINA disposition hearing. Jasmine called from Colorado to participate in the hearing. Alex did not personally participate in the hearing. The court confirmed that A.W. remained CINA and adopted the DHS case permanency plan.

Jasmine and Alex moved back to Iowa in January 2008. On February 6, both used marijuana. Five days later, the State filed the present petition to terminate their parental rights. The court set a date for the termination hearing and ordered each parent to provide a drug screen by a hair test. Alex's March hair test came back positive for cocaine while Jasmine's test was inconclusive because her hair sample was too damaged to test.

At the April 23 termination hearing, Alex and Jasmine testified that they had not completed any drug screens, beyond the hair test, because they did not have the \$10 fee to pay for a drug screen. However, they also testified that they had recently received a \$3000 tax refund and used that money to rent an apartment, purchase a car, and purchase home furnishings. Though neither was working at the time of the hearing, they also claimed to have worked temporary jobs during the preceding months. Their primary source of income was

approximately \$650 a month in unemployment compensation from Alex's previous employer.

On May 7, 2008, the juvenile court issued an order denying the termination petition. The court determined the State had met its burden to prove the statutory grounds for termination under Iowa Code section 232.116(1)(h), but found termination was not in A.W.'s best interests because he was placed with a relative pursuant to section 232.116(3)(a).

The attorney and guardian ad litem for the child now appeals, claiming both parents' parental rights should be terminated on the grounds requested by the State. The State joins in the guardian ad litem's request for termination.

## **II. Standard of Review**

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Grounds for termination must be proved by clear and convincing evidence and our primary concern is the child's best interests. *Id.*

## **III. Merits**

We, like the juvenile court, find there was clear and convincing evidence to prove the statutory grounds for termination pursuant to Iowa Code section 232.116(1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home). The only pertinent issue on appeal is whether termination is in A.W.'s best interests.<sup>1</sup>

Section 232.116(3)(a) states the court may elect to not terminate parental rights when a relative has legal custody of the child. This provision is permissive,

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<sup>1</sup> Accordingly, we do not address any additional arguments pertaining to alternative statutory grounds for termination.

not mandatory. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa Ct. App. 1996). The juvenile court concluded termination was not in A.W.'s best interests because he was in the care of a relative and his parents were making progress towards reunification. We respectfully disagree with the juvenile court's best interests finding.

A.W. was removed in October 2007 because (1) his parents were abusing drugs and (2) his parents were unable to provide him a home free from domestic violence. The permanency plan adopted at disposition required that Jasmine obtain a mental health evaluation, follow recommendations, and manage her medications. Both parents were also required to participate in random drug screenings, seek employment, obtain stable housing, and attend therapy to address their domestic violence issues.

The record reveals that the parents made some progress towards fulfilling the permanency plan—they obtained housing, sought employment, and Jasmine began taking medication for her bipolar disorder. However, they only made sporadic attempts to address their domestic violence issues and did little to address their substance abuse issues.

Alex made a minimal attempt to obtain anger-management treatment. He did not begin participating in classes until approximately one month before the termination hearing. Even then, he participated in only two of the four scheduled classes. Jasmine did not begin participating in psychotherapy for her anger until the State filed the present termination petition. Likewise, her attendance at these scheduled therapy sessions was, at best, inconsistent.

We find nothing in the record to convince this court that either parent has adequately addressed their sobriety. Both parents used marijuana approximately two and one-half months prior to the termination hearing. Though Jasmine claimed she has arranged to attend a substance treatment program in the future, the fact remains that neither parent has completed a substance abuse treatment program since the October removal. Alex testified that he did not need treatment because he had overcome his addiction on his own, yet a hair stat test conducted approximately one month prior to the termination hearing discovered cocaine in his system. Most importantly, neither parent has cooperated with random drug screening or provided a sample for urinalysis testing in the more than six months since A.W. was removed from their care.

The law requires a “full measure of patience with troubled parents who attempt to remedy a lack of parenting skills.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). This patience has been built into the six-month statutory scheme set forth in section 232.116(1)(h). See *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). When the statutory grounds for termination of parental rights exist, the needs of a child are generally promoted by termination. *In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa 1992). The purposes of this six-month limitation are “to prevent children from being perpetually kept in foster care and to see that some type of permanent situation is provided for the children.” See *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993) (discussing the limitation found in section 232.116(1)(e)).

While we understand the juvenile court’s desire to give these parents another chance to seek treatment for their substance abuse and domestic

violence issues, we simply cannot agree that such additional time is in A.W.'s best interests. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *A.C.*, 415 N.W.2d at 613. "We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children." *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997).

Alex and Jasmine have demonstrated that they are unable to provide for A.W.'s care at this time. Based on their lack of participation in substance abuse treatment, anger management treatment, and random drug screenings, we find no reason to conclude they would be able to do so in the foreseeable future. After considering A.W.'s short term and long-range interests, we conclude immediate termination of both parents' parental rights will provide him with the permanency he deserves. See *J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Accordingly, we reverse the juvenile court's decision and remand for entry of an order consistent with this opinion.

**REVERSED AND REMANDED.**

Huitink, J., concurs; Sackett, C.J., dissents.

**SACKETT, C.J.** (dissenting)

I dissent. I would affirm the juvenile court.

The juvenile court found the grounds for termination were not proven by clear and convincing evidence and termination is not in the child's best interest and services should continue. It also found that progress is being made and it is possible with additional rehabilitation the problems may be corrected. The child has a bond with his parents and his mother's extended family. The child here has been in the care of the mother's family and will remain in that care if parental rights are not terminated. While there is a suggestion the child might be adopted by the mother's aunt, the record is insufficient to make a finding this would happen. The juvenile court has set a review hearing for August 26, 2008, and has specifically set out the changes expected before the parents can reclaim their child, thus providing clear guidance for the parents. Giving the required discretion to the juvenile court and recognizing the juvenile court, unlike this court, has had the opportunity to directly observe the parents and the witnesses I would affirm.