

**IN THE COURT OF APPEALS OF IOWA**

No. 9-675 / 09-0950  
Filed October 7, 2009

**IN THE INTEREST OF J.P. and J.P.,  
Minor Children,**

**M.P., Mother,**  
Appellant,

**C.S.P., Father,**  
Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

A mother and father appeal from the termination of their parental rights.

**AFFIRMED ON BOTH APPEALS.**

Tammy L. Banning of Tammy L. Banning, P.L.C., Waterloo, for appellant mother.

Delmer D. Werner, Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen A. Hahn, Assistant County Attorney, for appellee State.

Linnea Nicol, Waterloo, for minor children.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

**DOYLE, J.**

A mother and father appeal separately from the order terminating their parental rights. Upon our de novo review, we affirm.

***I. Background Facts and Proceedings.***

M.P. is the mother and C.P. is the father of J.P., born August 2006, and J.P., born August 2007. The mother has been diagnosed with bipolar disorder, attention-deficit/hyperactivity disorder (ADHD), and borderline personality disorder. The mother has also been diagnosed with mild mental retardation and is the recipient of the Mental Retardation Waiver.<sup>1</sup> The father has been diagnosed with mood disorder, personality disorder, ADHD, and a learning disorder. Both parents take medications for treatment of their mental health conditions; however, the mother has a history of not taking her medications on a regular basis. Both parents have a history of alcohol and substance abuse.

The children came to the attention of the Iowa Department of Human Services (Department) on May 5, 2008, after it was reported that the family's home was in an unsanitary condition and the children had poor hygiene and were frequently ill, including having sinus and respiratory problems. A child protection assessment was initiated by the Department, and the parental home was found to pose a safety and sanitation concern. During the assessment, the home was observed to have piles of clothing and other belongings strewn about; the carpet could not be seen. Bags of garbage were overflowing onto the floor, and there was a foul odor about the home. Dishes had old food caked on them. The

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<sup>1</sup> The Mental Retardation Waiver pays for services to persons with a primary diagnosis of mental retardation who would otherwise require care in a medical institution.

children also had access to lantern fuel. The parents took the children to stay with the children's paternal grandmother for a short period of time while the parents cleaned the home. The parents were able to clean the home to make it safe and sanitary for the children to return, and the Department gave permission for the children to return to the home.

In June 2008, family, safety, risk, and permanency services were initiated with the family through service provider Lutheran Services in Iowa (LSI). A case plan was completed with goals for the parents, including that they follow through on mental health treatment, develop and expand their parenting skills, and maintain a safe and stable home environment. Specific steps included for the family to work to maintain their home to avoid health and safety hazards; meet mental health needs; meet regularly with the Department and LSI; and for LSI and the family to address issues of organization, maintaining and monitoring the condition of the home, housing, parent education, community resources, coordinating with other professionals, coping, and budgeting.

On August 18, 2008, new concerns regarding the condition of the home were reported. Two Department workers conducted a home visit the next day and found that the family's home smelled of animal urine. The family's cat's litter box was on the floor of the kitchen with feces in and around the area. An open box of cookies and a ripped open bag of bread also lay on the kitchen floor. The kitchen was cluttered with old food and food that required refrigeration after opening, such as juice containers and salad dressing. The family had been without electricity since the onset of services. Other areas of the home were so cluttered that it presented a fire hazard to the family.

On August 22, 2008, the Department filed an application for temporary removal of the children from the parents' home. On August 25, 2008, the State filed its petition asserting that the children were children in need of assistance (CINA). On August 28, 2008, juvenile court granted the Department's application for removal, finding that sufficient evidence had been shown that to return custody of the children to their parents at that time would place the children in imminent risk of abuse or neglect as a result of the condition in the parental home. The children were placed in foster care and have not been returned to the parents' custody since the removal.

On September 18, 2008, following a stipulation by the parties, the juvenile court adjudicated the children as children in need of assistance (CINA). The court found that because of concerns regarding inadequate supervision, limited parenting skills, and hazardous condition in the parental home, a return of custody to the parents at that time was contrary to the welfare of the children. The court ordered that custody of the children remain with the Department. The court further ordered the parents to complete mental health evaluations and assessments and ordered visitation as approved by the Department and the children's attorney and guardian ad litem.

During the course of these proceedings, the parents received or were offered many services, including child welfare services, safety, permanency, and at-risk services, parent skill development, supervised visitation, family foster care, individual mental health services, substance abuse treatment, drug testing, Title XIX assistance, family team meetings, and other individual parenting services, transportation assistance, licensed professional of the healing arts

evaluation, domestic violence services, vocational rehabilitation, adult supportive services, couples' counseling, money management services, housing assistance, and other community-based programming. Providers working with the mother have utilized techniques including modeling, writing, providing reading materials, verbal prompts, summarization, and simplification in order to assist the mother in acquiring the minimal skills to parent the children. Providers have provided the family with calendars, as well as cooking and cleaning appliances and supplies, including a crock-pot and two vacuum cleaners on two separate occasions.

The parents appeared to be progressing, but on October 9, 2008, the parental home was again observed to be unsuitable for the children. The home was very cluttered with piles of clothes and boxes throughout the home with very little room to move around. Parents explained they had sold their home and had to move everything out in less than two days and were in the process of sorting through their things.

The Department's worker reported on October 22, 2008, that the parents had made improvements since the children's removal. However, on October 28, 2008, the parents' visit with the children ended early after the mother's behaviors went out of control. The mother yelled at the service provider, blaming her for the children being in foster care. Later during the visit, after the provider suggested the mother use redirection or distraction instead of physical discipline, the mother yelled and swore at the provider. The mother physically advanced towards the provider, and the provider ended the visit. The mother stated to the paternal grandmother, who was present at the visit, that the grandmother should help the father take the children to the car, because if she went outside, she

would “snap” and “something would happen” that would result in the police getting called. The worker heard the mother say as she was leaving that she was going to admit herself to the hospital.

The mother admitted to using methamphetamine at the end of October 2008. The mother admitted herself for substance abuse treatment but left after four days. The mother then contacted a substance abuse treatment provider for treatment. The provider evaluated the mother and recommended outpatient treatment. The provider reported that mother’s attendance in the program was about fifty percent, but that the mother generally called to say she is ill and would not be attending and only had one “no-show.” The parents agreed to provide random drug screens; none have tested positive for illegal substances.

In December 2008, it was again reported that the parental home was very messy, cluttered, and not appropriate for children. Two service providers helped the mother clean the home while the father was at an appointment. When the father came home, he became very upset that the providers were helping the mother get rid of their garbage. One of the service providers felt very uncomfortable and requested the parents meet the provider in a neutral setting in the future.

Although they both had problems with alcohol in the past and the mother was in substance abuse treatment, the parents admitted to drinking alcohol on New Year’s Eve. It was reported the family was again behind on their rent and utilities, yet were reluctant to accept services that help with budgeting. After an incident that occurred on January 21, 2009, the parents separated. On that night, the parents had been at a bar, and the mother consumed alcoholic

beverages. The father let the mother drive his car to purchase cigarettes, although he knew she did not have a valid license. The mother left the bar with another man and did not return right away. The father became concerned and called the police. The mother later returned to the bar, consumed more alcoholic beverages, and went home with another man. The following morning, the father picked the mother up at the male's home, and the parents went to meet a service provider for an appointment. The parents got into a serious argument during the appointment about the events that occurred the previous night and the father stated he was going to file for divorce. The mother then went into the bedroom and contacted the police stating she needed a ride to the hospital as she was going to have herself committed. The parents continued to argue. The police eventually arrived and transported the mother to the hospital. The mother voluntarily released herself the next day after the father attempted to have her committed by the court. The parents reconciled thereafter and decided to try marriage counseling, but the children's visits were moved from the parental home to the service provider's office due to safety concerns.

On January 28, 2009, a review hearing was held. The juvenile court found that:

Despite the offer and receipt of . . . services, numerous concerns continue to exist. The parents' home has recently been observed to be in an extremely deteriorated condition which would likely place the children at risk. The court is advised that medication, tobacco product, and other hazardous items have been found within easy reach for toddlers. Further, the court is advised the mother has recently exhibited several instances of poor decision making in her use of alcohol. The mother has also hospitalized herself on at least two separate occasions as a result of her limited coping skills. From the statements of the parents, the court questions whether the parents understand how their behaviors and

lifestyle choices affect their children and their ability to care for the children.

A permanency hearing was then set.

On February 9, 2009, it was reported that the parental home was again messy, had items cluttered throughout the home, food sitting out, and was not appropriate for the children. The mother had missed one mental health appointment in January and was a “no show” in February. The father was also a “no show” at an appointment in February. On February 16, 2009, a transition plan was put in place for moving visits with the children forward. The parents were to be sober for ninety days (including alcohol and illegal drugs), keep their home clean and an appropriate environment for the children, participate in marriage counseling, keep their relationship free of arguments and fighting, attend all Pathways appointments unless they had a valid excuse, make appointments with all providers involved in the case, and follow all mental health recommendations.

On February 17, 2009, the parents received a second eviction letter stating they owed approximately \$1100 to their landlord. Workers were concerned, as the parents had recently purchased two computers, a flat screen TV, a game system, and had internet service and three phones in service. Additionally, the parental home’s bathroom was found to be inappropriate for the children on February 18, 2009.

On February 26, 2009, a permanency hearing was held. The court found that the permanency goal should be changed from reunification to termination of parental rights. The court found the parents had been involved with the



Department and services since July of 2008 and continued to be inconsistent in their participation in services and lacked the stability to provide for the basic needs of their children.

On March 3, 2009, the police were called to the parents' marriage counseling session after the mother became very angry and out of control. The parents again separated in early March 2009. While the parents were separated, it was reported that the mother was smoking marijuana and consuming alcohol, although those reports were unverified. On March 11, 2009, it was reported that the father had sexually abused one of the children. The mother left a message on the Department worker's voicemail asking that the report be investigated, leading the worker to believe the mother had been the reporter of the claim. The claim was determined to be unfounded. On March 19, 2009, the State filed its petition for termination of the parents' parental rights. On March 25, 2009, the home was once again found not appropriate for the children.

The parents reunited in April 2009 and had secured new, appropriate housing. On April 9, 2009, mother called one service provider very upset, screaming into the phone. The mother had received a call from Social Security that her SSI checks would be suspended until the mother got set up with a payee through an agency. The mother accused the provider of turning her into Social Security for misuse. The father also screamed on the phone at the service provider. The mother then terminated services with the provider. It was also reported that the mother drank alcoholic beverages in early April.

A contested termination hearing was held on May 21, 2009. At the time of the termination hearing, the parents were reconciled and engaging in services to

address their relationship with a new marriage counselor. The parents testified their relationship had improved immensely. They had had five sessions with their new counselor, and their counselor testified he was optimistic regarding the parents' positive progress made thus far and identified no safety concerns in their relationship. The mother was taking new medication and testified it was helping with her anger management issues.

The Department worker and service providers who testified at the hearing testified the parents and children have a bond and that the parents love their children very much. The parents' visitation attendance was consistent throughout the case, with the parents missing very few visits with their children. Additionally, the workers and providers testified that at the time of trial, the parents' new apartment was clean and appropriate for the children. However, the workers and providers testified that the parents' progress throughout the case could be characterized as one step forward, two steps back. Melissa Denning, a service provider with Family and Children's Council, testified that the condition of the parents' home, their financial stresses, and their relationship issues "all [went] together. . . . [W]hen one thing collapses, . . . everything seems to go under, and then we have to start back at ground zero." Denning testified she was concerned with the parents' volatile relationship and the instability that resulted. Although the parents' interactions with the children during visits were generally appropriate, Denning testified that the parents' relationship problems have affected the visits. Additionally, Denning testified that the parents were capable of cleaning up their apartment initially, but when problems arose, the condition of the house deteriorated pretty quickly and that once it deteriorated, it was really

hard to get the momentum and inertia for clean-up and appropriateness to happen again. Denning testified the parents often received eviction notices and that they did not really make any further effort because they would be moving. Then, after moving into a new place, the parents would maintain cleanliness for a bit, but then the condition would deteriorate again.

Lyle Potter, a service provider with LSI, testified that since the parents' last separation, there seemed to be more emphasis on the kids meeting the parents' needs, "give me affection. I want to be acknowledged." He testified that the parents' ability to safely parent went hand in hand with their relationship issues, and that if there was a lot of conflict going on or marital issues, "it definitely affect[ed] the way that [the parents] parent [and] their level of patience with the kids." He testified he supported the Department's recommendation that the parents' parental rights be terminated:

Because I do not see the volatility of the relationship going away because of the many different times. Like . . . the ups and downs. There's ups and downs, always, there is in any relationship. But it really concerns me when one of them will leave and—like I talked to [the parents], what happens if the kids are at home and something goes awry, and you don't see eye to eye? What happens if one of you takes off? And they . . . said, "Well, the kids will be okay." I'm like, "Who will they be with?" You know? "Who'd going to be taking care of them?" You know? And they couldn't give me an answer.

Potter testified that the parents' marital ups and downs were not typical marital ups and downs but extraordinary. Potter acknowledged that the parents and children were bonded, but testified that the children had bonded with other people, including their foster parents. Although Potter testified that his concerns about the children being returned to the parents might be alleviated if there were

consistency and stability in the parents' relationship for an extended period of time, he testified that the parents would have to show stability in their relationship for at least six months or maybe longer.

The Department's social worker assigned to the case testified that the parents would make positive strides, their home would be appropriate, and they would be moving forward to semi-supervised visits, but something would deteriorate and there would be an outburst or crisis that happens, setting the parents back. The worker testified the parents were inconsistent with services throughout the case, including following through with the recommendations of their mental health counselors and there were concerns about whether the parents were taking their medications.

On June 16, 2009, the juvenile court entered an order terminating the parents' parental rights to the children pursuant to Iowa Code section 232.116(1)(e) (2009) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child) and pursuant to 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 court found that because of the children's ages and the parents' limited internalization of the services offered, lack of safe and sanitary housing, history of chaotic lifestyle choices, domestic violence, substance abuse and mental health issues, it was clearly in the children's best interests and the community's best interests that the parents' parental rights be terminated.

The parents now appeal separately.

## ***II. Scope and Standards of Review.***

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Evidence is clear and convincing when it leaves "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). Our primary concern in termination cases is the best interests of the children. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

## ***III. Discussion.***

On appeal, both parents argue the State failed to establish by clear and convincing evidence grounds for termination. Additionally, the father contends the court erred in determining termination was in the children's best interests. We address each argument in turn.

### ***A. Grounds for Termination.***

When the juvenile court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate under one of the sections cited by the court in order to affirm the court's ruling. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). In this case, we choose to focus our attention on section 232.116(1)(h) as the basis for termination. Section 232.116(1)(h) permits termination of parental rights if all of the following have occurred:

- (1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Here, the parents do not dispute the first three elements of section 232.116(1)(h).

Rather, both parents argue that the State failed to prove by clear and convincing evidence that the children could not be returned to their custody. We disagree.

The legislature incorporated a six-month limitation for children in need of assistance aged three and below. Iowa Code § 232.116(1)(h)(3). Our supreme court has stated that “the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights.” *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the State having been legislatively set, we are obligated to heed the statutory time periods for reunification. The children first came to the attention of the Department in May 2008. The children were removed from their parents' home in August 2008. The children were adjudicated CINA in September 2008. By the time of the termination hearing the children had been out of their parents' custody for ten months. The statutory six-month period expired with little evidence that the parents could maintain their relationship to provide the necessary stability to safely parent their children in an unstructured, unsupervised setting. The parents' lack of progress raises serious concerns about their ability to meet the needs of their children in the future. While we commend the recent progress the

parents have made in attempting to address their longstanding relationship issues, such efforts are “simply too late.” See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). The record clearly establishes a pattern that the parents are able to maintain a safe and clean home for a short period of time with the assistance of others, but eventually let the home get messy to the point where it is unsafe for the children, despite repeated prompts and assistance. A parent’s past performance may be predictive of the quality of the future care that parent is capable of providing. *Id.* The record establishes that the parents’ volatile relationship causes the condition of the home to deteriorate such that it is unsafe for the children. The parents have failed to grasp the importance of their avoidance of substances and alcohol, which often lead to their relationship issues. Unfortunately, the record reflects that the children cannot be safely returned to the parents at this time.

“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.” *Id.* “When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *Id.* For the above reasons, we agree with the juvenile court’s decision to terminate the parents’ parental rights to the children.

**B. Best Interests.**

The father next contends termination was not the children's best interests. As stated above, our primary concern in termination cases is the best interests of the children. *A.S.*, 743 N.W.2d at 867. "A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Those best interests are to be determined by looking at the children's long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the children if the children are returned to their parents. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parents' past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

On our de novo review of the record, we find termination of the father's parental rights is in the children's best interests. There was no evidence in this record to establish that additional time would yield any different result. The children should not be forced to wait for permanency. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("[P]atience with parents can soon translate into intolerable hardship for their children."). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *J.L.W.*, 570 N.W.2d at 781. The children should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993). We conclude that termination is in the children's best interests.



***IV. Conclusion.***

Because we find clear and convincing evidence supporting termination of both parents' parental rights and termination is in the children's best interests, we affirm the juvenile court's decision terminating both parents' parental rights.

**AFFIRMED ON BOTH APPEALS.**