

**IN THE COURT OF APPEALS OF IOWA**

No. 9-726 / 09-1120  
Filed September 17, 2009

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

**A.J.S., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

Mother appeals from a juvenile court order terminating her parental rights to her son. **AFFIRMED.**

Jennifer Lerner, Muscatine Legal Services, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Gary Allison, County Attorney, and Korie L. Shippee, Assistant County Attorney, for appellee.

Esther Dean, Muscatine, attorney and guardian ad litem for minor child.

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

**SACKETT, C.J.**

Angela appeals the juvenile court order terminating her parental rights to one of her sons, A.P. She contends the court erred in determining, (1) there was clear and convincing evidence to support grounds for termination, and (2) that the State made reasonable efforts to reunify Angela with A.P. We affirm.

**I. BACKGROUND AND PROCEEDINGS.** A.P. was born in October of 2001. He came to the attention of the Department of Human Services in April of 2007 when his older brother was admitted to a hospital for mental health concerns. Voluntary services were initiated and included increased supervision in the home, safety planning, more consistent parenting, and mental health treatment for the mother, Angela, and her three children, including A.P. The children were removed from the home in October 2007, after Angela attempted suicide while caring for the children. The children were adjudicated children in need of assistance (CINA) in December of 2007. A.P. was placed in a foster home.

At the time A.P. was removed from the home, he acted infant-like although he was six years old. He was fairly non-verbal and often crawled like a baby or acted like a cat. He struggled with encopresis and enuresis and wore pull-up diapers. He was unwilling or unable to dress himself and Angela or an older sister would change him. Dr. Resmiye Oral from the University of Iowa Hospitals and Clinics Child Assessment Center performed a psychological evaluation of A.P. on January 18, 2008. The doctor concluded there were significant concerns that emotional abuse and neglect caused medical and mental health problems

for the children. She noted Angela's treatment of A.P. caused his emotional and developmental problems. She recommended additional services for the children, including play therapy, and suggested the children have no visitation with Angela for three months. In the doctor's opinion, Angela did not understand the effects her mental illness had on the children.

Angela cooperated with the services the Department of Human Services offered. She completed substance abuse treatment and attends AA meetings. She has been sober since November 2007. She sees a therapist each week and completed participation in a group for persons with borderline personality disorder. Despite Angela's improvement, professionals involved in the case remained concerned about Angela's ability to parent. The social worker and Angela's therapist reported that Angela lacked insight into how her mental illness has caused harm to the children. Professionals found Angela continued to allow her mental health needs to impact the children emotionally and she does not find herself accountable for the damage caused to the children.

A permanency hearing was held in October 2008. Angela requested, and the Department of Human Services recommended, that she be given six additional months to work toward reunification. The district court refused the request and ordered that a petition for termination of parental rights be filed with regard to A.P. We affirmed this decision. See *In re A.P.*, No. 08-1997 (Iowa Ct. App. Mar. 11, 2009).

By March 2009, Angela had two supervised visits with A.P. per week, each two hours in duration. During visits Angela often made A.P. something to

eat and had an age appropriate activity planned. The worker noted no safety concerns were present in the home and Angela would use appropriate direction toward A.P. when he misbehaved. The Department of Human Services continued to report concerns however. It noted that Angela did not initially accept her older son's report of sexual abuse allegedly perpetrated by the older sister. Although Angela stated she would ensure the older sister would not be left alone with the sons, the Department expressed doubts. It reported that the older sister had her own apartment but would spend time at Angela's daily and often spent the night there. The Department also reported that Angela did not accurately measure her children's feelings, talked with the children about adult issues, and relied on her children as her support system. It also noted that although Angela appears stable at times, there are also times when she has difficulty regulating her emotions, which could stem from her borderline personality disorder. It explained that it is difficult to determine when Angela is being truthful or dishonest.

A.P.'s development progressed when he was placed in foster care. He quickly learned to dress himself and only had isolated instances of encopresis and enuresis, most often occurring during visitations with Angela. By February 2009, A.P. had made improvement in communicating his feelings and emotions but remained vulnerable because of his delayed communication development. Even after Angela's participation in services, the Department found the children remained at risk if placed with Angela. The March 6, 2009 case progress report states "[t]he threat of emotional abuse remains due to the years of prior abuse

and the abundance of previous founded abuse reports . . . .” A petition to terminate Angela’s rights to A.P. was filed on March 19, 2009. The State asserted there were grounds to terminate Angela’s rights under Iowa Code sections 232.116(1)(e), (f), (k), and (l) (2007). The district court did not find clear and convincing evidence supporting termination under sections 232.116(1)(e), (k), or (l), and dismissed the petition as to those grounds. The district court did find clear and convincing evidence to support termination under section 232.116(1)(f).<sup>1</sup> Angela appeals, contending there is not clear and convincing evidence to support the termination and the State did not use reasonable efforts to reunify her with A.P.

**II. SCOPE OF REVIEW.** Our scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). We review the facts and law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). The State must prove the grounds for termination by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). “Clear and convincing evidence is evidence that 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) (quoting *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983)). We give weight to the fact findings of the juvenile court but are not bound by them. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

**III. MERITS.** Under Iowa Code section 232.116(1)(f), a court may terminate a parent’s rights to a child if the court finds

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<sup>1</sup> The father’s rights were also terminated because the court found he had abandoned A.P. under Iowa Code section 232.116(1)(b). The father has not appealed this ruling.

- (1) The child is four years of age or older.
- (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 twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Angela argues there is not clear and convincing evidence to support the termination. For evidence she notes the juvenile court found there was not clear and convincing evidence to support the termination on more specific grounds provided in sections 232.116(1)(e), (k), or (l), and instead had to rely on the "catch-all" provision of section (f) because the State had a weak case. This argument is unpersuasive. The State only needs to prove one ground for termination. *In re R.R.K*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995) (stating that we only need to find grounds for termination under one section of 232.116 to affirm the termination). The fact that the juvenile court found the other grounds not supported by clear and convincing evidence does not mean there is a lack of evidence to support termination under section (f). Furthermore, it is not important whether the juvenile court terminated Angela's rights under a more specific provision or under a more general section. A parent's rights can be terminated on any of the grounds listed.

Angela asserts there is not clear and convincing evidence to support the termination but she does not contest the Department's reports that the children cannot be returned to her care without suffering adjudicatory harm at this time. A.P. has been out of the home for nearly two years with no trial period of

returning to the mother's care. Her visits with A.P. have not advanced beyond the supervised stage.

In determining whether termination is appropriate, we must consider what the future holds for the child if returned to the parent. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). "When making this decision, we look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future." *Id.* In considering the mother's past performance as an indicator of her future ability to parent, we note the mother's older two children have serious behavioral and emotional problems that probably stem from years of neglect and emotional abuse.<sup>2</sup> We believe there is clear and convincing evidence to support the termination of Angela's parental rights to A.P. and affirm the juvenile court.

Angela also argues the State did not prove that reasonable reunification efforts were made. Prior to terminating a parent's rights, the State must provide reasonable services in an effort to preserve the family unit. *In re H.H.*, 528 N.W.2d 675, 677 (Iowa Ct. App. 1995); *In re T.C.*, 522 N.W.2d 106, 108 (Iowa Ct. App. 1994). Angela contends when the court ordered that a petition for termination of parental rights be filed, that the tenor of the case changed and no further reunification efforts were made. She does not specify what additional services should have been offered. The district court found reasonable efforts to

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<sup>2</sup> Angela's daughter purportedly struggles with substance abuse, mental health issues, and allegedly has sexually abused the older son. The older son has cut himself, which he stated he learned from Angela. The older son also has a history of starting fires and killing small animals. Angela's daughter is no longer under the Department's care as she has aged out of the system. Angela's older son was removed from a foster home and placed in a residential treatment facility because of his behavioral problems.

reunify were made and Angela progressed considerably through some services, specifically in the treatment of her mental health and substance abuse. However, the district court also found that visitations after the permanency hearing could not be increased because during previous attempts to increase visitation, A.P. exhibited anxiety and trauma. This finding is supported by the record. “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). A.P. needs permanency and a safe home environment. Angela has been provided numerous services to assist in reunification. Nonetheless she cannot resume custody of A.P. at this time. We therefore affirm the juvenile court’s termination of Angela’s parental rights.

**AFFIRMED.**