**IN THE COURT OF APPEALS OF IOWA**

No. 1-862 / 01-0619
Filed December 28, 2001

FILED
DEC 2 8 2001
CLERK SUPREME COURT

**IN THE INTEREST OF D.E. AND A.E., Minor Children,**

**D.E., Mother,**
Appellant.

**A.E., Father,**
Appellant.

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Appeal from the Iowa District Court for Polk County, Constance Cohen, Associate Juvenile Judge.

The mother and father appeal a juvenile court order terminating their parental rights to their children. **AFFIRMED.**

Tiffany J. Koenig and Christopher Kragnes, Sr., Des Moines, for appellant mother.

Bryan Tingle, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, M. Elise Pippin, Assistant Attorney General, John P. Sarcone, County Attorney, and Jenniffer A. Panko-Rahe, Martha Johnson and Bret Lucas, Assistant County Attorneys, for appellee-State.

Michael Sorci, Johnston, for the minor children.

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

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**MAHAN, J.**

The mother and father appeal a juvenile court order terminating their parental rights to their children. The parents contend the juvenile court abused its discretion by not utilizing the exception to termination under Iowa Code section 232.116(3)(a) (1999). We affirm.

**Background Facts and Proceedings.** Dannita and Anthony are the parents of Anthony, III, born on April 27, 1997, and Deanna, born on January 28, 2000. Deanna was removed from her parents' custody on February 4, 2000, due to her testing positive at birth for cocaine. The parents consented to the removal of Deanna, and she was placed in foster care. On February 23, 2000, Anthony, III was also removed from his parents' custody because the parents were actively using cocaine. The children were adjudicated to be children in need of assistance under Iowa Code sections 232.2(6)(c)(2) and (n). The court ordered the children's placement in foster care and ordered extensive services designed to reunify the family.

On May 22, 2000, because both parents were still testing positive for cocaine, the children were placed with their maternal grandmother, Delores, in Illinois, where they have remained. On July 25, 2000, a review hearing was held, and neither parent appeared. The court found that neither parent has complied with the extensive services that were previously ordered. In August 2000 the State filed a petition to terminate Dannita's and Anthony's parental rights to Deanna and Anthony, III. Prior to the termination hearing, both parents were

arrested in Illinois.[1] After a hearing in February 2001 the juvenile court terminated Dannita's and Anthony's parental rights under sections 232.116(1)(c), (g), and (k). Dannita and Anthony appeal.

**Standard of Review.** Termination proceedings are reviewed de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Although they do not bind us, we give weight to the juvenile court's findings of fact, especially when considering credibility of witnesses. *Id.* The primary interest in termination proceedings is the best interests of the child. *Id.* The State has the burden to prove the allegations of the petition by clear and convincing evidence. Iowa Code § 232.96.

**Termination of Parental Rights.** The court terminated Dannita's and Anthony's parental rights pursuant to sections 232.116(1)(c), (g), and (k). The actual grounds for the termination of their parental rights under these sections are not being contested or appealed.[2]

Rather, Dannita and Anthony contend the juvenile court erred in failing to consider the exception to termination as set forth in section 232.116(3)(a). The relevant portion of this section states:

> 3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

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[1] Dannita was arrested for providing false information while Anthony was arrested on forgery charges. At the time of the termination hearing, Dannita entered a substance abuse treatment program in Illinois. Anthony was still incarcerated in Illinois.

[2] Dannita concedes the grounds for termination have been met. Anthony does not argue that the statutory requirements for termination have not been proven by clear and convincing evidence. "Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue." Iowa R. App. P. 14(a)(3). The State contends, and we agree, that Anthony has therefore waived any argument as to the statutory requirements for termination.

(a) A relative has legal custody of the child.

Iowa Code § 232.116(3)(a). A termination, otherwise warranted, may be avoided under this exception. *In re D.E.D.*, 476 N.W.2d 737, 738 (Iowa Ct. App. 1991). The factors under section 232.116(3) have been interpreted by the courts as being permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). The words "need not terminate" are clearly permissive. *Id.* The court has discretion, based on the unique circumstances of each case and the best interest of the child, whether to apply the factors in this section to save the parent-child relationship. *Id.*

After a careful review of the record, we conclude Dannita's and Anthony's parental rights should be terminated, and we decline to apply the exception. The juvenile court properly exercised its discretion in this case.

Deanna and Anthony, III have waited for more than a year for their parents to provide the safe and stable home they need and deserve. Given their age and need for permanency and their parents' failure to utilize the services that would have fostered reunification, it is in the children's best interests parental rights be terminated. Accordingly, we affirm the juvenile court's order.

**AFFIRMED.**