

**IN THE COURT OF APPEALS OF IOWA**

No. 1-784 / 11-1360  
Filed October 19, 2011

**IN THE INTEREST OF C.C., N.R., L.R., K.P., and Y.P.,  
Minor Children,**

**I.R.-H., Father of N.R. and L.R.,**  
Appellant.

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Appeal from the Iowa District Court for Woodbury County, Mary L. Timko,  
Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

Matthew R. Metzgar of Rhinehart Law, P.C., Sioux City, for appellant  
father.

Alexander Esteves, Sioux City, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, Patrick Jennings, County Attorney, and J. Aaron Kirsch,  
Assistant County Attorney, for appellee State.

Marchelle Denker, Sioux City, for minor children.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

**DANILSON, J.**

A father appeals the termination of his parental rights to his two daughters. There is clear and convincing evidence for termination as the children are more than four years of age, have been out of their parents' custody for more than twelve months, have been adjudicated children in need of assistance, and the father is incarcerated and will remain so for some time. The children have been placed with siblings in a preadoptive home with relatives, which best provides for their safety and long-term nurturing and growth. We therefore affirm the termination of his parental rights.

**I. Background Facts and Proceedings.**

Israel is the father of N.R., born in 2004, and L.R., born in 2002. Israel was incarcerated in Minnesota in November 2006 when L.R. was four and N.R. was two. In 2007, Israel pled guilty to conspiracy to distribute methamphetamine and was sentenced to federal prison for 108 months.

On April 28, 2010, N.R., L.R., and their half-siblings K.P. (born in 1995, father—Bernardo), Y.P. (born in 1999, father—Bernardo), and C.C. (born in 2009, father—Carlos) were removed from their mother's custody following the arrests of their mother, Wendy, and Carlos on federal drug charges. All five children were placed with Israel's mother at the time of removal.

The five children were adjudicated children in need of assistance (CINA) on June 24, 2010. Home studies were initiated in California where Wendy's sister and brother-in-law lived, and in Iowa where C.C.'s paternal grandmother and step-grandfather lived.

On August 2, 2010, one-year-old C.C. was placed with his paternal grandmother and step-grandfather, who wished to adopt him.

Wendy's other four children—all girls—remained in the care of Israel's mother, Amelia,<sup>1</sup> until October 2010 when she asked that Y.P. be removed. The California home study was not yet complete. In order to keep the biological siblings together, Y.P. and K.P. were moved to shelter care, and eventually into foster care. Amelia had lost her job and was struggling financially.

A “dispositional review/permanency/concurrent jurisdiction” hearing was held on February 18, 2011. Wendy and Israel both remained incarcerated. The juvenile court noted that Y.P. and K.P. had not been able to visit with their siblings for a period of time after they were moved to foster care, which “caused a great deal of sadness for them.” The court observed C.C. was doing well in his potential preadoptive placement. The court noted the California home study had been completed and indicated that the home was appropriate; that Y.P. and K.P. expressed a desire to move to California; and that Wendy's sister indicated she was excited the children were coming to live with them. The court noted Wendy “is supportive of this placement. It was felt that, given the ages of the girls and the closeness of their sibling relationships, keeping them together was far more important than separating them.” The court also wrote:

[N.R.] and [L.R.] are comfortable under the care of their grandmother, [Amelia]. There are concerns, however, about the

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<sup>1</sup> Amelia is not biologically related to Y.P. and K.P. A September 29, 2010 dispositional order placed Y.P. and K.P. in her care as another suitable adult caretaker. See Iowa Code § 232.102(1)(a)(1) (noting that after dispositional hearing, the court may transfer legal custody to a “parent who does not have physical care of the child, other relative, or other suitable person”). In the dispositional order, the court noted the California home study “has been held up by Interstate Compact.”

structure, stability and supervision in Amelia's home. It was learned in November 2010 that Amelia had been taking [the girls] to see their father in prison on a monthly basis. This was not authorized visitation nor did Amelia ask at any point in time about taking the children to see their father. There are concerns about what Israel is telling the girls. It does appear that it could be difficult for [N.R. and L.R.] to move to California. [Department of Human Services Cheryl] Ameen and the children's guardian ad litem/attorney feel that such placement would be in their long-term best interests as they will be with their sisters in a stable environment.

The court ordered a termination petition be filed and ordered the four girls, N.R., L.R., K.P., and Y.P., transferred to California.

A petition to terminate parental rights was filed on March 11, 2011, and the termination hearing was held on May 2, 2011. Israel testified telephonically from prison. He stated he had served his term of incarceration in prisons in Minnesota (where the girls had visited every six months), then Colorado (where the girls visited once), and then South Dakota, where he had been for fifteen months. He stated the girls had visited him in South Dakota every three weeks. Those visits lasted four to five hours. Israel stated he was hoping to be out of prison in March 2013, though his release date without credit was September 2014. He asked that his parental rights not be terminated and that N.R. and L.R. be placed with his mother. He offered exhibits purportedly received by Israel from L.R. and N.R. The court sustained objections to the exhibits as lacking foundation.

On June 21, 2011, the court did terminate Israel's parental rights to N.R. and L.R. pursuant to Iowa Code sections 232.116(1)(b) (abandonment) and (f) (child four or older, adjudicated a CINA, removed from the parents' care for the

last twelve consecutive months, and cannot be returned to the parents' custody at the time of the termination hearing) (2011).<sup>2</sup> The court observed:

Israel will be incarcerated until 2013, at the earliest, if he participates in a prison drug program, and closer to September 2014, if he does not. If he is released early, it appears he will enter a half-way program and then be on parole for a period of five years. Even if he was released in 2013, Israel will be in no position to parent two teenage girls. . . .

. . . L.R. and N.R. have waited most of their lives to be the focus in their father's life . . . . They have waited long enough with no end to their limbo in sight. . . .

. . . .  
[Y.P., K.P., L.R., and N.R.] have remained in placement with their maternal aunt and uncle in the State of California since March 4, 2011. L. R. and N.R. did not express any reservations about leaving their paternal grandmother's home, but were excited about going to California. They have made the transition well and maintain phone contact with paternal relatives. . . . The [maternal aunt and uncle] are ready, willing, and able to adopt these four girls should parental rights be terminated.

Israel now appeals, contending the juvenile court erred in not admitting his photograph exhibits, the State failed to prove abandonment, and the children's best interests do not require termination.

## **II. Standard of Review.**

We conduct a de novo review of termination of parental rights proceedings. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered "clear and convincing" when there are no "serious or

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<sup>2</sup> The parental rights of Wendy, Carlos, and Bernardo were also terminated. Wendy, Carlos, and Bernardo have not appealed.

substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

### **III. Analysis.**

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

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

“We only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm its ruling.” *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000). Section 232.116(1)(f) provides that termination may be ordered when there is clear and convincing evidence a child over the age of four who has been adjudicated a CINA and removed from the parents’ care for the last twelve consecutive months cannot be returned to the parents’ custody at the time of the termination hearing. Iowa Code § 232.116(1)(f). Because the father does not dispute the existence of the grounds under sections 232.116(1)(f), we need not address the father’s claim

that there is not clear and convincing evidence of abandonment for purposes of section 232.116(1)(b).<sup>3</sup>

### **B. Factors in Termination.**

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interests, this court's primary considerations are "the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." *Id.*

The father is not able to provide for the children's long-term nurturing and growth. N.R. and L.R. are in a preadoptive relative placement with their sisters. See *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) (noting that "whenever possible" siblings should be kept together). We agree with the juvenile court that "it would be in [the children's] best interests to terminate the parent-child relationships so that they will have the opportunity to grow and mature in a safe, healthy and stimulating environment, free from drug activity, family dysfunction and chaos."

### **C. Exceptions or Factors against Termination.**

The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38; *J.L.W.*, 570 N.W.2d at 781. The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to

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<sup>3</sup> We also need not address the father's complaint that the court erred in not admitting his exhibits, which he contends show there was a father/daughter bond or connection, as we will assume the existence of a father/daughter bond.

save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). Even assuming N.R. and L.R. have a bond with their father, it is not such a close relationship that we would separate them from their sisters and place them in further limbo. We conclude no exception or factor in section 232.116(3) applies to make termination unnecessary.

#### **IV. Conclusion.**

There is clear and convincing evidence that grounds for termination exist under section 232.116(1)(f), termination of parental rights is in the children's best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm termination of the father's parental rights.

**AFFIRMED.**