

**IN THE COURT OF APPEALS OF IOWA**

No. 1-846 / 11-1504  
Filed November 23, 2011

**IN THE INTEREST OF M.L.,  
Minor Child,**

**A.F., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Marshall County, Victor J. Lathrop,  
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Melissa Nine of Kaplan, Frese & Nine, L.L.P., Marshalltown, for appellant  
mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, Jennifer Miller, County Attorney, and Joshua Vander Ploeg,  
Assistant County Attorney, for appellee State.

Mary Cowdrey of the Public Defender's Office, Marshalltown, for minor  
child.

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

**EISENHAUER, J.**

A mother appeals the termination of her parental rights to her child. She contends the court erred in terminating her parental rights because the child is in the care of relatives as provided in Iowa Code section 232.116(3)(a) (2011). She also contends her equal protection rights were violated. We review these claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The child was removed from the mother's care the day after his August 2010 birth after testing positive for exposure to marijuana. The mother admitted she had used marijuana and methamphetamine while pregnant with the child. The child was initially placed with the mother's great aunt and uncle, but in February 2011 his placement was transferred to the mother's sister and her husband. The child remains in their care and they wish to adopt him.

The mother's parental rights were terminated pursuant to section 232.116(1)(h). She does not contest these grounds for termination. Instead she claims termination was not warranted because the child is in the care of relatives. Section 232.116(3)(a) provides parental rights need not be terminated where a relative has legal custody of the child. However, this section is permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993), *overruled on other grounds by In re P.L.*, 778 N.W.2d 33 (Iowa 2010). Whether this section should be applied is determined by the best interests of the child. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by In re P.L.*, 778 N.W.2d 33 (Iowa 2010). "[T]he court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and

growth of the child, and to the physical, mental, and emotional condition and needs of the child.” *P.L.*, 778 N.W.2d at 39.

We conclude termination is in the child’s best interests. In addition to unaddressed substance abuse issues, the mother suffers from chronic paranoid schizophrenia, which causes her to have delusions. Although she receives medication for it, the mother testified at the termination hearing she sees and hears things. She has made numerous outlandish claims as a result. We cite with approval the following language from the juvenile court’s ruling:

As a result of her mental illness, [the mother] is not capable of processing her thoughts and knowledge into appropriate action necessary to meet the needs of a small child. When combined with the drug usage, it is clear [the mother] cannot care for [M.L.] on her own now or any time in the near future. In addition to providing him appropriate care and supervision, there must also be a concern for [M.L.]’s physical safety. While [the mother] is currently stable on her medications and has been appropriate around [M.L.], we also know she has a history where her medications no longer work and she needs to go into Center Associates and have them changed. The concern is whether [M.L.] would be safe with [the mother] until she realized she needs to go back in or would these hallucinations give her the idea of causing him harm.

We also note, as did the juvenile court, there is no evidence to establish the termination would be detrimental to the child. He is very young and has been out of the mother’s care his entire life. While he did receive weekly supervised visitation with the mother, he is not bonded to her in the way a child is to a parent. Terminating parental rights and placing the child in the care of relatives will allow him a safe, permanent home. He will also be able to continue contact with the mother as is deemed appropriate. We find this to be in his best interests.

The mother contends her equal protection rights were violated. The mother does not state how this issue was raised and ruled upon by the juvenile court, and we are unable to determine how this issue was preserved for our review. *In re K.C.*, 600 N.W.2d 29, 38 (Iowa 2003) (holding an issue not presented and passed on by the juvenile court may not be raised for the first time on appeal, not even one of constitutional dimensions).

We affirm the juvenile court order terminating the mother's parental rights.

**AFFIRMED.**