

**IN THE COURT OF APPEALS OF IOWA**

No. 1-881 / 11-1194  
Filed November 23, 2011

**IN THE INTEREST OF D.S., D.S., D.P., and D.P.,  
Minor Children,**

**D.J., Mother,**  
Appellant,

**D.S., Minor Child,**  
Appellant.

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Appeal from the Iowa District Court for Tama County, Angie Wilson,  
District Associate Judge.

The mother of four minor children and the attorney for the oldest child separately appeal from the juvenile court order terminating the mother's parental rights. **AFFIRMED.**

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

Bethany J. Currie of Johnson, Sudenga, Latham, Peglow & O'Hare, P.L.C., Marshalltown, for appellant-minor child.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, and Brent Heeren, County Attorney, for appellee.

Joanie Grife, Marshalltown, guardian ad litem for minor children.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

**MULLINS, J.**

A mother appeals the juvenile court order terminating her parental rights to her four children.<sup>1</sup> The oldest child, D.S. (born October 1996), separately appeals. The mother and the oldest child both contend the juvenile court erred in terminating the mother's parental rights because: (1) termination was not in the children's best interests, (2) D.S. objects to the termination, and (3) termination would be detrimental due to the closeness of the parent-child relationship. For the reasons stated herein, we affirm.

**I. Background Facts and Proceedings.**

The mother has four children, D.S. (age fourteen), D.S. (age twelve), D.P. (age three), and D.P. (age one). The four children first came to the attention of the Iowa Department of Human Services (DHS) on December 18, 2009. On this date, the police responded to the mother's home at 12:42 a.m. for a domestic violence report between the mother's sister and her boyfriend. When the police arrived, the mother was passed out on the floor next to the front door. When the mother was awakened, it was apparent that she was highly intoxicated and unable to care for her children. Concerned for the children's safety, the officers removed the children from the mother's care. A child protective assessment was later determined to be founded for denial of critical care.

Removal was confirmed by a temporary removal order on December 23, 2009. The parties subsequently stipulated to be children being adjudicated

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<sup>1</sup> The juvenile court also terminated the parental rights of the father to D.S. and D.S. The father for D.P. and D.P. consented to the termination of his parental rights. Neither father has appealed.

children in need of assistance under Iowa Code sections 232.2(6)(b), (c), (g), and (n) (2011). Custody of the children was continued with DHS for placement in family foster care.

Following the children's removal, the mother participated in substance abuse and mental health evaluations. The substance abuse evaluation recommended extensive outpatient treatment, while the mental health evaluation recommended individual counseling twice a month. However, the mother's attendance was sporadic, and the mother continued to abuse alcohol.

On July 29, 2010, the mother was admitted to residential substance abuse treatment at Heart of Iowa. During residential treatment, the mother actively participated in individual and group treatment programming, and was considered a role model for other patients. Based upon her outstanding progress, the mother graduated from residential treatment in October 2010 and was transitioned to Heart of Iowa's halfway house program.

While in the halfway house, the mother was able to have her children returned to her care.<sup>2</sup> The two younger children were placed with her in early December 2010, and the two older children joined the family just before Christmas. However, when the children were transitioned into the mother's care, she soon became overwhelmed. The mother began missing group therapy sessions and outside support meetings and began breaking program rules.

On New Year's Eve, the mother left the halfway house with her children without permission and stayed out until 2:30 a.m. Although she initially denied it,

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<sup>2</sup> In late-November 2010, the mother gave birth to a child. This child was immediately placed for adoption, and is not a part of this case.

at the termination hearing, the mother admitted that she went to her sister's house to watch the ball drop, and while there drank two beers.

Four nights later, the mother again left the halfway house with the children without permission. On this occasion, the mother left the children at her sister's house (who was not approved by DHS to care for the children) while she went out and had "a couple of beers and a couple of mixed drinks" with a friend. Because the mother was "impaired" and could not drive, she did not return to the Heart of Iowa until 5:00 a.m. When she returned to the halfway house, the mother did not tell the staff the truth about where she had been. Because of the late night, the two older children missed school the next day. Based upon the mother's infractions, DHS removed the children from her care, which resulted in the mother no longer being eligible for the Heart of Iowa halfway house program.

On January 26, 2011, a permanency hearing was held. The juvenile court directed the State to file petitions to terminate parental rights. D.S. did not support termination of his mother's parental rights. Recognizing a possible conflict of interest, the guardian ad litem requested the court appoint an attorney to represent D.S. The juvenile court granted the request. See *In re A.T.*, 744 N.W.2d 657, 665 (Iowa Ct. App. 2007) (recognizing that the juvenile court may appoint independent counsel when a child of sufficient age and maturity does not agree with the recommendation of the guardian ad litem representing them).

Following her discharge from the program, the mother began to make progress. The mother obtained suitable housing at Home to Stay, a transitional housing unit monitored by the Department of Correctional Services. The mother

also obtained full-time employment, completed a parenting class, and participated in substance abuse and mental health treatment.

Hearings on the termination petitions were held on April 20 and May 25, 2011. On the first day of the hearing, D.S. testified he did not want his mother's parental rights terminated, and that he felt he and his siblings could safely be returned to his mother's care. D.S. further testified termination would be hurtful to him because his mother "is the only person I can really talk to."

In May, the mother again regressed. She went to Illinois for approximately three weeks, and as a result, she missed her visits with the children and her substance abuse counseling sessions. The mother also lost her employment, and was on the verge of being evicted from her housing. During this time, D.S. was kicked out of school for aggressive and disrespectful behaviors to both staff and students, and was increasingly disrespectful to the foster family.

During the second day of the hearing, the mother admitted she was an alcoholic and would need "a few months" before she would be capable of resuming custody of her children. The mother also acknowledged her drinking had a negative impact on her children, and has required her two older children to care for the two younger children when she drank.

On July 19, 2011, the juvenile court entered two separate orders terminating the mother's parental rights. The juvenile court terminated the mother's parental rights to D.S. and D.S. under Iowa Code sections 232.116(1)(d), (f), and (l), and to D.P. and D.P. under section 232.116(1)(d), (h), and (l). The mother and D.S. separately appeal.

## II. Standard of Review.

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the factual determinations of the juvenile court, but are not bound by them. *Id.* Our primary concern is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

In seeking out those best interests, we look to the child's long-range as well as immediate interests. This requires considering what the future holds for the child if returned to the parents. 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.

*In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997) (citations omitted).

## III. Analysis.

The mother and D.S. do not challenge the statutory grounds for termination. Rather, they assert separately that termination was not in the children's best interests under Iowa Code section 232.116(2), termination was inappropriate under section 232.116(3)(b) since D.S. objected to it, and termination was inappropriate under section 232.116(3)(c) since it would be detrimental due to the closeness of the parent-child relationship.

### A. Section 232.116(2) – Best Interests of the Children.

In determining a child's best interests, we "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." *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (quoting Iowa Code § 232.116(2)).

The children had been removed from the mother's care for almost seventeen months at the time of the termination hearings. During this time, the mother had only been able to make progress on her alcohol addiction for short periods of time before relapsing. One of the relapses occurred while the children were in the mother's care for a trial home placement. The mother's alcohol abuse prevents her from providing the children with a safe and stable home. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). In addition, the mother's alcohol abuse has resulted in the two older boys becoming "parentified," acting as the caretaker for the two younger children. A child's long-term nurturing and growth is not furthered when the child becomes responsible for nurturing the parent or their siblings in the parent's stead. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up for this own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "At some point, the rights and needs of the child[ren] rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The children need structure and permanency, and should not have to wait in foster care for an indefinite period of time to get it. *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990) ("We have long recognized that the best interests of a child are often not served by requiring the child to stay in 'parentless limbo.'"). We agree with the juvenile court that termination was in the four children's best interests.

**B. Section 232.116(3)(b) – Child Objects to Termination.**

Section 232.116(3)(b) provides the juvenile court "need not terminate the relationship between the parent and child if the court finds . . . [t]he child is over

ten years of age and objects to the termination.” This provision is permissive, not mandatory. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa Ct. App. 1996) *overruled on other grounds by P.L.*, 778 N.W.2d at 39. It is in the court’s discretion, based upon the unique circumstances of each case and the best interests of the child, whether to apply this provision. *Id.*

The record is clear that D.S. loves his mother and wants to return to her care. However, because of her inability to address her alcohol dependency, the mother is not capable of adequately meeting D.S.’s needs. In addition, given the mother’s inconsistent treatment history, it does not appear that the mother will be able to provide a healthy and safe environment for D.S. in the near future. By the second day of the termination hearings, D.S.’s behaviors had worsened and he had become increasing aggressive and disrespectful at school and with the foster care family. D.S. needs safety and permanency. The juvenile court did not err in finding D.S.’s best interests required the termination of the mother’s parental rights. *In re L.P.*, 370 N.W.2d 839, 843 (Iowa Ct. App. 1985).

**C. Section 232.116(3)(c) – Parent-Child Bond.**

Section 232.116(3)(c) provides that the juvenile court need not terminate parental rights when “[t]here is clear and convincing evidence that the termination would be detrimental to the child due to the closeness of the parent-child relationship.” In analyzing this exception, “our consideration must center on whether the child will be disadvantaged by termination, and whether the disadvantage overcomes [the parent’s] inability to provide for [the child’s] developing needs.” *In re D.W.*, 791 N.W.2d 703, 709 (Iowa 2010). Although we



recognize the parent-child bond, the evidence shows that the mother's inability to meet D.S.'s and the three other children's needs is not overcome by the disadvantage that may result from termination.

**IV. Conclusion.**

For the foregoing reasons, we affirm the juvenile court orders terminating the mother's parental rights.

**AFFIRMED.**