

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1104 / 12-1841  
Filed January 9, 2013

**IN THE INTEREST OF J.E.,  
Minor Child,**

**J.E., Minor Child,  
Appellant.**

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Appeal from the Iowa District Court for Cerro Gordo County, Gregg R. Rosenblatt, Judge.

The guardian ad litem for the minor child and the State appeal the dismissal of the petition to terminate parental rights. **AFFIRMED.**

Mark A. Young of Young Law Office, Mason City, attorney and guardian ad litem for appellant minor child.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, Carlyle D. Dalen, County Attorney, and Nicole Benes, Assistant County Attorney, for State joining in appeal.

Charles Biebesheimer of Stillman Law Firm, Clear Lake, for mother.

Nicholas T. Larson of Larson Law Office, P.L.L.C., Osage, for appellee father.

William Morrison, Mason City, for appellee intervenor.

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

**POTTERFIELD, P.J.**

Under review here is the propriety of the juvenile court's order dismissing the State's petition to terminate parental rights without prejudice and ordering that relative placements for the child be investigated. The juvenile court concluded the State had failed to prove by clear and convincing evidence that termination of the parent-child relationships were in the child's best interests.

The child's guardian ad litem (GAL) appeals, contending the court erred in finding (1) the option of relative placement with a great uncle and aunt had not been properly and timely addressed by the Department of Human Services, and (2) termination was not in the child's best interests. The State joins the GAL's arguments.

Termination of parental rights under chapter 232 follows a three-step analysis. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). First, the court must determine if a ground for termination under section 232.116(1) has been established. *Id.* Second, if a ground for termination is established, the court must, 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.* Third, if the statutory best-interest framework supports termination of parental rights, the court must consider if any statutory exceptions set out in section 232.116(3) should serve to preclude termination of parental rights. *Id.*

Here, the court found there were statutory grounds for termination pursuant to Iowa Code section 232.116(1)(e) (2011) (authorizing termination where parent failed to maintain significant contact over last six months) and (h) (authorizing termination where child under three has been adjudicated CINA,

has been out of parent's custody for at least last six months, and cannot be returned home at present).

However, the trial court concluded termination of parental rights was not in the child's best interests under section 232.116(2) (requiring the court to "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").

The juvenile court wrote:

The court determines that the State of Iowa has not shown by clear and convincing evidence that, at this time, termination of parental rights and adoption by foster parents is necessarily in the child's best interests. Further evaluation of relative placements needs to occur, on an expedited basis, so that additional permanency options for [J.E.] can be analyzed. Possible permanency options to be explored may include guardianship of [J.E.] with [great aunt and uncle] . . . or possible adoption by [them]. The court may also determine, after a full consideration of placement of [J.E.] with [them], that continued placement in family foster care and adoption by foster parents may be the most appropriate permanency option.

At the present time, no exceptions set out in section 232.116(3) appear to apply. However, that subsection states that the court need not terminate parental rights if the child is placed with relatives. In this matter, further exploration of placement with relatives needs to occur.

Citing section 232.104(2)(b), the court dismissed the petition to terminate, without prejudice, and continued the juvenile proceedings for an additional six months.

The district court found the testimony of the maternal great aunt and uncle—that they had expressed interest and willingness to be considered a placement for the child—was "credible," and that they were "legitimately concerned about preserving family ties" for the child and "about offering a safe

and stable placement for him.” Given the deference afforded the court’s findings, especially with respect to credibility determinations, see *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990), and the record as a whole, we concur in the juvenile court’s conclusion that termination was not in the child’s best interest. We affirm.

**AFFIRMED.**