IN THE COURT OF APPEALS OF IOWA

No. 3-002 / 12-1535
Filed January 24, 2013

IN THE INTEREST OF N.J.,
Minor Child,

M.S., Mother,
Appellant,

K.J., Father,
Appellant.

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

An incarcerated father challenges the termination of his parental rights to his son. **AFFIRMED.**

Andrea M. Flanagan of Sporer & Flanagan, P.L.L.C., Des Moines, for appellant-father.

Julia Ofenbakh, Urbandale, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John Sarcone, County Attorney, and Stephanie Brown, Assistant County Attorney, for appellee.

Erin Mayfield of Youth Law Center, Des Moines, attorney and guardian ad litem for minor child.

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

TABOR, J.

An incarcerated father challenges the termination of his parental rights to his now four-year-old son, N.J. The father's only argument on appeal is that termination is not in the child's best interests. Our de novo review of the record and analysis under Iowa Code sections 232.116(2) and (3) (2011) bring us to the same conclusion as reached by the juvenile court—N.J.'s well-being is not advanced by leaving his family situation in limbo.

The father, Kenneth, has been incarcerated for N.J.'s entire life. His criminal record includes convictions for carrying weapons, second-degree robbery, intimidation with a dangerous weapon, and going armed with intent. The court removed N.J. from his mother's care in February 2012 when she violated the conditions of her court-ordered placement by leaving a correctional center with her son—prompting the issuance of an Amber Alert. Authorities eventually discovered N.J. was left with a family friend and placed him with a maternal cousin. On July 3, 2012, the State filed a petition to terminate the parental rights of both the mother and the father.

The juvenile court held a termination hearing on August 15, 2012. Both parents participated by telephone because they were serving prison sentences. Both admitted in their testimony that their current situations did not allow them to assume the care of N.J. Kenneth's current offense involved an attempt to rob a pizza deliveryman. Kenneth testified he was not eligible for parole until June 2015 and would not discharge his sentence until June 2024.

The court issued an order on August 20, 2012, terminating the rights of both parents. Only the father's parental rights are at issue in this appeal.[1]

Our review in termination cases is de novo, allowing us to consider the entire record with fresh eyes. *In re A.S.T.*, 508 N.W.2d 735, 737 (Iowa Ct. App. 1993). Still, we give deference to the juvenile court's factual findings, especially when they involve judging the credibility of witnesses. *Id*.

Iowa courts follow a three-step analysis in termination of parental rights cases. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). First, a court must determine if a ground for termination under section 232.116(1) has been proved. *Id.* Second, if a ground for termination has been established, the court must apply the framework in section 232.116(2) to decide if termination is in the child's best interests. *Id.* Third, if the statutory best-interest framework supports termination, the court must consider if any factors set out in section 232.116(3) preclude termination. *Id.* Steps two and three are in play here.

Our best-interest analysis focuses on the following considerations: the child's safety; the best placement for furthering the child's long-term nurturing and growth; and the child's physical, mental, and emotional condition and needs. Iowa Code § 232.116(2). We also take into account whether the parent's ability to provide for the needs of the child is affected by the parent's imprisonment for a felony. *Id*. § 232.116(2)(a). Finally, we weigh the child's integration into his or her foster family and desirability of maintaining that environment for the child. *Id*. § 232.116(2)(b). Section 232.116(3) gives the court an option not to terminate if

[1] The supreme court dismissed the mother's appeal because her petition was untimely and her signature was not on the notice of appeal.

the child is in the legal custody of a relative, or the record contains clear and convincing evidence that termination would be detrimental due to the closeness of the parent-child relationship. *Id.* § 232.116(3)(a), (c).

Kenneth contends the juvenile court erred in terminating his parental rights because he and his side of the family have a bond with N.J. We acknowledge Kenneth's relatives were diligent in bringing N.J. to visit Kenneth during his incarceration—logging eighteen visits between March 2009 and November 25, 2011. But by the time of the termination hearing, the child had not seen his father for almost nine months. The juvenile court found N.J. "has no recollection of his father, has not expressed a desire to see him or hear from him, and has no attachment to him." Under these circumstances, we don't believe that either section 232.116(2) or section 232.116(3)(a) offers a viable reason for declining to terminate Kenneth's parental rights.

Kenneth also argues terminating his rights would be

> far more detrimental to N.J. than any danger perceived by not terminating. Any danger perceived by not terminating could be addressed through continued individual therapy and counseling, and permanency could be achieved through another planned living arrangement such as a guardianship with the current biological relative caretakers.

We disagree. Placement with a relative under a permanency order is not legally preferable to termination of parental rights. *In re L.M.F.*, 490 N.W.2d 66, 67 (Iowa Ct. App. 1992). The State has an important interest in providing N.J. a "stable, loving homelife as soon as possible." *See P.L.*, 778 N.W.2d at 38. N.J. has developed a "very strong bond" with the maternal relatives who have been caring for him. He is at an adoptable age and they are willing to adopt him. "It is

well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *Id*. at 41.

As Kenneth acknowledges on appeal, his own violent and irresponsible actions have resulted in his long-term incarceration and the absence from his son's life. We cannot overlook this situation in deciding the best-interest question. *See In re J.S.*, 470 N.W.2d 48, 51 (Iowa Ct. App. 1991). We agree with the juvenile court's assessment that it is not in N.J.'s best interest—given his young age and integration into his foster family—to postpone a permanent placement until his father is released from prison.

AFFIRMED.