

**IN THE COURT OF APPEALS OF IOWA**

No. 2-529 / 12-0773

Filed July 25, 2012

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

**V.S., Mother,**  
Appellant,

**J.S., Father,**  
Appellant.

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Appeal from the Iowa District Court for O'Brien County, David C. Larson,  
District Associate Judge.

A mother appeals from the order terminating her parental rights to her  
child. **AFFIRMED.**

Shawna L. Ditsworth, Spirit Lake, for appellant-mother.

Bethany Brands of Brands Law Office, Spirit Lake, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Micah J. Schreurs, County Attorney, and Lori J. Kolpin,  
Assistant County Attorney, for appellee-State.

Tisha M. Halverson of Klay, Veldhuizen, Bindner, DeJong, DeJong &  
Halverson, P.L.C., Paullina, guardian ad litem and attorney for minor children.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

**BOWER, J.**

A mother appeals from the permanency order regarding custody of her child and the order terminating her parental rights to her child.<sup>1</sup> She contends the juvenile court erred in denying her request to transfer custody of the child to the paternal grandfather and his wife. Subsequently, she seeks to avoid termination of her parental rights due to the child's placement with a relative. Because placement of the child with the paternal grandfather and his wife is not in the child's best interests, we affirm both orders.

***I. Background Facts and Proceedings.***

The child was born in December 2010 and was removed from the parents' custody five days later due to concerns about the parents' cognitive abilities. The child has been in foster care since that time with the same foster family. The child was adjudicated in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2011). The parents were granted supervised visitation with the child and were provided with services to help them safely parent the child.

In January 2012, the State filed its petition seeking to terminate the parents' rights pursuant to section 232.116(1)(h). The juvenile court found that although the parents participated in services and made some improvements, their parenting skills remained at a basic level. None of the service providers testified that the child could be returned to the parents' custody at the time of the termination. Concerns regarding their ability to safely supervise and parent the

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<sup>1</sup> The father filed a notice of appeal but failed to file a brief and his appeal was dismissed by the supreme court prior to transferring the case to this court.

child remained. Evidence was presented at the hearing regarding incidents where the parents failed to properly mix the child's formula, misunderstood the correct dose of medication to provide the child, and failed to properly label opened jars of food to track when they would expire.

As an alternative to termination, the paternal grandfather and his wife asked the child to be placed with them, allowing them to assist with parenting. The juvenile court found this placement was not in the child's best interests. After finding the statutory grounds for termination had been met, termination was determined to be in the child's best interests, and no mitigating factors as set forth in section 232.116(3) applied, the district court terminated both the mother and the father's parental rights.

## ***II. Scope and Standard of Review.***

Our review of termination of parental rights proceedings is de novo. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). While we are not bound by the juvenile court's fact findings, we give them weight, especially where witness credibility is concerned. *Id.*

## ***III. Analysis.***

Termination of parental rights under Iowa Code chapter 232 follows a three-step analysis. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010); *D.S.*, 806 N.W.2d at 465. The first step is to determine whether a ground for termination under section 232.116(1) is established. *P.L.*, 778 N.W.2d at 39. If so, the court then applies the best-interest framework set out in section 232.116(2) to determine 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 of the factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

The mother does not dispute the ground for termination has been proved and that termination is in the child's best interests. Instead, she argues the child should have been placed in the care of the paternal grandfather and his wife and weighing the factors set forth in section 232.116(3) the juvenile court should have denied the termination petition on the basis the child could have been placed with a relative. Because we find placing the child with the paternal grandfather and his wife is contrary to the child's best interests, we affirm the termination of parental rights.

A Department of Human Services worker performed a home check on the paternal grandfather's home and noted the following concerns: the grandfather had a founded/confirmed report of denial of critical care for failure to properly supervise his son by allowing him to watch pornographic movies during weekend visitations, showing a "serious lack of judgment, lack of boundaries" and "serious inappropriateness of behavior"; an "extremely alarming" family history of sexual abuse; the step-grandmother's inability to hold the child due to arthritis; and the grandfather and his wife's lack of understanding as to why the child's visits need to be supervised or why the child was removed from the parent's custody. The worker also had concerns about the grandfather and his wife's ability to set boundaries for the mother and the father.

A family relative concerned about the child's safety testified at the termination hearing regarding the family's history of sexual abuse, which extends at least three generations. She related her own history of sexual abuse while in the care of the grandfather's wife and the wife's failure to protect her. She also testified regarding her own son's allegations that he was sexually abused while in the care of the grandfather and his wife and their failure to appropriately supervise the children in their care.

Upon our de novo review, we find the child's best interests are served by denying the request to place the child with the paternal grandfather and his wife. We further find termination is in the child's best interests. The mother cannot provide the level of care and supervision necessary to ensure the child's safety. The child has been in the care of the same foster family nearly since birth and has thrived in their care. The foster family and child are bonded and the foster family wishes to adopt the child. Considering the child's safety; long-term nurturing and growth; and physical, mental, and emotional needs, *P.L.*, 778 N.W.2d at 40, we agree termination is appropriate.

**AFFIRMED.**