

IN THE COURT OF APPEALS OF IOWA

No. 2-731 / 12-1232
Filed August 22, 2012

**IN THE INTEREST OF D.E., I.E., AND C.E.,
Minor Children,**

**N.C.E., Father,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
District Associate Judge.

A father appeals the order terminating his parental rights. **AFFIRMED.**

Melody Butz of Butz Law Offices, Cedar Point, for appellant father.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, Jerry Vander Sanden, County Attorney, and William Croghan,
Assistant County Attorney, for appellee State.

Henry Keyes, Cedar Rapids, for appellee mother.

Judith Hoover, Cedar Rapids, attorney and guardian ad litem for minor
children.

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

VOGEL, P.J.

Nicholas appeals the termination of his parental rights to his children, D.E., born 1997; I.E., born 2000; and C.E., born 2002. The children's mother's rights were also terminated; she does not appeal. Nicholas asserts termination was not in the children's best interests. We affirm. Our review is de novo. *In Interest of M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993).

This family has had involvement with the juvenile court system for over a decade. There were multiple founded reports of denial of critical care/adequate shelter, including Children-in-Need-of-Assistance (CINA) actions from 2001 in Buchanan County. In the spring of 2005, the family came to the attention of the Department of Human Services (DHS) in Linn County. The children were adjudicated for the second time as CINA on July 14, 2005. After years of attempting to keep the children in their parents' home, they were placed with their paternal uncle and his wife in June 2010. The children now consider their uncle and aunt's home to be their home. The uncle and aunt love the children and want to adopt them through a subsidized adoption. The uncle testified at the termination hearing that he and the aunt would not hinder but promote ongoing contact and a healthy relationship between the children and their parents.

The juvenile court terminated Nicholas' parental rights pursuant to Iowa Code section 232.116(1)(b), (d), (e), and (f) (2011). Nicholas does not contest that the statutory grounds were met but rather asserts that termination is not in the children's best interests. Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of the children after a review of section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We

consider “the child’s safety,” “the best placement for furthering the long-term nurturing and growth of the child,” and “the physical, mental, and emotional condition and needs of the child.” *Id.* In this case, the record demonstrates that termination is in the children’s best interests.

The juvenile court found that severing the bond between the children and their father would not cause the children substantial harm as “permanency outweighs any possible harm.” We agree.

The oldest child, D.E., was fourteen at the time of the hearing and has stated that he does not want to be adopted. Even though D.E. has at times resisted termination and adoption, the DHS worker testified that D.E. appreciates the “stability and structure” offered to him living in his uncle and aunt’s home. There, the children are “comfortable” and know that there will be food on the table and they will be well cared for. Nicholas offers little of that stability for any of the children. He went from January to July 2011 without seeing them. Between September 2011 and January 2012, Nicholas attended only nine out of seventeen visits. When Nicholas has seen the children, his visits triggered negative behaviors in the children. Nicholas has had recent legal troubles, including time spent in jail for an habitual offender alcohol charge and three probation violations. There are also serious concerns about his ability to care for the children’s various emotional and physical special needs.

The DHS caseworker for this family recommended termination in order to obtain permanency. She testified guardianship was not preferable to adoption as guardianship would only continue the children’s anxiety and uncertainty as to their future. Moreover, although the uncle and aunt love the children very much,

a subsidized adoption, in lieu of a guardianship, would provide them a financial boost in caring for the children's many needs.

The record clearly shows that the children cannot be returned to Nicholas. The children have expressed anger about their father being in and out of their lives, and they appreciate the stability and comfort afforded them the last two years, in relative care. The children's best interests will be served by being adopted by their uncle and aunt; none of the considerations found in Iowa Code section 232.116(3) apply.

AFFIRMED.