

**IN THE COURT OF APPEALS OF IOWA**

No. 2-881 / 12-1299  
Filed October 17, 2012

**IN THE INTEREST OF K.B., J.B., E.M.,  
and Q.G.,  
Minor Children,**

**J.M., Father of E.M.,  
Appellant,**

**A.M., Father of Q.G.,  
Appellant,**

**T.B., Father of K.B. and J.B.,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Rachael E. Seymour,  
District Associate Judge.

The fathers of four children separately appeal the termination of their  
parental rights. **AFFIRMED ON ALL APPEALS.**

Todd E. Babich of Babich Goldman, P.C., Des Moines, for appellant J.M.

Susan R. Stockdale, Des Moines, for appellant T.B.

Ross A. Gibson, Urbandale, for appellant A.M.

Thomas J. Miller, Attorney General, Amy Licht, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Jennifer Galloway, Assistant  
County Attorney, for appellee.

Jamie Deremiah, Des Moines, for mother.

Nicole Garbis Nolan of Youth Law Center, Des Moines, guardian ad litem and attorney for minor children.

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

**PER CURIAM.**

The three fathers of four children appeal the termination of their parental rights. The mother's parental rights were also terminated. She does not appeal. We affirm on all appeals because statutory grounds exist to terminate each of the father's parental rights to his respective children, termination is in the children's best interests, and no factor serves to preclude termination.

**I. Background Facts and Proceedings.**

The children at issue, K.B. (born February 2010), J.B. (born February 2009), E.M. (born December 2003), and Q.G. (born June 2001) belong to a family with a long history of involvement with the Department of Human Services (DHS). Their mother has been in more than one domestically violent relationship and has been determined to abuse the children physically. Her violence and the violence of the men she has lived with have resulted in numerous child abuse assessments. The mother has an older child, J.G. (who is not involved with the current appeal), who was assaulted by step-father Troy in August 2010—Troy was arrested for child endangerment and subsequently pled guilty. The assault of J.G. began DHS's current involvement with the family.

The children were removed from their mother's custody in October 2010 and adjudicated children in need of assistance (CINA) on November 29. No parent has moved beyond supervised visitations since the removal.

A petition to terminate the parental rights of the parents of K.B., J.B., E.M., and Q.G. was filed on October 19, 2011. The two older children at issue (E.M. and Q.G.) have been in four placements since removal. At the time of the

termination hearing, they were in the care of a maternal aunt, and workers expressed optimism about that placement. Stepsiblings E.M. and Q.G. liked being in the same home and have expressed a wish to stay. The younger two children (K.B. and J.B.) were initially in a relative placement, but were transferred to non-relative foster care in February 2011. K.B. and J.B. are doing well in their current pre-adoptive placement. J.B.'s play therapist, Jessica Pilling, testified J.B. was bonded to his foster family and was in need of permanency.

Troy is the father of K.B. and J.B. and was married to the children's mother. Troy is aggressive and engages in controlling behaviors. He has a history of arrests for theft, assault, harassment, and methamphetamine-related offenses. In August 2010, Troy assaulted his stepdaughter, J.G., hitting her in the face several times, causing injuries. In addition to assaulting J.G., he has physically abused the other stepchildren and acknowledged being domestically violent with the children's mother. He admits to threatening the workers involved in these proceedings. In August 2011, after a hair stat tested positive for illegal substances, Troy admitted using methamphetamine "because of the stress the DHS case had caused him," "the stress of his wife leaving him," and lack of contact with his kids. He continued to use methamphetamine despite entering treatment. Troy submitted a UA on November 11, 2011—just weeks before the termination hearing, that tested positive for marijuana and methamphetamine. During the first day of termination of parental rights hearing,<sup>1</sup> Troy was arrested for a probation violation. He remained in jail for several weeks. He was again in

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<sup>1</sup> The termination hearing was held on November 29 and 30, December 6, 2011, and January 3, 11, 20, and February 1, 2012.

jail at the time of the February 1 hearing awaiting admission to a residential facility, which he expected would take six to eight weeks. Troy had only sporadic employment after the summer of 2011. Troy's counselor, Patrick Weeg, a social worker, testified Troy was motivated to become a better parent and was ready and willing to parent his children, but "I think right now at this moment, he is not able" because "[o]ne, the substance abuse issue"; "[t]wo, he's incarcerated"; and "[three,] there needs to be a consensus with the children's therapist that Troy is suitable."

Anthony is the father of the oldest child, Q.G. Anthony, had no contact with Q.G. until the child was nine years old. He has two other children by two other women in another state. He began having supervised visits with Q.G. in January 2011. Visits were suspended for a couple of months because Anthony was accompanied to one visit by his stepfather who is a registered sex offender. His visits resumed when Troy relocated to Iowa. At the time of the termination hearing, Anthony had one, one-hour supervised visit with Q.G. per week. He also attended a weekly counseling session with Q.G. Anthony's mental health counselor testified Anthony has been attending therapy sessions and is addressing issues of managing his emotions and understanding Q.G.'s sense of abandonment. Anthony attended parenting classes and received a certificate of participation (but not of completion due to tardiness and missed sessions). At the termination hearing, Anthony acknowledged for the first time<sup>2</sup> that in 2006 he had intentionally abused his daughter (who was three months old at that time).

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<sup>2</sup> He testified, however, he had disclosed the abuse to his mental health counselor.

He had, until then, told Iowa workers involved in the juvenile proceedings that she had been hurt falling off the bed. Troy testified he pled guilty to felony child endangerment, stating he “picked her up forcefully,” causing multiple bruises on her face and head. Anthony testified he served time in prison in 2007 for violating his probation related to the child abuse charge. As of January 2012, Anthony had not seen his other son since the December 2010. He had not seen his daughter since 2008. Anthony was asked if his failure to have contact with his other son for the past year “shows your ability or lack thereof to be consistent in a child’s life.” He responded, “Partially, yes.” He stated he wanted to remain a part of Q.B.’s life.

Justin is the father of the second oldest child, E.M. Justin was physically abusive to the mother when they were in a relationship (2003-2006). He has been arrested for child endangerment and domestic abuse assault. He has a history of methamphetamine abuse. He reported to a Family Safety, Risk, and Permanency (FSRP) worker that he was using marijuana and, as of November 10, 2011, had not obtained a requested psychiatric evaluation. Justin had struggled to make weekly visits on time. His attendance improved when, in August 2011, visits were changed to one-hour supervised visits two times a month. Justin attended weekly therapy sessions with E.M., and in a November 14, 2011 report, the therapist noted “Justin’s overall involvement with [E.M.], and role as a parent, has improved dramatically since the last court hearing.”<sup>3</sup> His parenting skills during supervised visits were described by the FSRP worker to

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<sup>3</sup> The permanency hearing was in September 2011.

be “below average.” After the first day of the termination hearing, Justin posted this comment on Facebook: “Finally one day down. One more to go tomorrow. It’s really bad when you picture in your mind jumping over the table and choking the living shit out of a Judge.” The FSRP worker testified Justin could not be allowed unsupervised visits at present and she believed it would be more than six months before E.M. might be able to reside with him.

Each of the father’s appeals from the termination of his parental rights.

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

We conduct a de novo review of termination of parental rights proceedings. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although we are not bound by the juvenile court’s findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered “clear and convincing” when there are no “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

Iowa Code chapter 232 governing termination of parental rights follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next 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.* If the

statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

### **III. Discussion.**

*A. Termination of Troy's parental rights, father of K.B. and J.B.* The court terminated Troy's parental rights pursuant to Iowa Code section 232.116(1)(d), (e), and (h) (2011). Troy contends there is not sufficient evidence to support termination under subparagraph "e." However, he does not challenge the other statutory grounds. See *D.W.*, 791 N.W.2d at 707 (noting that when the juvenile court terminates parental rights on more than one statutory ground, we may affirm the juvenile court's order on any ground we find supported by the record). There is clear and convincing evidence to support termination of Troy's parental rights pursuant to section 232.116(1)(h): the children, who are under three years of age, have been adjudicated CINA and have been out of the parents' custody for more than one year and cannot be returned to Troy's care at present.

Troy argues termination is not in the children's best interests, but we disagree. These children have been in an out-of-home placement for more than one year. Troy's counselor testified there was a *possibility* that Troy might be able to parent in six months, but this record does not support that statement. Around the time of the termination hearing, Troy was actively using illegal substances, was arrested for probation violation, and had yet to adequately address issues of substance abuse and anger management. The children were in a safe, stable, pre-adoptive home. Terminating Troy's parental rights so the



children can be permanently placed gives primary consideration to the children's safety, to the best placement for furthering their long-term nurturing and growth, and to their physical, mental, and emotional needs under section 232.116(2). 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. *In re Dameron*, 306 N.W.2d 743, 747 (Iowa 1981). We also do not find any circumstances that weigh against termination. We therefore affirm the termination of Troy's parental rights.

*B. Termination of Anthony's parental rights, father of Q.G.* The juvenile court terminated Anthony's parental rights pursuant to Iowa Code section 232.116(1)(d), (e), and (f). Anthony disputes each ground, but there is clear and convincing evidence to support termination: Q.G., who is older than four years of age and adjudicated a CINA, has been out of the parents' custody for at least twelve of the last eighteen months, could not presently be return to Anthony's custody. See Iowa Code § 232.116(1)(f).<sup>4</sup>

Anthony is not presently able to parent Q.G. on a fulltime basis because of the unresolved issues of abandonment and his past child abuse of another child.

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<sup>4</sup> Pursuant to section 232.116(1)(f), the court may terminate parental rights if it finds all of the following:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Moreover, Anthony attended, but did not satisfactorily complete parenting classes. “Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable.” *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990).

Anthony asserts that even if statutory grounds exist, the court need not terminate the parent-child relationship because a relative has legal custody of the child, or because termination would be detrimental due to the closeness of the parent-child relationship. See Iowa Code § 232.116(3)(a), (c). Assuming for the sake of argument that the father adequately raised this issue,<sup>5</sup> the factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

While we acknowledge a bond is developing between Q.G. and Anthony, balanced against that developing parent-child bond, we consider the lifelong bond between stepsiblings Q.G. and E.M. See *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994) (noting that “whenever possible” siblings should be kept together). We note, too, that Anthony had no contact at all with his son for nine

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<sup>5</sup> The State contends he failed to preserve the issue as the termination order does not discuss Q.G.’s placement with a relative as potential factor weighing against termination and Anthony did not file a motion to enlarge. See *In re A.M.H.*, 416 N.W.2d 867, 872 (Iowa 1994) (finding waiver of issues not the subject of a motion to enlarge). There was testimony concerning Q.G. and E.M.’s placement with their aunt and the aunt’s willingness to allow continued contact between fathers and children.

years and we express concern with his failure to maintain contact with his other biological son, whom he has not seen for more than a year. We, like the juvenile court, are also concerned with Anthony's lack of candor as to his prior abuse of his other child. "Insight for the determination of the child's long-range best interests can be gleaned from 'evidence of the parent's past performance for that performance may be indicative of the quality of the future care that parent is capable of providing.'" *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (quoting *Dameron*, 306 N.W.2d at 745). We do not find circumstances weigh against termination here. We therefore conclude no exception or factor in section 232.116(3) applies to make termination unnecessary and we affirm the termination of his parental rights.

*C. Termination of Justin's parental rights, father of E.M.* The juvenile court terminated Justin's parental rights pursuant to Iowa Code section 232.116(1)(d), (e), and (f). He contests the sufficiency of the evidence to support these grounds.

E.M. was born in December 2003. She was removed from her mother's custody in November 2010. Her father, Justin, was not active in the child's life until these CINA proceedings. Justin has received services including supervised visits and psychological counseling. However, Justin has unaddressed substance abuse issues: he testified he had used methamphetamine when living with the mother; he admits using marijuana and does not consider it a drug; and he refused to provide drug screens throughout the CINA proceedings because he was actively using marijuana. Justin also has unaddressed anger issues:

despite three convictions for domestic abuse assault, he denies domestic violence; and he posted a threatening comment on social media about the presiding judge during the termination hearing. Finally, he admitted he was unable to have the child placed with him at present. There is clear and convincing evidence that grounds for termination exist under section 232.116(1)(f).<sup>6</sup> No circumstances weigh against termination. We affirm the termination of his parental rights.

**AFFIRMED ON ALL APPEALS.**

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<sup>6</sup> See footnote 4 for Iowa Code section 232.116(1)(f) statutory language.