

**IN THE COURT OF APPEALS OF IOWA**

No. 2-954 / 12-1689  
Filed December 12, 2012

**IN THE INTEREST OF C.M. and K.M.,  
Minor Children,**

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

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

A father appeals the termination of his parental rights. **AFFIRMED.**

Nathaniel A. Tagtow of Pargulski, Hauser & Clarke, P.L.C., for appellant.

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 Carr, Des Moines, for mother.

John Jellineck, Des Moines, attorney and guardian ad litem for minor  
child.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

**MULLINS, J.**

A father appeals the termination of his parental rights, contending termination is not in the children's best interest. The father argues the parent-child bond and the children's placement with the paternal grandparents prevent termination. We affirm.

**I. Background Facts & Proceedings**

The parental rights of two children, C.M. (born 2009) and K.M. (born 2008), are at issue in the present appeal. At all times throughout these proceedings, the father was incarcerated for the delivery of methamphetamine. Prior to incarceration, the father was not involved in either C.M. or K.M.'s life.

The father's extensive and continued use of methamphetamine and marijuana began at approximately the age of eighteen. On or about November 18, 2010, the father, then twenty-three years old, was arrested for delivering methamphetamine. He was sentenced to a suspended term of ten years in prison and placed on probation. He subsequently tested positive for use of a controlled substance in violation of the terms of his probation. As a result, his probation was revoked and he began to serve his ten-year prison sentence. Although the father is optimistic about being released from prison in 2013, the Iowa Department of Corrections offender information indicates he is not set to be discharged until June 2015.

This case first came to the attention of the Department of Human Services (DHS) on July 29, 2011. At that time, the police found the mother caring for the children under the influence of methamphetamine and in possession of drug

paraphernalia. She later admitted she cared for the children while high on methamphetamine. Consequently, the court placed custody of the children with DHS for purposes of family foster care or relative placement. The father was incarcerated at the time of removal.

On September 8, 2011, the juvenile court held an uncontested adjudication hearing, and adjudicated the children in need of assistance. The court held review hearings on February 9 and May 8, 2012. Prior to the May 8, 2012 hearing, DHS facilitated the children's visitation with the father at the Newton Correctional Facility for approximately one and a half hours to one hour and forty-five minutes at a time.

On July 3, 2012, the State filed a petition to terminate parental rights. On July 27, 2012, the juvenile court held a permanency hearing during which the father indicated he would contest the termination of his parental rights.

DHS transferred custody of the children to the paternal grandparents on August 17, 2012. One week later, on August 24, 2012, the court held contested termination of parental rights proceedings. The juvenile court found

Clearly [the father] suffers from [a] severe and chronic substance abuse problem as evidenced by prior acts and is a danger to himself and others. Given his unknown prognosis, there is no reason to believe that he would be available to safely care for [K.M.] or [C.M.] within a reasonable period of time, given their ages and need for permanency. When in the community, prior to his incarceration in 2010, he failed to provide for [his children] or engage in their lives in any meaningful way. Now, because of his own choices, he is unavailable to his children and is unable to demonstrate an ability to resist the temptations of relapse in the community.

The juvenile court terminated the father's parental rights pursuant to Iowa Code section 232.116(1)(d), (e), (f), (h), and (l) (2011). The father appeals.

## **II. Standard of Review**

We review decisions to terminate parental rights de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). While we give deference to the juvenile court's factual findings, we are not bound by them. *Id.*

## **III. Analysis**

To review a decision terminating parental rights, we conduct a three-step analysis. First, we must determine whether the State established statutory grounds for termination by clear and convincing evidence. Iowa Code § 232.116(1); *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Second, if the State established statutory grounds for termination, we consider whether termination is in the children's best interest under section 232.116(2). See *P.L.*, 778 N.W.2d at 40. Finally, we consider whether any exceptions under section 232.116(3) weigh against termination. See *id.* at 41. The father concedes the statutory grounds for termination. Thus, we consider the final two steps in this analysis.

### **A. Section 232.116(2)**

The father contends termination is not in the children's best interests. To determine whether termination is in the children's best interest, we must "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." Iowa Code § 232.116(2).

We give deference to the juvenile court's finding that the father's severe and chronic substance abuse issues make him a danger to himself and to others. See *H.S.*, 805 N.W.2d at 745. Prior to the father's incarceration, he had no involvement in the children's lives. At the time his children were adjudicated in need of assistance in September 2011, the father was incarcerated for delivering methamphetamine, and testing positive for the use of a controlled substance in violation of his probation. Prior to the termination hearing, the paternal grandparents had taken the children to visit the father in prison approximately ten times. At the time the juvenile court ordered termination, the father had still never completed a substance abuse treatment program.

A parent must take personal responsibility for the circumstances leading to incarceration and resulting in their inability to parent. *In re J.L.W.*, 523 N.W.2d 622, 624 (Iowa Ct. App. 1994). "Insight for the determination of the child[ren]'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 A.B.*, 815 N.W.2d 764, 778 (Iowa 2012) (internal citations omitted). In light of the father's limited contact with the children, significant substance abuse issues, and current incarceration, we find it is in the children's best interest to terminate the father's parental rights.

**B. Section 232.116(3)**

The father alleges the parent-child bond weighs against termination. The court need not terminate the father's parental rights, if "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the

time due to the closeness of the parent-child relationship.” Iowa Code § 232.116(3)(c).

Prior to incarceration, the father had no involvement with C.M. and K.M. He testified by phone the children only know he is their father “to an extent.” At the time of the termination proceedings, he had less than eighteen hours of supervised visitation with the children at the Newton Correctional Facility. We find the parent-child bond is insufficient to prevent termination in this case.

The father contends the children’s temporary placement with the paternal grandparents pursuant to the permanency order weighs against termination. The court need not terminate parental rights, if “[a] relative has legal custody of the child[ren].” *Id.* § 232.116(3)(a).

The children must not be made to await the structure, consistency, and permanency they deserve. See *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990) (“We have long recognized that the best interests of a child are often not served by requiring the child to stay in ‘parentless limbo.’”). Placement with a relative pursuant to a permanency order is not legally preferable to termination of parental rights. *In re L.M.F.*, 490 N.W.2d 66, 66–67 (Iowa Ct. App. 1992). The father is serving a ten-year-maximum jail sentence. The father testified it was not fair to the children to await permanency while he served out his term. Meanwhile, the grandparents are willing and able to seek adoption. Upon our de novo review, we find the section 232.116(3)(a) exception does not prevent termination in this case.

**IV. Conclusion**

We find it is in the children's best interest to terminate the father's parental rights, and no exceptions under section 232.116(3) prevent termination. Accordingly, we affirm.

**AFFIRMED.**