

IN THE COURT OF APPEALS OF IOWA

No. 3-358 / 13-0315
Filed April 24, 2013

**IN THE INTEREST OF L.K. and D.K.,
Minor Children,**

**M.K., Father,
Appellant.**

Appeal from the Iowa District Court for Madison County, Kevin Parker,
District Associate Judge.

A father appeals from the order terminating his parental rights to two
children. **AFFIRMED.**

Thomas Graves of Graves Law Firm, P.C., Clive, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, and Julie Forsyth, County Attorney, for appellee-State.

Jane Rosien of Flander, Casper & Rosien, P.C., Winterset, for minor
children.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

EISENHAUER, C.J.

A father of twins appeals from the order terminating his parental rights. He contends the State did not make reasonable efforts to reunify him with the children, termination is not in the best interests of the children, and the court need not have terminated his parental rights because the children were in the custody of a relative. We affirm.

The children were born two months prematurely in March 2010. In 2010 the father's parole was revoked after he was arrested for domestic abuse of the mother. The children were removed from the mother's custody in January 2012 and placed with the maternal grandmother, where they remain. The father was released from prison in March 2012. He began visitation with the children in June, having one hour of supervised visitation each week. He attended less than half of the offered visitation.

In December 2012 the State petitioned to terminate the parental rights of both parents. The petitions came on for hearings in January 2013. In February, the court terminated both parents' parental rights under Iowa Code section 232.116(1)(e) and (h) (2011). The court found the father had been in prison for the majority of the children's lives, he had neither cooperated with the department of human services nor fully accessed services, he had missed many scheduled visits, his bond with the children was inadequate, and he had provided little financial assistance for the children. The court further found the parents had not taken advantage of the services provided, but had not asked for additional services or a change in services. The court concluded termination was in the

children's best interests and none of the factors in section 232.116(3) applied to prevent termination. The father appeals.¹

We review terminations de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We examine both the facts and law, and adjudicate anew those issues properly preserved and presented. *In re L.G.*, 532 N.W.2d 478, 480-81 (Iowa Ct. App. 1995). We accord considerable weight to the findings of the juvenile court, especially concerning the credibility of witnesses, but are not bound by them. *Id.* at 481.

Our first step is to determine if a statutory ground for termination exists. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Because the father does not dispute the statutory grounds for termination, we do not have to discuss them. *See id.* The second step is to consider the children's best interests as set forth in section 232.116(2). *Id.* The father contends termination of his parental rights is not in the best interests of the children. He argues the court "failed to take into account the positive and beneficial influence [he] could have on his two children if he were given an extended period of six months to so demonstrate."

We agree with the juvenile court the children's immediate and long-term best interests are served by their remaining with their grandmother, who is meeting their physical, mental, and emotional needs and providing a loving,

¹ We note the father's petition on appeal does not indicate whether any of the issues were preserved for review, state how they were preserved, or list any facts or conclusions of the juvenile court with which the father disagrees. We encourage attorneys to follow form 5 in Iowa Rule of Appellate Procedure 6.1401 when preparing a petition on appeal, including setting forth separate legal issues, how they arose and were preserved for appeal; stating what findings or conclusions of the court the appellant disagrees with and why; generally referring to a particular part of the record supporting the appellant's position; and providing supporting legal authority for each issue. *See* Iowa R. App. P. 6.201(d) ("The petition on appeal shall substantially comply with form 5 in rule 6.1401."); *see also* 6.1401-Form 5.

nurturing environment. See Iowa Code § 232.116(2). The children have been in her care since their removal in January 2012 and are thriving. The father has not demonstrated a commitment to meeting the children's needs. He participated in less than half of the offered visits. We consider the father's past performance as an indication of the quality of future care he is capable of providing. See *In re D.W.*, 791 N.W.2d 703, 709 (Iowa 2010).

We find no indication the father asked for additional time. The termination order does not mention any such request and expressly finds the parents did not ask for additional or different services. The request for additional time is not preserved for our review. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003).

The third step in our analysis is to consider whether any of the statutory factors in section 232.116(3) "should serve to preclude termination of parental rights." *D.W.*, 791 N.W.2d at 707. The father contends Iowa has a preference for relative placement and allows a court not to terminate if a relative has custody of the children. Iowa Code section 232.116(3)(a) allows a court not to terminate if a relative has legal custody. A court has discretion, based on the unique circumstances of each case and the best interests of the children, whether to apply this section to save the parent-child relationship. *In re D.S.*, 806 N.W.2d 458, 475 (Iowa Ct. App. 2011). We conclude the children's placement with their maternal grandmother does not preclude termination of the father's parental rights. The children's placement with their grandmother serves their best interests, and she desires to adopt them if parental rights are terminated.

AFFIRMED.