

**IN THE COURT OF APPEALS OF IOWA**

No. 3-426 / 13-0439  
Filed May 15, 2013

**IN THE INTEREST OF J.M.,  
Minor Child,**

**H.J.M., Father,**  
Appellant,

**C.T., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Marshall County, Stephen A. Owens, Associate Juvenile Judge.

A father and mother appeal separately from the order terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

Darrell Meyer, Marshalltown, for appellant father.

Reyne See of Peglow, O'Hare & See, P.L.C., Marshalltown, for appellant mother.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney General, Jennifer Miller, County Attorney, and Joshua Vander Ploeg, Assistant County Attorney, for appellee State.

Jennifer Meyer of Jennifer Meyer Law, P.C., Marshalltown, for minor child.

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

**EISENHAUER, C.J.**

A father and mother appeal separately from the order terminating their parental rights to their child. The mother contends termination is not in the child's best interests. The father contends the State failed to prove the statutory grounds for termination and termination is not in the child's best interests. We affirm on both appeals.

When the mother gave birth to the child in Iowa in June 2011, she was on probation in Colorado and had left that state without permission. The child was removed from her care and placed with the father. The mother was returned to Colorado, was incarcerated, and remained in jail at the time of the termination hearing in February 2013. She anticipated release to a halfway house in early 2014, where she likely would spend six months to a year.

The child was removed from the father's care in July 2011 and placed in foster care after the father became intoxicated and passed out while caring for the child. The father was in jail from August 2011 through November 2011 and again from January 2012 through July 2012. Within a month of his last release from jail, the father was arrested for public intoxication. In August 2012 following a permanency hearing, the court gave the father an additional six months to pursue reunification and required the father to maintain stable employment and housing, remain sober, and continue with substance abuse treatment and other services.

In September, without notice to the department of human services, the father moved to Colorado. Eventually he contacted the caseworker by e-mail. Soon after moving to Colorado, the father was arrested for operating a vehicle

while intoxicated. At the time of the termination hearing, the father was in a halfway house in Colorado and anticipated being released soon.

The court terminated the mother's parental rights under Iowa Code section 232.116(1)(h) (2011) and the father's parental rights under section 232.116(1)(b) and (h). The court found termination was in the child's best interests, "so that the child may be adopted into a home free of criminal behavior, alcohol abuse, and incarcerated parents all of which detrimentally affect the child's safety and stability." At the time of the termination hearing, the child was in the care of a foster/pre-adoptive family.

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.

**Mother.** The mother argues three issues under the umbrella of the child's best interests. First, she claims termination is not in the child's best interests because the child has not lived with the pre-adoptive family for 180 days; therefore, giving the parents more time will not delay permanency.

In determining a child's best interests, we "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). Where, as here, the child is in foster care, we may also consider "whether the child has become integrated into

the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into the foster family." *Id.* § 232.116(2)(b). In considering the child's integration into the foster family, we review how long "the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child." *Id.* § 232.116(2)(b)(1). There is no best interests requirement termination must be delayed until a child has been in a foster home for 180 days. *See id.* § 600.10 (providing for a minimum of 180 days residence before adoption, unless waived by the juvenile court). The pre-adoptive foster family had significant contact with the child before the child was moved to their home. The family is able and willing to integrate the child into their family permanently, and we find maintaining that environment and continuity for the child will serve the child's immediate and long-term best interests. We affirm on this issue.

The mother also contends termination is not in the child's best interests because the father had made "remarkable progress toward reunification" before his most recent incarceration. The mother lacks standing to raise a claim on the father's behalf. *See In re K.R.*, 737 N.W.2d 321, 323 (Iowa Ct. App. 2007); *see also In re D.G.*, 704 N.W.2d 454, 460 (Iowa Ct. App. 2005) (stating that one parent cannot assert facts or legal positions pertaining to the other parent as the court makes a separate adjudication as to each parent).

The mother next contends termination is not in the child's best interests because there is a statutory preference for children to be raised by their natural parents and "there are two capable parents available to this child." To the extent

the mother's claim relates to the father's availability, she lacks standing. See *D.G.*, 704 N.W.2d at 460. Although there is a presumption the best interests of a child will be served by leaving the child with its parents, the presumption is not conclusive. *In re T.R.*, 460 N.W.2d 873, 875-76 (Iowa Ct. App. 1990). The State must intervene when parents abdicate their responsibility to care for their children properly. *In re D.W.*, 385 N.W.2d 570, 574 (Iowa Ct. App. 1986). Shortly after the child's birth, the mother was returned to Colorado to serve a six-year sentence. Her incarceration has made her unavailable to the child. She has not seen or had any contact with the child since the child's removal from her care just after birth. We conclude the evidence in this case overcomes any presumption in favor of having the child in the mother's custody. We affirm on this issue.

The child's best interests are served by termination of the mother's parental rights. We affirm.

**Father.** Conceding the other elements of Iowa Code § 232.116(1)(h), the father contends the court erred in finding the child could not be returned to his custody under section 232.102. See Iowa Code § 232.116(1)(h)(4). At the time of the termination hearing, the father was in Colorado and either living in a halfway house or was on work release. The court correctly determined the child could not be returned to his custody at that time. We affirm this statutory ground for termination.

The father argues the child could not be adopted for several months, "during which time the father could reunite with the child." The court had already given the father an additional six months to work toward reunification, but the father left Iowa and continued to demonstrate he has problems with alcohol. He

had not completed substance abuse treatment before leaving Iowa. Considering the father's past performance and inability to maintain sobriety in a noncustodial setting, we conclude the child's best interests are served by termination of the father's parental rights. See *In re D.W.*, 791 N.W.2d 703, 709 (Iowa 2010). We affirm on this issue.

The father contends the court erred in finding he had abandoned the child while also finding the State failed to prove the father had not maintained significant contact with the child during the preceding six months. The court terminated the father's parental rights under section 232.116(1)(b) (abandonment) and (h) (child under four years cannot be returned to parent's care). Having affirmed termination of the father's parental rights under section 232.116(1)(h), we need not address his argument concerning paragraph (b). See *D.W.*, 791 N.W.2d at 706 (noting termination may be affirmed if any of multiple grounds cited by the court is supported by the evidence).

The father argues the State did not make reasonable efforts to transfer the case to Colorado. He acknowledged he did not provide the necessary information to the department before he was arrested and incarcerated in Colorado to allow it to pursue transferring the case to Colorado. We conclude the State's efforts at reunification were reasonable under the circumstances. See *In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000). We affirm on this issue.

**AFFIRMED ON BOTH APPEALS.**