

**IN THE COURT OF APPEALS OF IOWA**

No. 9-258 / 09-0049  
Filed May 6, 2009

**IN THE INTEREST OF N.F., Jr., S.P. and C.P.,  
Minor Children,**

**N.N.F., Sr., Father,**  
Appellant,

**R.L.P., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Carol S. Egly, District  
Associate Judge.

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

Nancy L. Pietz, Des Moines for appellant father.

Jeffrey Wright, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant  
County Attorney, for appellee, State.

M. Kathryn Miller, Juvenile Public Defender, for minor children.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

The child at issue first came to the attention of the Iowa Department of Human Services (DHS) in August 2007 when the child's father, N.F., beat the child's mother, R.P. During this incident, N.F. also kicked N.F. Jr.'s half-brother while he was attempting to protect his mother and N.F. Jr., who was less than two months old at the time.<sup>1</sup> This resulted in a founded child abuse report and a criminal no contact order prohibiting N.F. from being at that residence.

On November 12, 2007, N.F. returned to the residence and tried to take his child, causing injuries to the child's maternal grandfather in the process. These events prompted DHS to obtain a temporary removal order on November 19, 2007, and the child was placed with his maternal grandparents. On November 28, 2007, the juvenile court filed a removal order continuing the temporary legal custody of the maternal grandparents, with whom the child has remained since removal from his parents' custody. The child was adjudicated a child in need of assistance on December 19, 2007. On July 8, 2008, the no contact order against N.F. was modified to allow him to have supervised visitation with his child. After a hearing, N.F.'s parental rights were terminated on December 23, 2008, pursuant to Iowa Code section 232.116(1)(d) and (h) (2007). N.F. appeals arguing the juvenile court erred in: (1) terminating his rights on the above-listed grounds; (2) terminating his rights when a relative had custody of the child; and (3) failing to enter a permanency order under section 232.104(2)(b).

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<sup>1</sup> N.F.'s parental rights to N.F. Jr. are the only rights at issue on appeal.

## II. Standard of Review

We review a termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the child. *Id.*

## III. Termination of Parental Rights

Though the juvenile court terminated N.F.'s parental rights on two statutory grounds, we need only find that termination is appropriate on one ground to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

We agree with the juvenile court that clear and convincing evidence supported termination of N.F.'s parental rights pursuant to section 232.116(1)(h).<sup>2</sup> This section provides that termination is appropriate when: (1) the child is three years of age or younger; (2) the child has been adjudicated a child in need of assistance; (3) the child has been removed from the physical custody of the child's parents for the last six consecutive months; and (4) there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents. Iowa Code § 232.116(1)(h). The first three elements are not disputed.

As to the fourth element, the State presented clear and convincing evidence that the child cannot be returned to N.F.'s custody at this time. At the time of the termination hearing, N.F. was incarcerated and expected to remain in

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<sup>2</sup> Though N.F. failed to cite any legal authority or include a statement of this legal issue as required by Iowa Rule of Appellate Procedure 6.151(2)(d) and (e) and has therefore waived this issue on appeal, we opt to address its legal merits in light of the seriousness of the issue.

jail for eight months. N.F. displays violent tendencies that present a threat to N.F. Jr. He beat N.F. Jr.'s mother on many occasions and threatened to kill her. He threatened to burn down the home of N.F. Jr.'s maternal grandparents. He refused to cooperate with DHS, calling caseworkers profane names, hanging up on them, and insisting that they could not tell him what to do. "[W]hen a parent is incapable of changing to allow the child to return home, termination is necessary." *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995).

In addition to his violent behavior, N.F. admitted that he had a drug problem. He testified that he was incarcerated because of this drug problem. He also testified that he was not in a position to have custody of his son. He did not know the last time he had seen his son and admitted that he did not deserve to have custody of the child. N.F.'s past is filled with violence and substance abuse issues. "The future can be gleaned from evidence of the parents' past performance and motivations." *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

The child's guardian ad litem recommended termination of N.F.'s parental rights, testifying that he had not demonstrated any ability to resume custody. Clear and convincing evidence supports the juvenile court's finding that N.F. Jr. cannot be returned to N.F.'s custody at this time.

Since November 2007, the child has been living with his maternal grandparents, who provide him a safe and stable home. "A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). The child's maternal grandparents expressed an interest in adopting him and ensuring that he has contact with his paternal grandparents.

We find the juvenile court properly exercised its discretion in terminating N.F.'s parental rights in spite of Iowa Code section 232.116(3)(a), which provides that a court "need not terminate the relationship between the parent and child" if a relative has custody of the child. N.F. has shown little, if any, improvement since the child was removed from his care in November 2007. "A parent does not have an unlimited amount of time in which to correct his or her deficiencies." *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). We agree with the juvenile court that the child needs a permanent home. "A child should not be forced to endlessly suffer parentless limbo." *In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa Ct. App. 1992). Terminating N.F.'s parental rights will provide the child with a permanent and stable home, which he deserves.

For the same reasons, we find that the juvenile court properly declined to delay permanency for another six months, as allowed by Iowa Code section 232.104(2)(b).

**AFFIRMED.**