

**IN THE COURT OF APPEALS OF IOWA**

No. 0-144 / 10-0104  
Filed March 10, 2010

**IN THE INTEREST OF A.R.S.,  
Minor Child,**

**R.T., Father,  
Appellant.**

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Appeal from the Iowa District Court for Pottawattamie County, Mark J. Eveloff, District Associate Judge.

A father appeals from the order terminating his parental rights to his child.

**AFFIRMED.**

Patrick A. Sondag, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn M. Landon, Assistant County Attorney, for appellee.

Roberta Megal, Council Bluffs, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

**SACKETT, C.J.**

Roderick, the father of Ariell, appeals from the juvenile court order terminating his parental rights.<sup>1</sup> He contends the State did not prove the grounds for termination by clear and convincing evidence and termination is not in the child's best interests. We affirm.

**Background.** The child, born in 2003, was removed from the parents' custody in August of 2008 after the parents were arrested and jailed for fraudulent practices. At the time of the removal the family had "no visible means of support," was homeless, and both parents were "actively using illegal substances." In September, the court found the child was in need of assistance. Substance abuse evaluation and treatment was provided for the parents, among other services. The father tested positive for amphetamines, methamphetamine, and cocaine at various times during this case. He failed to participate in most of the drug screens requested by his probation officer or the Department of Human Services. When not in jail, he participated in supervised visitation. Both parents have had their parental rights to other children terminated.

By the time of an August 2009 CINA review/modification/permanency hearing, the father was incarcerated for a probation violation. His anticipated date of release was as early as April of 2010, but could be as late as September of 2011. The State petitioned to have his parental rights terminated, alleging grounds existed under Iowa Code sections 232.116(1)(b), (d), (e), (f), (g), (i), and (j) (2009). Following a hearing at which the State introduced exhibits and the

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<sup>1</sup> The mother admitted the State's allegations concerning her and has not appealed from the termination order.

father testified, the court dismissed the petition as to sections 232.116(1)(b) and (e), and terminated the father's parental rights under sections 232.116(1)(d), (f), (g), (i), and (l).

**Scope and Standards of Review.** “[T]he proper standard of review for all termination decisions should be de novo.” *In re P.L.*, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 2010). We give weight to the fact findings of the juvenile court, “especially when considering the credibility of witnesses,” but are not bound by them. Iowa R. App. P. 6.904(3)(g). The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). The State has the burden of proving the grounds for termination by clear and convincing evidence. *In re T.A.L.*, 505 N.W.2d 480, 483 (Iowa 1993). When the juvenile court terminates a parent's rights on more than one statutory ground we may affirm if we find clear and convincing evidence to support any of the grounds cited by the court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

**Merits.**

In *In re P.L.*, \_\_\_ N.W.2d \_\_\_, \_\_\_ the court held:

Section 232.116 requires the juvenile court to make various decisions in the process of terminating a parent's parental rights. First, the court must determine if the evidence proves one of the enumerated grounds for termination in section 232.116(1). If a ground is proven, the court may order the termination. Iowa Code § 232.116(1). Next, the court must consider whether to terminate by applying the factors in section 232.116(2). *Id.* § 232.116(2). Finally, if the factors require termination, the court must then determine if an exception under section 232.116(3) exists so the court need not terminate. *Id.* § 232.116(3).

Our analysis on de novo review, follows the same pattern.

*Grounds for termination.* The father contends “the State failed to establish by clear and convincing evidence grounds to terminate [his] parental rights with [the child] pursuant to Iowa Code section 232.116(1)(d), (f), (g), (i), and/or (l).”<sup>2</sup>

Section 232.116(1)(f) provides for termination if the court 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.

The first three elements are undisputed. The child was six years old, was found to be in need of assistance in September of 2008, and had been removed from her parents' custody for the preceding sixteen months. At the time of the termination hearing, the father was incarcerated and would not be released, at the earliest, for another four months. He testified the child could not be returned to his custody upon his release for “roughly another seven to eight months or more. Things take time.” We find clear and convincing evidence supports termination of the father's parental rights under section 232.116(1)(f).

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<sup>2</sup> Iowa R. App. P. 6.1401—Form 5 requires an appellant to “state the legal issues presented for appeal.” The instructions state: “*The issue statement should be concise in nature setting forth specific legal questions. General conclusions such as ‘the trial court’s ruling is not supported by law or the facts,’ are not acceptable.*” *Id.* (italics in original). The father's conclusory statement of the legal issues presented for appeal closely resembles the unacceptable conclusory statement illustrated in the instructions.

*Best Interests.* The father contends terminating his parental rights is not in the child's best interests. In determining a child's best interests, we are limited "to the considerations contained in section 232.116(2)." *P.L.*, \_\_\_ N.W.2d at \_\_\_\_\_. 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).

The father has not been able to provide a safe, stable home for the child in the past. He has abused illegal substances since before the child was born. We have long recognized parents with chronic, unresolved substance abuse problems present a danger to their children. *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993). The father has not demonstrated an ability to obey the law or to maintain sobriety when he is not in custody. We have indicated that a good prediction of the future conduct of a parent is to look at the past conduct. See *In re C.C.*, 538 N.W.2d 664, 666 (Iowa Ct. App. 1995).

It is well-settled law that 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." *P.L.*, \_\_\_ N.W.2d at \_\_\_\_\_. We find placement with the father at some time in the future would not be "the best placement for furthering the long-term nurturing and growth of the child.

See Iowa Code § 232.116(2). For the sixteen months prior to the termination hearing, the child has been in a foster family where she has thrived. They have been meeting her physical, mental, and emotional needs. It is a "stable, satisfactory environment" and the foster family "is able and willing to permanently

integrate the child into the foster family.” See *id.* Consequently, termination was proper under sections 232.116(1) and (2).

The father argues termination is not in the child’s best interest because either termination “would be detrimental to the child . . . due to the closeness of the parent-child relationship” or the father’s absence is “due to the parent’s admission or commitment to [an] institution.” See *id.* § 232.116(3)(c), (e). The State contends the father did not preserve this claim for review because the termination order does not address section 232.116(3) and the father did not file a motion to reconsider under Iowa Rule of Civil Procedure 1.904(2). We agree. Consequently, we do not address this issue.

Even if the claim were preserved, neither exception claimed exists. First, there is not clear and convincing evidence of such a close parent-child relationship between the father and child that terminating it would be detrimental to the child. See Iowa Code § 232.116(3)(c). Second, the “institution” referred to in section 232.116(3)(e) does not include correctional facilities. See *In re J.V.*, 464 N.W.2d 887, 890 (Iowa Ct. App. 1990).

**Conclusion.** After applying the requirements of Iowa Code section 232.116, we find the juvenile court did not err when it terminated the father’s parental rights.

**AFFIRMED.**