

**IN THE COURT OF APPEALS OF IOWA**

No. 0-154 / 10-0147  
Filed March 24, 2010

**IN THE INTEREST OF T.L., V.J., and D.L.,  
Minor Children,**

**L.D.J., Father,  
Appellant.**

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Appeal from the Iowa District Court for Clinton County, Phillip J. Tabor,  
District Associate Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

Martha L. Cox, Davenport, for appellant father.

Lucy Valainis, Davenport, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, Mike Wolf, County Attorney, and Cheryl Newport, Assistant  
County Attorney, for appellee State.

Neill Kroeger, LeClaire, for minor children.

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

**DANILSON, J.**

A father appeals the termination of his parental rights to his seven-year-old son, V.J., and his six-year-old daughter, D.L. We affirm.

**I. Background Facts and Proceedings.**

In September 2008, the mother went on a two-day crack cocaine binge and left the children (along with their older half-sister, T.L.)<sup>1</sup> at their grandmother's house under the supervision of the mother's seventeen-year-old half-sister.<sup>2</sup> The Iowa Department of Human Services (DHS) became involved and arranged for the mother and children's admittance to Hightower Place substance abuse treatment center.<sup>3</sup> On October 23, 2008, however, the mother decided to leave Hightower Place against medical orders, and signed a voluntary foster care placement agreement allowing the children to be removed from her care. The children are special needs children<sup>4</sup> and have remained together in family foster care since the initial placement. On December 3, 2008, the children were adjudicated children in need of assistance (CINA).<sup>5</sup>

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<sup>1</sup> The mother's parental rights were terminated, but she does not appeal. T.L.'s father's parental rights were also terminated, but he does not appeal.

<sup>2</sup> The grandmother was also on a crack cocaine binge at this time. The seventeen-year old was left to care for herself and her two younger siblings, as well as the mother's three children. The Iowa Department of Human Services was notified when the seventeen-year old went to a neighbor's house to ask for food to feed the six children.

<sup>3</sup> DHS was initially involved with the family in 2005 and 2006, but the mother participated in services and eventually regained custody of the children.

<sup>4</sup> The children's grandmother stabbed their grandfather to death in October 2008, and the children suffered severe emotional trauma after this event. The children have suffered emotionally and psychologically due to episodes of domestic abuse in the family home and due to substance abuse issues by the adults in their lives. The children also have academic difficulties in school.

<sup>5</sup> The children were adjudicated CINA under Iowa Code sections 232.2(6)(b), (c)(1), (c)(2), and (n) (2009), due to the following: physical abuse or neglect, or likelihood of physical abuse or neglect; mental injury; failure to receive a reasonable degree of

The father became incarcerated due to probation violations on June 16, 2006, when the children were two and three years of age. Although the father states that he resided with the children before his incarceration, the record reflects reports of domestic violence between the mother and father, and at least one no-contact order against the father. Thus, the extent that the father actually lived in the family home is difficult to ascertain from the record. DHS filed a founded report that the father denied critical care to the children in 2005. The children were removed from the mother's care, and the mother was ordered to stay away from the father in order to get the children back in her care.

The father had little contact with the children during his incarceration, and did not see them at all. The father attended and completed substance abuse, domestic violence, parenting, and other programs during his imprisonment. According to the father, he paid some amount of child support throughout his imprisonment and upon his release.<sup>6</sup> The father was released in late May 2009. The father attended the review hearing on July 8, 2009. After the review hearing in July, the father began to have supervised phone conversations with the children usually on a weekly basis. The father remained in support of the children's reunification with the mother until one or two months before the termination hearing.

After his release, the father lived in Waterloo, approximately three hours away from the children, and testified he was unable to visit the children because

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care in supervision; and failure to receive adequate care as a result of parental mental capacity of condition, imprisonment, or drug or alcohol abuse.

<sup>6</sup> DHS was unaware of any child support payments, and there is no evidence in the record to corroborate the father's testimony.

he did not have transportation until the beginning of October. The father had a supervised visit with the children once in October and once in December. He sent a twenty-five dollar gift of money for V.J.'s birthday in September, and gave the children Christmas presents during his visit with them in December. The father's work schedule and inability to travel prompted DHS to request that the father contact them when he was able to visit the children. The father only sporadically contacted caseworkers, and had no additional contact with the children. The father also failed to attend NA/AA meetings, a condition of his parole.

Eventually it became apparent that the mother was not making progress toward reunification with the children. The father requested services in Waterloo. Services were initiated in November 2009, and began in early December 2009. The father met weekly with a service provider from Lutheran Services, to discuss parenting skills and housing. The caseworker agreed the father had suitable housing; however, the worker was not able to evaluate the father's parenting skills or interactions with the children, because the children were not present for the services in Waterloo, and the father was unable to travel to visit the children. The father also submitted his sister as a possible placement option for the children, but her background check was not complete by the time of termination.

On September 30, 2009, the State filed a termination petition. A contested hearing took place on January 6, 2010. At the hearing, the father requested reunification with the children, or in the alternative, that he be given three to six additional months to reunify with the children. On January 8, 2010,

the court terminated the father's parental rights to the children pursuant to Iowa Code sections 232.116(1)(b), (e), (f), (i), and 232.117 (2009). The father now appeals.<sup>7</sup>

## **II. Scope and Standard of Review.**

We review termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination under section 232.116(1) must be proved by clear and convincing evidence. *In re P.L.*, 778 N.W.2d 33, 34, 39 (Iowa 2010); *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). If a ground exists, the court may terminate a parent's parental rights. *P.L.*, 778 N.W.2d at 37-39. In determining whether to terminate, our primary considerations are the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. *Id.* at 37, 39; Iowa Code § 232.116(2). We also consider whether any of the exceptions contained in section 232.116(3) allow the court not to terminate. *P.L.*, 778 N.W.2d at 37-39; Iowa Code § 232.116(3).

## **III. Merits.**

### **A. Clear and Convincing Evidence under Section 232.116(1).**

The father argues the State failed to prove the grounds for termination by clear and convincing evidence. Under section 232.116(1)(b), parental rights may

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<sup>7</sup> The father has also filed a motion to strike the State's response in this matter as untimely under Iowa Code section 6.202(2) (2009). The father filed his petition on appeal on February 2, 2010. Because the State was served the petition by mail, it was allowed to add three days to the fifteen-day deadline to file its response. See Iowa R. App. P. 6.701(6). In this case, the deadline landed on a weekend, so the State had until the next business day (February 22, 2010) to file its response. See Iowa Code § 4.1(34). The State's response was timely filed on that date. The father's motion is therefore denied.

be terminated if the court finds “there is clear and convincing evidence the child has been abandoned or deserted.” Abandonment is characterized as the giving up of parental rights and responsibilities along with the intent to forego them. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996).

The father contends the State failed to prove (1) that he gave up his parental rights and responsibilities as demonstrated by his conduct and (2) an accompanying state of mind showing his intent to forego these rights and responsibilities. The father points to the following facts in support of his argument: he lived with the children prior to his incarceration; he attempted to communicate with the children while he was incarcerated; he requested telephone communication with the children beginning in July 2009; he gave V.J. a gift of money for his birthday in September 2009; he visited the children in October 2009 for approximately one hour at V.J.’s soccer game; and he visited the children and gave them Christmas presents in December 2009.

The children were two and three-years-old when the father became incarcerated in early June 2006. The father did not see the children at all throughout his three-year incarceration and contacted them by writing letters sporadically. Although the father alleges he lived with the children prior to his incarceration, the record indicates various reports of domestic violence, at least one no-contact order entered against him in 2002, and the children were removed from the care of the parents in 2005. To his credit, after his release, the father kept in some contact with the children by telephone. We acknowledge that

the father requested services in Waterloo, but this effort was not significant or productive given the fact that he was not visiting with the children.

Despite the father's contentions to the contrary, we find the State provided reasonable services to reunify the family or eliminate the need for removal in this case. The father was incarcerated throughout much of pendency of these court proceedings. Upon his release, the father was provided numerous visits and contacts with caseworkers, and visits with the children were scheduled whenever the father was available. Although it appears the father's work schedule and transportation issues created some difficulty for him to see the children, these reasons do not justify only two visits with the children in a seven-month period. Even after his release from incarceration, the father continued to support the children's reunification with the mother and made little effort initially to further his relationship with them. As the juvenile court stated, "[The father's] efforts since being released from incarceration do not rise to significant and meaningful contact to reestablish himself as an important person in his children's lives."

The father does not have an unlimited amount of time to correct his deficiencies. See *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). Prior to his incarceration, the father was violent and had a no-contact order issued against him. The children were removed from the mother's care, and the mother was ordered to stay away from the father in order to regain custody of the children. He did not see the children for three years during his incarceration—more than half of the children's lives. As of the date of the termination hearing, he had seen the children only twice since June 2006. Past performance of a

parent may be indicative of the quality of future care the parent is capable of providing. *In re C.W.*, 554 N.W.2d 279, 283 (Iowa Ct. App. 1996). There is no reason to further delay V.J. and D.L. the permanency they need and deserve. We find clear and convincing evidence supports termination of the father's parental rights.

**B. Child's Interests under Section 232.116(2).**

The father also argues termination of his parental rights is not in the best interests of the children. In addition to meeting the section 232.116(1) grounds for termination, section 232.116(2) requires us to 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. *P.L.*, 778 N.W.2d at 37-39; Iowa Code § 232.116(2). Therefore, termination is not mandatory upon finding the requisite statutory elements under section 232.116(1). *P.L.*, 778 N.W.2d at 37-39; *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996).

As our supreme court recently stated:

Rather than a court using its own unstructured best-interest test, the court is required to use the best-interest framework established in section 232.116(2) when it decides what is in the best interest of the child. . . . Accordingly, a court should base its best-interest determination on the legislative requirements contained in section 232.116(2), rather than upon the court's own value system. Additionally, in making this determination the court's decision should contain specific reasons as to why the court made its determination under section 232.116(2). By doing so, we will assure parents that our courts are applying the legislative intent of the statute in termination actions decided under chapter 232.



*P.L.*, 778 N.W.2d at 37. In determining the best placement for the child, the court is to look at the child's long range as well as immediate interests:

The court is to consider what the future likely holds for the child if the child is returned to the parent . . . . Insight for that determination is to be gained from evidence of the parent[s] past performance, for that performance may be indicative of the quality of future care the parent [is] capable of providing. Case history records are entitled to much probative force when a parent's record is being examined.

*In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

In this case, it is clear the father is unable to provide the children with a stable home. The children have been exposed to domestic violence and substance abuse by the mother, and the father continued to support the mother's reunification with the children until one or two months before the termination hearing. The father has done little to develop a relationship and bond with the children in over three years. It is unclear whether he has provided any financial support for the children. The children are six and seven-years-old and need safety and permanency in their lives. Children should not be forced to endlessly await the maturity of a natural parent. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). At some point, the rights and needs of the children rise above the rights and needs of the parent. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The father cannot provide for the long-term nurturing and growth of the children. He has not made these children a priority in his life since they were adjudicated in December 2008, and we cannot find that he will do so in the foreseeable future.

We also find that none of the exceptions to termination listed under section 232.116(3) apply. We agree with the juvenile court that termination of the father's parental rights is in V.J. and D.L.'s best interests.

We affirm the termination of the father's parental rights.

**AFFIRMED.**