

IN THE COURT OF APPEALS OF IOWA

No. 0-299 / 10-0364
Filed May 12, 2010

**IN THE INTEREST OF A.W. and N.W.,
Minor Children,**

**N.C.W., Father,
Appellant.**

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

A father appeals a juvenile court order terminating his parental rights.

AFFIRMED.

Carrie E. Coyle of Carrie E. Coyle, P.C., Davenport, for appellant.

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

J. David Zimmerman, Clinton, for mother.

Martha Cox, Davenport, attorney and guardian ad litem for minor children.

Considered by Vaitheswaran, P.J., and Doyle, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MAHAN, S.J.**I. Background Facts & Proceedings**

Neil and Jessica are the parents of Nita, born in 2005, and Aiden, born in 2007. Both parents have a lengthy history of substance abuse. Neil also has a history of criminal activity. Aiden was born with illegal drugs in his system. The children were removed from the parents' care and placed with the paternal grandmother.

The children were adjudicated to be in need of assistance (CINA) under Iowa Code sections 232.2(6)(b), (c), (n), and (o) (2007). The children were placed with the mother at a treatment facility. On October 11, 2008, the children were placed in the care of the father due to the mother's continued drug use.

The children were removed from the father's care on May 7, 2009. Neil had been charged with serious assault, criminal mischief in the fifth degree, and disorderly conduct. While under the influence of alcohol, he punched in the window of his paramour's car. A child of the paramour who was in the car received cuts on the face. Nita and Aiden were placed in the care of the paternal grandmother and an aunt.

The father was placed in a residential correctional facility. He was released from the facility in September 2009. He moved into a trailer with his brother, who has a history of substance abuse. He has visitation with the children that was supervised by his sister.

The State filed a petition to terminate the parents' rights on November 3, 2009. The juvenile court terminated Neil's parental rights under sections

232.116(1)(d), (f) (Nita), (h) (Aiden), and (j) (2009).¹ The guardian ad litem argued that the children should be placed in a guardianship. The juvenile court rejected this argument, finding:

It is clear from the testimony of the current custodian that guardianship would not provide permanency for these children, as any time either parent had any period of sobriety, there would be nothing to prevent them from attacking the guardianship established herein and asking that the children be returned to the respective parent who was currently enjoying a period of sobriety.

The court concluded termination was in the best interests of the children. Neil appeals the termination of his parental rights.

II. Standard of Review

The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Clear and convincing evidence is needed to establish the grounds for termination. *In re T.P.*, 757 N.W.2d 267, 269 (Iowa Ct. App. 2008). Our primary concern in termination cases is the best interests of the children. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

III. Best Interests

Neil claims termination of his parental rights is not in the children's best interests. He states he is able to meet the children's needs, he is able to financially support the children, and he is maintaining sobriety. He asserts he has a close bond with the children and they should be placed in his care.

We determine a child's best interests by looking at section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). We consider "the child's safety," "the

¹ The mother's parental rights were also terminated, but she has not appealed.

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.*

Although the court may find grounds to terminate under sections 232.116(1) and 232.116(2), the court may determine termination is not appropriate if the circumstances contained in section 232.116(3) are found to exist. *Id.* On appeal, Neil has raised an argument based on section 232.116(3)(c), the closeness of the parent-child relationship. This issue was not raised below, and we do not address issues raised for the first time on appeal. See *In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa Ct. App. 1997).

The juvenile court did address section 232.116(3)(a), which applies if a relative has legal custody of the child. The court concluded a guardianship was not appropriate under the facts of this case. The court uses its best judgment in applying the factors contained in the statute. *P.L.*, 778 N.W.2d at 40. On our de novo review we concur in the court’s conclusion that a guardianship would not be in the children’s best interests. A guardianship would not provide the permanency needed by the children.

We affirm the juvenile court order terminating Neil’s parental rights.

AFFIRMED.