

IN THE COURT OF APPEALS OF IOWA

No. 0-527 / 10-0917
Filed July 28, 2010

**IN THE INTEREST OF C.R.B., J.B. JR., and P.L.,
Minor Children,**

**J.A.B. SR., Father of C.R.B. and J.B. JR.,
Appellant,**

**P.L., Minor Child,
Appellant.**

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Juvenile Judge.

The guardian ad litem and J.A.B. appeal from the juvenile court's
termination orders. **AFFIRMED.**

Jesse A. Macro, Jr. of Gaudineer, Comito & George, West Des Moines,
for appellant-father.

Michelle R. Saveraid of Youth Law Center, attorney and guardian ad litem
for minor children.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Stephanie Brown,
Assistant County Attorney, for appellee State.

Todd E. Babich of Babich, Goldman, Cashatt & Renzo, P.C., Des Moines,
for father of P.L.

Considered by Vaitheswaran, P.J., Eisenhauer and Danilson, JJ.

EISENHAUER, J.

This appeal involves three children born to the same mother. J.L. is the father of P.L., born in 1996. He lives in Arizona and prior to these proceedings had not had contact with P.L. in approximately five years. J.B. is the father of C.B., born in 2000, and J.B. Jr., born in 2002, and was living with the mother and all three children in February 2009 when he was accused of sexually abusing P.L. The children were removed from the mother and J.B.'s care and were adjudicated in need of assistance in March 2009.

By October 2009, the children had been returned to the legal custody of the mother. On January 20, 2010, the State filed petitions to terminate the parental rights of both fathers, but later dismissed its petition against J.L. The petition against J.L. was refiled by the guardian ad litem. Following a hearing, the juvenile court dismissed the petition to terminate J.L.'s parental rights. The guardian ad litem appeals from this ruling. In a separate order, the court terminated J.B.'s parental rights to C.B. and J.B. Jr. pursuant to Iowa Code sections 232.116(1)(b), (d), (e), and (f) (2009). J.B. appeals from the termination of his parental rights. Our review of these termination decisions is de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

We first consider the guardian ad litem's contention the juvenile court erred in dismissing the termination petition against J.L. She contends there is clear and convincing evidence to terminate his parental rights pursuant to Iowa Code sections 232.116(1)(b), (e), or (f). Assuming arguendo the grounds for termination are supported by clear and convincing evidence, we agree with the

juvenile court's conclusion termination would not be in P.L.'s best interest and would be more detrimental than maintaining the parent-child relationship. None of the factors outlined by statute militate in favor of termination. See *P.L.*, 778 N.W.2d at 39 ("In considering whether to terminate, 'the court shall 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.'" (quoting Iowa Code § 232.116(1))). J.L. poses no danger to P.L.'s safety. Nor do P.L.'s physical, mental, and emotional needs require termination. The record shows a father who has been estranged from his daughter's life, but who is making an effort to reconnect with her. Because there is no compelling reason to terminate J.L.'s parental rights, we affirm the court's order dismissing the termination petition.

We next consider whether the court properly terminated J.B.'s parental rights to C.B. and J.B. Jr. His rights were terminated pursuant to Iowa Code sections 232.116(1)(b), (d), (e), and (f). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(f) where the State proves by clear and convincing evidence 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.

There is no dispute concerning the first three elements. Instead, the father argues there is not clear and convincing evidence to prove the children cannot be returned to his custody. We disagree.

In March 2009 the juvenile court adjudicated all three children in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) and (6)(d). Criminal charges against J.B. were pending arising out of the sexual abuse allegations, and an order prohibiting any contact between J.B. and his children has remained in effect throughout the case. He pled guilty to a reduced charge of child endangerment and, at the time of the termination hearing, was incarcerated. He was to remain incarcerated for approximately one year, during which time the children would not be able to be returned to his custody. As noted by the juvenile court:

As a non-admitting sex offender, [the father] elected to prioritize a strategy that would support the best possible outcome in his criminal case over the best interest of his children. Because of his failure to participate in reunification services and to provide any information the Department of Human Services concerning progress he may have made, there had been no progress toward reunification.

Even after his release from custody, to regain any contact with his children the father would have to admit to his wrongdoing—which he was unwilling to do at the time of termination—and receive additional services.

The children should not be forced to endlessly suffer in parentless limbo. See *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997). While the law requires a “full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,” this patience has been built into the statutory scheme

of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). Children should not be forced to endlessly await the maturity of a natural parent. *Id.* At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

The father also contends termination is not in the children's best interest. He points out that termination is not required under section 232.116(1)(3) because the children are in the care of their mother. Given the safety issues presented by the father's sexual abuse of his stepdaughter—his children's half sister—as well as the children's physical, mental, and emotional needs, we conclude termination is in the children's best interest.

AFFIRMED.