

**IN THE COURT OF APPEALS OF IOWA**

No. 0-531 / 10-0982  
Filed August 25, 2010

**IN THE INTEREST OF P.B.H. and J.O.,  
Minor Children,**

**A.K.C., Mother,  
Appellant,**

**M.O., Father of J.O.,  
Appellant.**

---

Appeal from the Iowa District Court for Jefferson County, William S. Owens, Associate Juvenile Judge.

A mother and father appeal the termination of their parental rights to their children. **AFFIRMED.**

Mary Baird Krafka of Krafka Law Office, Ottumwa, for appellant-mother.

William C. Glass, Keosauqua, for appellant father of J.O.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Tim W. Dille, County Attorney, and Patrick J. McAvan, Assistant County Attorney, for appellee.

Leslie D. Lamping of Day, Meeker, Lamping, Schlegel & Salazar, Washington, for intervenors.

Kenneth Duker of Breckenridge & Duker, P.C., Ottumwa, for appellee-father.

Patricia Lipski, Fairfield, attorney and guardian ad litem for minor children.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

**TABOR, J.**

This termination case involves a five-year-old girl, J.O., and her two-year-old half-brother, P.H. Their mother, A.C., appeals the termination of her parental rights to both children. J.O.'s father, M.O., appeals the termination of his parental rights to his daughter. The parents do not dispute the juvenile court's finding that their children cannot be returned to their care at this time. Instead they ask us to consider the factors weighing against termination in Iowa Code section 232.116(3)(a) and (c) (2009). After our de novo review of the record, we find the parents cannot avoid termination based on the factors involving custody by a relative and closeness of the parent-child relationship.

**I. Background Facts and Proceedings.**

The Iowa Department of Human Services (DHS) learned in July 2008 that these children were exposed to methamphetamine use by P.H.'s father, Kent, whose parental rights are not being terminated in this action. The children's mother lived with Kent and investigators found drug paraphernalia and residue under their bed. P.H. was adjudicated as a child in need of assistance (CINA) in October 2008. J.O. was adjudicated as a CINA in November 2008. The DHS placed both children with their maternal grandmother, Leah. Leah already had adopted J.O.'s older brother after A.C. and M.O.'s parental rights to that child were terminated in 2003. According to a safety plan developed by the DHS, A.C. was not allowed to live in the same residence as Leah and the children. Despite that plan, A.C. repeatedly showed up at Leah's house, once entering in the middle of the night and refusing to leave.

In January 2009, Leah came to the DHS and asked that J.O. and P.H. be placed in a foster care home because of the stressful situation caused by her daughter's disregard of the safety plan. The DHS placed the children with Kent's sister, Karen, who is P.H.'s biological aunt. The children stayed in her home, with visitation in Kent's home, during the pendency of the termination proceedings. A.C. was unhappy with the DHS decision to place her children with Kent's family and took steps to disrupt the situation. For instance, A.C. called law enforcement at least seven times over the course of nine months to accuse Karen of child abuse. All reports were unfounded.

M.O.'s only effort to contact J.O. after she was adjudicated as a CINA was a telephone call on her birthday; he did not participate in any services offered by the DHS. He told a social worker that he was not stable enough to seek custody of J.O. and did not object to J.O. spending time with Kent or thinking of Kent as her father. M.O. just wanted J.O. to realize when she was older that he was her biological father.

On October 28, 2009, the State filed its termination petition. The juvenile court held a termination hearing that included testimony from eight witnesses and took place over four non-consecutive days between December 16, 2009, and February 10, 2010. On June 2, 2010, the juvenile court issued its order terminating M.O.'s parental rights to J.O. based on Iowa Code sections 232.116(1)(e), (f), and (g). The court also terminated A.C.'s parental rights to J.O. and P.H. under Iowa Code sections 232.116(1) (f), (h), and (g). Both parents appeal.

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

We review the juvenile court's decision to terminate parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650 (Iowa Ct. App. 2007). The State must prove grounds for termination under section 232.116(1) by clear and convincing evidence. *Id.* at 650-51. In considering whether to terminate, our primary considerations are the children's safety; their physical, mental, and emotional condition and needs; and the placement which best provides for the long-term nurturing and growth of the children. Iowa Code § 232.116(2). Even if termination is appropriate under section 232.116(2), the court need not terminate if any of the circumstances listed in section 232.116(3) exist. *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010).

## **III. Merits.**

We turn first to the father's challenge. His only argument on appeal is that termination was not in J.O.'s best interest because he has a "strong emotional bond" with his daughter. Under section 232.116(3)(c), the juvenile court "need not terminate the relationship between parent and child if the court finds . . . [t]here is clear and convincing evidence that termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." The father did not present any evidence concerning his relationship with J.O.; in fact, M.O. did not participate personally in the termination proceedings. The DHS case worker testified that her letters and telephone calls to M.O. went unanswered. Social workers and family members testified that J.O. considered Kent to be her father. Nothing in this record convinces us that J.O. has the kind

of attachment to M.O. that would trigger a finding under section 232.116(3)(c). See *In re A.J.*, 553 N.W.2d 909, 916 (Iowa Ct. App.1996) (finding provision permitting consideration of close parent-child relationship did not apply to parents who failed to maintain meaningful contact with child), *overruled on other grounds by P.L.*, 778 N.W.2d at 39.

We turn next to the mother's appeal. A.C. obviously loves her children and hates the prospect of having her parental rights terminated. But A.C. agreed in her testimony that her children could not safely return to her today. Her mother seconded that assessment, acknowledging A.C. would need to secure a steady job, move out of her mother's apartment and find suitable housing, start a bank account, learn to manage her money, and follow a pain-control regime for her migraine headaches before she could independently care for her son and daughter. A.C. made little progress toward these goals during the year and more her children were removed from her custody. Rather than concentrating on her own reunification efforts, A.C.—who has been diagnosed with borderline personality disorder—took measures to sabotage the success of her children's placements at her mother's home and with their aunt Karen.

On appeal, A.C. cites two of the factors under section 232.116(3). First, she contends that because P.H. is currently in the custody of his father's family, the juvenile court erred in not granting her additional time to reunify with her son. See Iowa Code § 232.116(3)(a). Second, she asserts there is clear and convincing evidence that termination will be detrimental to both children because

of their close bond with her and their maternal grandmother, Leah. See Iowa Code § 232.116(3)(c).

The juvenile court took a pessimistic view of the mother's bid for more time:

[A.C.] is without a place of her own to live, has no job, has not regularly participated in services, has missed visits, continues to be in need of parenting development and mental health treatment, and has spent as much time objecting to or obstructing placement of her children as she has working on reunification. . . . In essence, she is asking the children remain in foster care until such time as she is able to put herself in a position to have the children returned to her. This is something [A.C.] was unable to do some seven years ago for [her older son] and also has been unable to accomplish over the last year or more for [P.H.] and [J.O.]. Given [A.C.'s] performance in this case, and her history there is no likelihood she will ever be in a position to have these children placed with her.

In our de novo review, we reach the same conclusion. A parent's past conduct is a good predictor of future prospects. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). Because A.C. presented no credible evidence she has the wherewithal to alter her pattern of delay and inaction, the termination decision should not be put on hold simply because P.H. is placed with relatives. A.C. wants to avoid termination because the DHS placed P.H. with his father's family, yet she testified that she does not consider placement with Kent as safe for her children.

We must acknowledge that A.C.'s concerns about Kent are not without some basis. It was, after all, his methamphetamine use that launched the DHS investigation. But the record strongly suggests that Kent is a success story for adult drug court. As the juvenile court found: "[H]e has done everything

expected of him, is clean and sober, has actively participated in services and visits with the children, and is in what appears to be a positive relationship.” His sister Karen also provides a safety net as the DHS continues to evaluate Kent’s ability to provide a permanent home for these children.

The final question is the closest. Is the bond between A.C. and her children so tight that termination would be damaging to the children’s best interests? A.C. expressed a desire to have her children back, but for several months had no contact with them. During a supervised visit in January 2010, J.O. had to be coaxed to interact with her mother. We do not find clear and convincing evidence in this record that A.C. has such a close relationship with J.O. and P.H. that termination would be to their detriment. See *P.L.*, 778 N.W.2d at 41.

A.C. argues that termination would not only sever the children’s ties to her, but to their maternal grandmother “with whom the children had also closely bonded.” Many witnesses confirmed the children’s affinity for their grandmother. But the factor at section 232.116(3)(c) does not apply to Leah. Her rights are not being terminated. Kent’s family testified that they would foster contact between the children and their maternal grandmother. A.C. cannot use her mother’s bond with her children to strengthen her claim.

Neither parent is able to forestall termination of their parental rights based on the factors weighing against termination at section 232.116(3). We concur with the juvenile court’s ruling terminating the parental rights of A.C. and M.O.

**AFFIRMED.**