

IN THE COURT OF APPEALS OF IOWA

No. 0-967 / 10-1836
Filed January 20, 2011

**IN THE INTEREST OF B.S. and K.S.,
Minor Children,**

**J.L.S., Mother,
Appellant.**

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

A mother appeals from the order terminating her parental rights.

AFFIRMED.

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

Sarah Wenke, Ottumwa, for father K.H.

John Silko, Bloomfield, for father L.T.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Allen Cook, County Attorney, and Seth Harrington, Assistant
Wapello County Attorney, for appellee State.

Ryan Mitchell of Orsborn, Bauerly, Milani & Grothe, L.L.P., Ottumwa, for
minor children.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

A mother appeals the termination of her parental rights to her children. We review her claims de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The mother's parental rights were terminated pursuant to Iowa Code section 232.116(1)(h) (2009) (the child is three years of age or younger, the child has been adjudicated a child in need of assistance, the child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, and there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time). The mother does not contend the State failed to prove the grounds for termination. She also does not dispute the juvenile court's findings pursuant to section 232.116(2), finding termination is in the children's best interests. Rather, she contends termination is not warranted pursuant to section 232.116(3) because of the strong bond between her and the children. We disagree.

Even though a court may find termination appropriate under section 232.116(2), a court need not terminate the relationship between the parent and children if any of the enumerated circumstances contained in section 232.116(3) exist. See *P.L.*, 778 N.W.2d at 37. However, section 232.116(3) has been interpreted to be permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). In determining whether to apply this section, we consider the children's long-term and immediate best interests. See *P.L.*, 778 N.W.2d at 37. A court has discretion, based on the unique circumstances of each case and

the best interests of the children, whether to apply this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

The juvenile court found termination was in the best interests of the children, explaining:

[T]he court has given primary consideration to the safety of the children, to the best placement for furthering their long-term nurturing and growth, and the physical, mental, and emotional condition and needs of the children. In this case, the children have been in foster care on two separate occasions, and have now been in foster care continuously for a year. While [the mother] has progressed at times sufficient to allow the children to be returned to her, that progress was short lived, and the children again had to be removed. Though the children were reported to be developmentally delayed at the time of their initial removal due to being born prematurely, they were on-target developmentally when returned to [the mother's] custody. After their second removal it was reported the children were at least one year behind developmentally. This was reportedly due to a lack of stimulus in [the mother's] home and her failure to follow through with the recommendations for [Area Education Agency] Early Access Services. The children are in need of consistency and stability, and neither of their birth parents has shown a capacity to do that for any length of time. Clearly, the children's long-term best interests would not be served by returning them to the custody of their parents.

Additionally, the juvenile court determined that none of the factors in section 232.116(3) applied, finding

While it is reported there is a bond between [the mother] and the children, it is also reported that due to [the mother's] lack of consistency in visiting the children it may be less harmful for the children to not see their mother than it would be for them to see her as inconsistently as they have been.

Upon our de novo review of the record, we agree with the district court's conclusions. Although the record shows the mother and children share a bond, under the facts and circumstances in this case, and considering the children's

long-term and immediate best interests, we decline to apply section 232.116(3).

Accordingly, we affirm the termination of the mother's parental rights.

AFFIRMED.