

**IN THE COURT OF APPEALS OF IOWA**

No. 0-968/ 10-1637  
Filed January 20, 2011

**IN THE INTEREST OF T.K.,  
Minor Child,**

**E.J.Z., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,  
District Associate Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Brian Johnson of Jacobsen, Johnson & Viner, P.L.C., Cedar Rapids, for  
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller Todd, Assistant  
Attorney General, Jerry Vander Sanden, County Attorney, and William Croghan  
and Kelly Kaufman, Assistant County Attorneys, for appellee.

David Fiester, Cedar Rapids, for father.

Angela Railsback, Cedar Rapids, attorney and guardian ad litem for minor  
child.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

**SACKETT, C.J.**

A mother appeals from the juvenile court order terminating her parental rights to one child.<sup>1</sup> She contends no statutory grounds were shown to exist and termination is not in the child's best interest. We affirm.

**I. Background.**

The child, born in June of 2009, was brought to the hospital on August 16 because he had begun vomiting. After being rehydrated by intravenous saline, he was sent home. On August 24 the child's father brought him to the hospital again because he was limp and unresponsive. He was hospitalized with an eventual diagnosis of Shaken-Baby Syndrome. The child had acute and sub-acute subdural hematomas and multiple retinal hemorrhages. Doctors determined the injuries were from non-accidental trauma and were consistent with two instances of injury. The child was removed from the parents' custody upon release from the hospital and placed in family foster care.<sup>2</sup> The child abuse assessment found the father to be the perpetrator of the abuse. A criminal investigation continued.<sup>3</sup>

The order finding the child in need of assistance provided supervised visitation for the mother. In April of 2010, the State petitioned to terminate the

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<sup>1</sup> The child has two older half-siblings, born in 2003 and 2007. They are not at issue in this appeal.

<sup>2</sup> The older children were removed from the mother's home and placed in the care of their father.

<sup>3</sup> In an interview, the older half-sibling related an incident where the child was fussy and would not stop crying and the father shook the child and yelled "shut up." This occurred in August of 2009, just a day or two before the child was first taken to the hospital.

parental rights of both parents. In May, the father was charged with child endangerment causing serious injury.

Following a hearing in July, the juvenile court issued an order in September terminating the parental rights of both parents under Iowa Code section 232.115(1)(h) (2009) and terminating the father's parental rights also under section 232.116(1)(d). The court noted the child is a special-needs child who receives physical therapy and occupational therapy and is on medication to control seizures. He has severe developmental delays. When released from the hospital the child had a shunt and a feeding tube. By the time of the termination hearing, the service provider was recommending semi-supervised visitation for the mother. The provider testified she did not believe termination was in the child's best interests and noted a bond between the mother and child.

The court found:

[T]here continue to be many ongoing protective and safety concerns. [The mother and father] have remained together as a couple despite [the father's] pending felony and founded abuse report. [The mother] is pregnant with [the father's] child and is due in October. Both parents remain firm in their belief that the cause of [the child's] injuries was his three-month immunization shots despite professional opinions to the contrary. [The mother] has consistently said she does not believe [the father] hurt [the child] or would hurt him. When the State asked her if she was willing to leave [the father] if that meant [the child] would be returned to her, she replied that [he] hadn't been proven guilty. The State then questioned whether she would change her mind and separate from [him] if he were convicted of harming [the child] and she answered, "No." . . . Also of concern is that [the child] has a half-sibling who was sexually abused by [the mother's] half-sibling, yet [she] continues her relationship with the perpetrator.

The court further found termination was in the child's best interest after considering the parents' past performance and the considerations set forth in

Iowa Code section 232.116(2). See *In re P.L.*, 778 N.W.2d 33, 38-39 (Iowa 2010). Finally, the court considered if any of the circumstances in section 232.116(3) would allow the court not to terminate and found, “There are none known in the instant case.”

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

Our review of termination-of-parental-rights proceedings is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We review the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the juvenile court’s factual findings but are not bound by them. *In re E.H., III*, 578 N.W.2d 243, 248 (Iowa 1998).

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). When the juvenile court terminates a parent’s rights, we affirm if clear and convincing evidence supports the termination under the cited statutory provision. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The State has the burden of proving the allegations by clear and convincing evidence. “Clear and convincing evidence” is evidence leaving “no serious or substantial doubt about the correctness of the conclusion drawn from it.” *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002) (quoting *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983)).

### **III. Merits.**

The mother contends the court erred in finding the child could not be returned to her care at the time of the termination. See Iowa Code § 232.116(1)(h)(4). She argues the service provider in this case testified termination was not in the best interests of the child, the mother did well during visitation, and there were no concerns about the mother's parenting ability. She further argues she has maintained stable housing and employment, she has participated in doctor visits with the child, she had demonstrated the ability to care for his special needs, and she has a support system in place. The mother notes her bond with the child as well as the bond the two older half-siblings, who also have participated in visitation, have with the child. "In short, there are not any obstacles in terms of parenting ability and providing for [the child's] needs that could not be fulfilled by [the mother] immediately if [the child] was returned to her care." She asserts it was unfair for the court to terminate her parental rights primarily based on her belief the father did not harm the child and her decision not to end her relationship with the father, who merely had been charged with, but not convicted of any crime against the child.

Although both parents steadfastly maintain the child's condition and injuries are the result of a vaccination, the medical evidence is clear the injuries were non-accidental. The child abuse assessment found the father to be the abuser. There is evidence the child was fussy and would not stop crying, the father was upset with the crying, the father yelled at the two-month-old child to "shut up," and shook the child. The mother, based on her denial of the father's

actions, has refused to participate in counseling. Although the mother has demonstrated her ability to care for the physical needs of the child during visitation, we conclude the child would be at risk if returned to the mother's care while the father has access to the child. We conclude the evidence satisfies the requirement of section 232.116(1)(h)(4). We affirm the statutory ground for termination.

The mother also contends termination is not in the child's best interests. She notes the bond between the child and her. She argues the parent-child bond should be a "huge factor" in this case because, with the child's special needs "a loving home and patience is going to be even more important. [She, as the child's] mother, is the best suited individual to provide for his needs and support him." The juvenile court acknowledged the difficult circumstances:

[He] is a special needs child. He will have special needs throughout his life, including severe developmental delays. It is unknown whether he will ever be able to walk. His current placement has made no determination to date as to whether they are committed to adopting him. He will be a difficult child [to] place if they decide that they're not interested in adopting him or are not chosen as the adoptive home.

Even though the child's future placement was uncertain, the juvenile court, after considering the factors set forth in section 232.116(2) found termination was in the child's best interests. See *P.L.*, 778 N.W.2d at 38-39. The court did not find any factors in section 232.116(3) allowed it not to terminate. See *id.* at 41.

If a statutory ground for termination exists, "the court may terminate a parent's parental rights." *Id.* at 39. Then the factors in section 232.116(2) are considered to decide whether to terminate. *Id.* at 40. Section 232.116(2) provides:

In considering whether to terminate the rights of a parent under this section, 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.

We look to the child's long-term as well as immediate interests. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998). "This requires considering what the future holds for the child if returned to the parents." *J.E.*, 723 N.W.2d at 798 (quoting *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997)). "[W]e look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future." *Id.* From our review of the record, we agree with the finding of the juvenile court.

The evidence shows there is a parent-child bond, albeit more one-sided because of the significant brain damage suffered by the child. The mother does not argue or point to any evidence, however, that "termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." See Iowa Code § 232.116(3)(c). We, like the juvenile court, do not find any of the permissive factors in section 232.116(3) exist to prevent termination.

**AFFIRMED.**