

IN THE COURT OF APPEALS OF IOWA

No. 1-171 / 11-0110
Filed April 13, 2011

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

**A.J.B., Father of S.C.,
Appellant,**

**S.Q.C., Mother,
Appellant.**

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor,
Judge.

A mother and father appeal the termination of their parental rights.

AFFIRMED.

Christine Frederick of Zamora, Taylor, Woods & Frederick, Davenport, for
appellant-father of S.C.

Brenda Drew-Peebles, Davenport, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael Walton, County Attorney, and Julie A. Walton,
Assistant County Attorney, for appellee.

Katherine Teel, Davenport, for appellee-father of D.C. and K.K.

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

EISENHAUER, J.

This is an appeal of a juvenile court order terminating parental rights. The father of S.C. contends reasonable efforts were not made to reunify him with his child. He also contends the State failed to prove the grounds for termination by clear and convincing evidence. The mother of S.C., D.C., and K.K. contends the juvenile court erred in terminating her parental rights because “the adjudicatory harm had been alleviated by placing the children in relative care.” We review orders for the termination of parental rights de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The undisputed facts of this case show a mother with a long history of substance abuse and failed attempts to complete treatment and refrain from the use of illegal substances. She attempted treatment six times over the course of this case, but each time left the program early or was unsuccessfully discharged. Two weeks before the termination hearing, high levels of cocaine were present in the mother’s system.

A.J.B., the father of S.C., has been convicted of several crimes in Iowa. He was serving a prison sentence in Virginia for felony possession of a firearm from November 2008 until two days before the August 2010 permanency hearing. For a six week period, all three children were cared for by A.J.B.’s mother four days per week. During that time, A.J.B. was involved in their care. However, once the grandmother indicated she could no longer care for the children, the father failed to attend regular visitations with the child even though they were offered to him on a weekly basis.

The mother does not dispute the grounds for termination have been proved by clear and convincing evidence. The father contends the court erred in terminating his parental rights pursuant to Iowa Code sections 232.116(1)(e) and 232.116(1)(f) (2009). The juvenile court terminated the father's parental rights pursuant to sections 232.116(1)(e), (f), and (h). We need only find termination under one ground to affirm. Because the father does not appeal termination under section 232.116(1)(f) or (h), we affirm. See *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010) (holding where the juvenile court bases termination on multiple grounds, appellate court may affirm on any ground supported by clear and convincing evidence).

The father also contends the State failed to make reasonable efforts to reunify him with his child. He complains he requested a family team meeting upon his release from prison but one was never scheduled. He also complains services were not provided to aid his transition following his release from prison. The father did not raise this issue before the juvenile court prior to the termination hearing and therefore has not preserved it for our review. See *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994) (holding a challenge to the sufficiency of services should be raised at the time the services are offered).

In her statement of issues in her petition on appeal, the mother contends the court erred in terminating her parental rights because the adjudicatory harm was alleviated by placing the children with relatives. However, in her argument she recognizes the children were never placed with relatives, although she believes they should be placed with relatives in lieu of terminating her parental

rights. Under section 232.116(3)(a), a juvenile court need not terminate parental rights when a relative has legal custody of the child. Application of this section is permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by In re P.L.*, 778 N.W.2d 33 (2010). In determining whether to apply the section, the court must consider a child's long-term and immediate best interests. *Id.*

The maternal great aunt, who lives in Tennessee, indicated a willingness to take all three children. However, her husband had missed too many foster parent classes to become a licensed foster parent and had to restart the classes. As of December 2010, he had not signed up to do so. The maternal aunt's daughter, who also lives in Tennessee, indicated a willingness to take in the children if her mother could not, but an interstate home study still needed to be completed. The children have been in foster care since October 2009. They are not and have not been placed with a relative since their removal; therefore, the exception in 232.116(3) does not apply. The court placed the children in the guardianship and custody of DHS for adoptive placement. The interested relatives have the option of seeking to adopt the children.

We conclude termination is in the children's best interests. Given the mother's lengthy history of substance abuse and her many failed attempts at treatment, her prognosis for achieving and maintaining sobriety is poor. *See In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) (holding a parent's past conduct is indicative of the future). 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 children are young and require permanency. Termination is in their best interest.

AFFIRMED.