

**IN THE COURT OF APPEALS OF IOWA**

No. 1-472 / 11-0304  
Filed June 29, 2011

**IN THE INTEREST OF L.M.,  
Minor Child,**

**N.M., Father,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Colin Witt, District Associate Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

Jared C. Harmon, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John P. Sarcone, County Attorney, and Faye Jenkins, Assistant County Attorney, for appellee State.

Nicole Garbis-Nolan of Youth Law Center, Des Moines, for minor child.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

**DANILSON, J.**

A father appeals the termination of his parental rights to his two-year-old daughter. He contends the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the child's best interests. Considering the father's lack of insight, continued drug use, and demonstrated inability to keep the child safe from the mother's violence, we conclude there is clear and convincing evidence the child cannot be returned to his care at this time. We further agree that termination is in the child's best interests, despite any presence of a parent-child bond. We affirm the termination of his parental rights.

**Discussion.**

The father ran away from home as a child and lived in several group homes while in the custody of the Iowa Department of Human Services. He began smoking marijuana when he was sixteen years old. He is the father of two other children, seven-year-old N.M. and two-year-old A.M., with his "on-again, off-again" girlfriend, Kristy.

When the father is not in a relationship with Kristy, he is in a relationship with the mother of L.M. The father has gone back and forth between the two women "for years." The mother was pregnant with L.M. at the same time Kristy was pregnant with A.M., and the children were born a few months apart. The father lived with the mother during her pregnancy with L.M.

L.M. tested positive for marijuana at birth in September 2008 and was hospitalized for two weeks. She was adjudicated in need of assistance (CINA) and removed from the care of the parents. The father participated in services,

including substance abuse evaluation and treatment and anger management services. He participated in drug testing. The child was returned to the care of the father in March 2009, with the understanding the child was to have no contact with the mother.

The court expressed its concern about the child's safety due to the mother's propensity for violence. The mother's participation in services was minimal and ended completely in March 2009. The mother previously had her parental rights terminated to another child due to physical abuse suffered by the child inflicted by the mother, including bruises, cigarette burns, and broken bones. The mother was convicted of child endangerment and spent significant time incarcerated. The mother also gave birth to another child, whom she does not have custody of or contact with, but it is unclear whether her parental rights have been terminated to that child.

The child was removed from the father's care in September 2009, when a domestic violence incident occurred between the father and mother. The father stated he would not allow the child to be in contact with the mother. The child was eventually placed back in the father's care. The mother's parental rights were terminated in January 2010, and the CINA case was closed in February 2010.

A second CINA case was opened in June 2010, when DHS discovered the father was living, at least part time, with the mother and was allowing the mother to provide care for the child. At that same time, the mother was charged with an assault occurring at the father's home when she inflicted injuries to the brother of the father's on-again, off-again girlfriend, Kristy. The father also

admitted to using marijuana between February 2010 (when the initial CINA case closed) and June 2010. The father did not contest the child's removal from his care. His participation in services since the most recent removal has been minimal. The child has remained in the same pre-adoptive foster family and has thrived in that placement.

The State filed its petition to terminate the father's parental rights in September 2010. Following a hearing in November 2010, the juvenile court entered its order terminating the father's parental rights pursuant to Iowa Code sections 232.116(1)(i) (2009). The father appeals. We review his claims de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007).

For termination under section 232.116(1)(i), the State must prove the child meets the definition of CINA based on a finding of physical or sexual abuse as a result of the acts or omissions of the parent and the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child. The father does not dispute those facts. The State must also present clear and convincing evidence the "offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time." Iowa Code § 232.116(1)(i)(3). The father argues the State failed to meet its burden on this element.

The father acknowledges the central issue in this case is his ability to keep the child safe from the mother. He states he has received services and he could have demonstrated to the court within a reasonable time that he was able to safely parent the child. He asserts he has an appropriate home for the child, is able to provide for the child, and is willing to do what it takes to get the child back

in his care. But the father has demonstrated an inability to keep the child safe from the mother's violence.

The father admits he has made "mistakes with contact with the mother," and argues he should have "another chance to do what I need to do as a father." He testified in September 2009 that he understood the significance of keeping the mother away from L.M. and stated he would "never allow contact" between L.M. and the mother. Yet, thereafter, the father allowed the mother back in his home. The police were called when a domestic violence situation occurred. At the termination hearing, he explained, "I did not even expect it to happen, nor was planning for it to happen. It just kind of happened. And I did not think I would get into any trouble for it." The father further stated, "I blame [the mother] completely for this whole thing." At the termination hearing, however, the father's girlfriend admitted the father "can't stay away from [the mother]" and that "he has chosen to be around the mother knowing that he wasn't supposed to be." She stated that he would not be around her again, however, because "it's come to the point where he's not going to have his daughter anymore."

Caseworkers remained concerned about L.M.'s safety if she were to be returned to the father's care. The father has a continued "lack of insight in regards the child's mother." The mother is aggressive and violent toward the father and has a disturbing history of inflicting bodily injury onto another one of her children. The father simply does not understand that L.M. cannot, under any circumstances, be in contact with the mother. The father's promises that he would "not allow the mother to hurt L.M." are not enough. The father also continued to use marijuana throughout the pendency of these proceedings. The

child is not safe in his care. The child has been adjudicated a CINA in two separate cases and has been under the court's jurisdiction for most of her life. Caseworkers and the guardian ad litem were "in absolute agreement" that the father's parental rights should be terminated.

As the juvenile court observed:

[The father] has proven on this record that he will not act in the child's best interest in keeping her safe. The father quickly moved back in with the mother whose rights were terminated and from whom he was clearly told by another judge to stay away from and to keep the child safe. The father immediately went back to a long-standing habit of using marijuana while a caretaker of the child as soon as the original juvenile cases closed. The father clearly was intent at the close of the last case to do whatever he wanted, including going back to smoking marijuana and living with the mother.

Evidence of the parent's past performance may be indicative of the quality of the future care that parent is capable of providing. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). The State has presented clear and convincing evidence to support termination of the father's parental rights pursuant to section 232.116(1)(i).

The father contends his parental rights should not be terminated due to the closeness of the parent-child relationship. Iowa Code section 232.116(3) lists factors weighing against termination, including the presence of evidence "that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c). The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38; *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa 1997). The court has discretion, based on the unique circumstances of each case and the

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

Although we recognize a bond exists between the father and L.M., that bond was disrupted, and undoubtedly lessened, by the father's argumentative and hostile behavior during visitation, and the recent abrupt discontinuation of visitation. We also note that the child has lived in the same foster family home for half of her life and is bonded with her foster siblings. Under these circumstances, we cannot maintain a relationship where there exists only a possibility the father will become a responsible parent sometime in the unknown future. Termination of parental rights is in the child's best interests, see Iowa Code § 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion.

We affirm termination of the father's parental rights.

**AFFIRMED.**