

**IN THE COURT OF APPEALS OF IOWA**

No. 1-726 / 11-1195  
Filed October 5, 2011

**IN THE INTEREST OF T.C. and N.C.,  
Minor Children,**

**S.A.G., Mother,**  
Appellant,

**T.L.C., Father of T.C.,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Rachael E. Seymour,  
District Associate Judge.

A mother and a father appeal from the termination of their parental rights  
to a son. **AFFIRMED.**

Robb D. Goedicke of Burdette Law Firm, P.C., Clive, for appellant mother.

Erin M. Carr of Carr & Wright, P.L.C., Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Cory L. McClure, Assistant  
County Attorney, for appellee State.

Nicole Garbis Nolan of Youth Law Center, attorney and guardian ad litem  
for minor children.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

**POTTERFIELD, J.**

Samantha, the mother of T.C. and N.C., appeals from the termination of her parental rights to T.C. She consented to the termination of her parental rights to N.C. and does not challenge that termination on appeal. Timothy is the father of T.C. and appeals from the termination of his parental rights. Upon our de novo review, see *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010), because the statutory grounds for termination have been proved, termination is in the best interests of the child, and no statutory factor weighs against termination, we affirm the termination of the parental rights of both parents.

**I. Statutory grounds exist.**

Both parents' rights were terminated pursuant to Iowa Code section 232.116(1)(h) (2011), which provides that the court may terminate if the child (1) is three years of age or younger; (2) has been adjudicated a child in need of assistance (CINA); (3) has been removed from the physical custody of the child's parents for at least six months of the last twelve months; and (4) there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents at the present time. There is no doubt the statutory factors for termination exist.

*Child is 3 years of age.* T.C. turned three in February 2011.<sup>1</sup>

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<sup>1</sup> T.C. came to the attention of the department of human services (DHS) in December 2009 due to a report that Timothy was smoking marijuana in T.C.'s presence and a domestic dispute had occurred while T.C. was present. Services were recommended and offered at that time. Neither parent took advantage of services, however.

In June 2010, Timothy was in jail on a burglary charge to which he later pleaded guilty; relatives reported Samantha had been leaving T.C. with various people for several days without proper clothing, diapers, or food.

*Child was adjudicated CINA.* On July 14, 2010, upon the stipulation of the parties, T.C. was adjudicated CINA pursuant to Iowa Code sections 232.2(6)(b) (“Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.”), (c)(2) (“The failure of the child’s parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.”), and (n) (“Whose parent’s or guardian’s mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.”).

*Child was removed from parent’s custody at least six months.* T.C. was removed from the parents’ custody on June 4, 2010. Timothy had been arrested for burglary after he, Samantha, and T.C. accompanied a woman to retrieve her belongings from another’s home and Timothy was involved in an altercation with the resident. The parties stipulated to T.C.’s continued removal at a hearing on June 10, 2010, and the district court found placement outside the home was necessary due to exposure to domestic violence, illegal drug use, and improper supervision. T.C. had remained out of the parents’ custody—some eight months at the time of the February 18, 2011 termination hearing.

*Child cannot be returned to the custody of the child’s parents at the present time.* At the termination hearing, Samantha testified she was confined at the Women’s Residential Facility and T.C. could not be returned to her care. She stated she did not know when she might be released and it could be about a year before she could care for T.C. She had just recently taken the risk to her

parental rights seriously and was finally seeking assistance for mental health, substance abuse, and domestic abuse issues.

At the time of the February 18, 2011 termination hearing, Timothy was on probation, having been released from incarceration on November 27, 2010. He had no employment. He tested positive for THC/marijuana on February 9, 2011, which was a violation of his probation. He was scheduled to begin substance abuse treatment the following day—more than a year after first recommended. He had begun attending individual therapy to address issues of anger management, depression, and anxiety in January 2011. He was living with his mother, whom Timothy conceded was not a suitable person for T.C. to be around as she “ain’t that stable” and had “mood ticks.”

## **II. Termination is in the child’s best interests.**

Both parents ask that their parental rights not be terminated. They argue that because T.C. is in a relative placement, an extension of time would not be harmful. Timothy also contends there is a strong bond between him and T.C., which should preclude termination.

“Once the limitation period lapses, termination proceedings must be viewed with a sense of urgency.” See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). T.C. and his sibling, N.C., have been in the care of their maternal great aunt and uncle since June 2010. While in their care, T.C. has overcome his developmental deficits. T.C. has flourished in their care and is integrated in their home. The relatives have indicated they wish to adopt both siblings.

We have no assurances that T.C. could return to either parent’s custody in a reasonable time. “Insight for the determination of the child’s long-range best

interests can be gleaned from ‘evidence of the parent’s past performance for that performance may be indicative of the quality of the future care that parent is capable of providing.’” *Id.* (citation omitted). Both parents have unresolved substance abuse, mental health, and domestic violence issues. Both parents waited until the eleventh hour to admit any of these issues were detrimental to T.C. and seek assistance. Neither parent is in a better place than when the case began. Giving “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,” see Iowa Code § 232.116(2), we agree with the juvenile court that termination is in T.C.’s best interests.

### **III. No statutory factor weighs against termination.**

Iowa Code section 232.116(3) lists factors that can militate against termination, including a situation where “[a] relative has legal custody of the child,” Iowa Code § 232.116(3)(a), and “[t]here is clear and convincing evidence that the termination would be detrimental 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.

The trial court wrote, and we adopt the following:

[Samantha] and [Timothy] had 8 months of services through a voluntary case and then an additional 8 months through a formal CINA case to address the substance abuse, domestic violence, and neglect which brought these children to the Court’s attention. The parents’ lack of participation in services shows an unwillingness to make necessary changes to have the child[] placed in their care. . . .

Further, the child[] need[s] a long-term commitment from a parent to be appropriately nurturing, supportive of their growth and development, and who can meet their physical, mental, emotional, and safety needs. While the current custodians meet this criteria; neither [Timothy] nor [Samantha] has demonstrated they are willing or able to fulfill this parental role. The parents request additional time to show they can fulfill this role for [T.C.] but it is not in his best interest to continue to suspend his crucial days of childhood while the parents experiment with ways to face up to their own problems. There is no reason to believe either [Samantha] or [Timothy] will address these issues in the future if the motivation of reunification was not enough for them to do so now.

It is also clear by the parents' testimony, a guardianship means they will request contact with [T.C.] and hope to someday regain custody of him. Both parents lack insight into [T.C.'s] most basic needs and the Court believes requests for future contact would be guided by the parents' desires, not what is best for the child. It is not in [T.C.'s] best interest to be subjected to unnecessary emotional turmoil [and possible separation from his sibling] either now or in the future.

While a bond between Timothy and T.C. exists, it is not sufficient to deprive T.C. of the permanency the child deserves.

We therefore affirm the termination of parental rights of Samantha and Timothy to T.C.

**AFFIRMED.**