

IN THE COURT OF APPEALS OF IOWA

No. 1-727 / 11-1201
Filed October 5, 2011

**IN THE INTEREST OF L.B.-F.,
Minor Child,**

**L.J.B., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise M. Jacobs,
District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

John C. Heinicke of Kragnes & Associates, P.C., Des Moines, for
appellant father.

William E. Sales III, Des Moines, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Annette Taylor,
Assistant County Attorney, for appellee State.

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

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

DOYLE, J.

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

L.J. is the father of L.B.-F.¹ The father has a history of criminal activity, including a 2008 conviction for possession of a controlled substance with intent to deliver, for which he was placed on probation for two years.

L.B.-F., born in October 2009, was born three months premature and has medical issues. The child remained in the hospital for approximately three months. While in the hospital, the parents visited the child often.

After the child's release from the hospital, the child came to the attention of the Iowa Department of Human Services in February 2010, due to concerns of substance abuse by the parents, as well as domestic violence and lack of appropriate parenting skills. The child was removed from the mother's care in April 2010 and placed in the care of the child's maternal grandmother. Shortly thereafter, the father's probation was revoked, and the father was incarcerated.

The State subsequently filed a petition alleging the child to be a child in need of assistance (CINA). Following a hearing on the petition, the child was adjudicated a CINA by the juvenile court on June 2, 2010.

Ultimately, the mother was offered services but did not make any progress towards reunification with the child. The father remained incarcerated throughout the case, with a tentative discharge date of February 2014.² In April 2011, the State filed a petition to terminate the parents' parental rights. Following a trial on

¹ The termination of the mother's parental rights is not at issue in this appeal.

² The father testified that he would go before the parole board in October 2011 and believed there was a high possibility he would be released on parole at that time.

the termination petition, the juvenile court entered its order terminating the parents' parental rights on numerous grounds. The father now appeals.

On appeal, the father first argues the juvenile court failed to consider Iowa Code section 232.116(2) (2011) when it terminated the father's parental rights.³ We disagree. Although the juvenile court did not expressly cite section 232.116(2), it is clear the court did address whether termination of the parents' parental rights was in the child's best interests:

The child's best interests require that the parental rights of his mother . . . and father . . . be terminated. The child's safety is the court's primary consideration. The child cannot be returned to the care and custody of his father who is incarcerated and there are ongoing concerns about the safety of the child if returned to the care and custody of his mother. The child needs a long-term commitment by an adult who is appropriately nurturing, supportive of his growth and development, and that appropriately meets his physical, mental, and emotional needs. The child is currently placed with his maternal grandmother who meets such criteria.

It is the child's best interest that the parental rights of both of his parents . . . be terminated.

Upon our de novo review, we are convinced the relevant factors were considered by the juvenile court when it found termination of the father's parental rights were in the best interests of the child. Moreover, in our thorough review of the record, we reach the same conclusion as the juvenile court and accordingly affirm on this issue.

Additionally, the father contends the juvenile court failed to consider the statutory "exceptions" to termination.⁴ See Iowa Code § 232.116(3); *P.L.*, 778 N.W.2d at 39. Specifically, he suggests the court need not terminate his rights

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due to the closeness of his relationship with the child and the child's placement in relative custody. Again, 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 child if any of the enumerated circumstances contained in section 232.116(3) exist. See *P.L.*, 778 N.W.2d at 37. Section 232.116(3)(a) provides termination is not required when a relative has legal custody of the child. Section 232.116(3)(c) provides termination is not required where it would be detrimental to the child due to the closeness of the parent-child relationship. The exceptions set forth in 232.116(3) have been interpreted as permissive, rather than 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 child'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 child, 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 child, and we agree. Here, there is no evidence of a close bond between the father and the child. The father last saw the child in April 2010 when he was six months old and has minimally maintained contact with the maternal grandmother since. Additionally, although the child is in the care of a relative, under the facts and circumstances in this case, and considering the child's long-term and immediate best interests, we agree with the juvenile court that termination of the father's parental rights is in the child's best interests. We note the child is doing well in

the care of the relative. We therefore decline to apply section 232.116(3).

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

AFFIRMED.