

**IN THE COURT OF APPEALS OF IOWA**

No. 1-909 / 11-1046  
Filed December 21, 2011

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

**L.N., Mother,**  
Appellant,

**T.G., Father,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A mother and father appeal separately from the order terminating their parental rights. **AFFIRMED.**

Jeffery Wright, Des Moines, for appellant mother.

Nathaniel Tagtow, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Katherine Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Jon Anderson, Assistant County Attorney, for appellee State.

Michelle Saveraid of the Youth Law Center, Des Moines, for minor child.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

**DANILSON, P.J.**

The father of L.G. appeals the termination of his parental rights. 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 severe, chronic substance abuse problem and his history and prognosis, we find there is clear and convincing evidence the child will not be able to be returned to his custody within a reasonable period of time. We further agree termination is in the child's best interests, despite the child's placement with a relative and any presence of a parent-child bond. We affirm termination of the father's parental rights. The mother appealed the termination of her parental rights, but her appeal was not timely filed and was dismissed by our supreme court.

**I. Background Facts and Proceedings.**

This family has a long history of involvement with the Iowa Department of Human Services (DHS). The mother gave birth to L.G.'s half-brother, D.B., in June 2004. A no-contact order was in place between the mother and D.B.'s father, Dan, as a result of incidents of domestic violence between them. There was drug use in the home as well. Dan was arrested in March 2005 for an incident of domestic violence.

By April 2005, the mother and D.B. were residing with the mother's next paramour, Mr. Murphy. There was drug use and ongoing violence between the mother and Mr. Murphy in the home. D.B. was removed from the mother's care after being present when police officers interrupted a drug transaction in the

home. Methamphetamine and marijuana were found in the couple's possession. D.B. was placed in the custody of his maternal grandparents.

The mother began living with her next paramour, the father. She became pregnant with L.G. The mother engaged in services, and in April 2006, D.B. was returned to her care. In August 2006, L.G. was born. There were incidents of domestic violence between the mother and father. In December 2006, the mother was arrested for domestic assault after an argument with the father over the care of L.G. Two weeks later, the mother was arrested for assault with a weapon after attempting to run down a female friend with her vehicle.

In January 2007, L.G. and D.B. were removed from the mother's care in response to the mother's arrests and resulting incarceration, as well as concerns about drug dealing, substance abuse, and ongoing domestic violence. D.B. was placed back in the care of the maternal grandparents; L.G. was placed in the care of the father. The father was on probation for drug-related charges, but was "in good standing" with his probation officer.

In July 2007, with the permission of DHS, the mother moved in with the father and L.G. In September 2007, D.B. was returned to the mother's care. In February 2008, the mother was arrested for a domestic assault on the father. A no-contact order was put in place. D.B. was placed back in the care of the maternal grandparents. The mother initially moved in with D.B. and the maternal grandparents while L.G. remained in the care of the father. The mother then moved back in with the father and L.G.

In April 2008, DHS learned the mother had moved out of the family home. The mother stated her intention to "truly address her mental health issues." She

stated L.G. should remain with the father. In May 2008, L.G. was placed in the custody and guardianship of the father. The mother also stated it was in D.B.'s best interests to remain with the maternal grandparents because "he had spent so much time with them." In September 2008, the mother and Dan's parental rights to D.B. were terminated. D.B. was adopted by the maternal grandparents in January 2009.

In February 2009, the mother gave birth to P.J. Another paramour of the mother, Luke, was the putative father of P.J. DHS later learned the mother had shared "some type of ongoing, but volatile relationship" with Luke for several years.

In March 2009, the father tested positive for marijuana at a low level. L.G. remained in his custody. There were allegations the mother and father were using methamphetamine together, but DHS did not find evidence to support the allegations. In June 2009, the mother and father moved in together and "shar[ed] care of L.G. and P.J." By July 2009, the couple had again separated.

In August 2009, the father relapsed on methamphetamine. L.G. was placed with the maternal grandparents. It appeared to be "a true relapse" and the father "seemed to be accountable, reengaged in substance abuse treatment, and committed to sobriety." In October 2009, L.G. was returned to the father's care. The father obtained a district court order that placed L.G. in the joint legal custody of the parents, but in the sole physical custody of the father. Reasonable visitation with the mother was allowed under the father's supervision. The juvenile court closed L.G.'s child-in-need-of-assistance (CINA) case in March 2010.

DHS later discovered the father had started using methamphetamine again shortly after L.G.'s CINA case closed. The family came to the attention of DHS again in July 2010, when L.G. was present during a domestic assault between the mother and Luke. The child was on an unsupervised visit with the mother, who was living with Luke. DHS found the mother and father were sharing care of L.G. about "50/50" regardless of the district court's custodial order as well as DHS recommendations to the father that the mother could not provide unsupervised care for L.G. Three days later, on July 15, 2010, L.G. was present when the father physically mangled and killed a cat. In August 2010, L.G.'s guardian ad litem requested permission from the juvenile court to file a new CINA petition for L.G.

In the early morning hours of October 4, 2010, police stopped the father's vehicle for driving without headlights. Police discovered methamphetamine and burglary tools in the vehicle. L.G. was unfastened in his car seat, and a pair of scissors was within his reach. The father was arrested on charges of child endangerment, burglary, and possession of methamphetamine. L.G. was removed from the father's care. L.G. spent the night in shelter and was placed with the maternal grandparents the next day, where he has remained to date.

On October 19, 2010, L.G. was again adjudicated CINA. In the course of L.G.'s second CINA adjudication and investigation, DHS discovered the father was using illegal drugs, had lost his employment, and was essentially homeless. Reasonable efforts were waived, and the State filed its petition to terminate parental rights to L.G. in November 2010. The termination hearing took place in February 2011. The juvenile court observed that just days before the hearing the

father was arrested on theft and possession of methamphetamine charges. The juvenile court entered its order in June 2011, terminating the mother's and father's parental rights. The juvenile court observed that "initially it appeared the principle ongoing protective issues involved the mother"; however, "[s]hortly thereafter it became apparent that both parents had unresolved issues which placed L.G. at risk, but that was in retrospect." The parents now appeal.<sup>1</sup>

## **II. Standard of Review.**

We conduct a *de novo* review of termination of parental rights proceedings. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116 (2011). See *id.* Evidence is considered "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

## **III. Analysis.**

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination

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<sup>1</sup> The mother's appeal was not timely filed. On November 7, 2011, our supreme court issued an order dismissing the mother's appeal. See Iowa R. App. P. 6.201(1)(b) (2009).

should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

#### **A. Grounds for Termination.**

The juvenile court entered its order terminating the father's parental rights pursuant to Iowa Code sections 232.116(1)(b), (i), and (j). The father contends clear and convincing evidence does not support termination under any of these sections. We may affirm the termination if facts support the termination of a parent's rights under any of the sections cited by the juvenile court. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We focus our analysis in this appeal on section 232.116(1)(j). Termination is appropriate under that section where the State has proved the following:

(1) The child has been adjudicated a CINA and custody has been transferred from the child's parents for placement.

(2) The parent has a severe, chronic substance abuse problem and presents a danger to self or others as evidenced by prior acts.

(3) The parent's prognosis indicates the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

Iowa Code § 232.116(1)(j). The father claims, "No evidence was presented that the father has a severe, chronic substance abuse problem," and even if such evidence existed, "there was no evidence that the father's prognosis indicated that the child could not be returned to his custody within a reasonable period of time." This implicates the second and third elements of section 232.116(1)(j). For the reasons that follow, we disagree with the father's claim.

At the start of this case, the father was on probation for drug-related charges. In March 2009, he tested positive for marijuana at a low level. There were also allegations at that time the mother and father were using methamphetamine together, although the allegations were not substantiated. In August 2009, the father relapsed on methamphetamine, and the child was removed from his care. The child was eventually returned to the father's care. DHS later learned the father began using methamphetamine again as early as March 2010. In October 2010, he was arrested for possession of methamphetamine. He admitted to using drugs in November 2010. In February 2011, he was again arrested for possession of methamphetamine.

The father does not dispute the juvenile court's findings that during the summer of 2010, he had: "lost substantial weight"; "lost his employment"; and become "essentially homeless." The father has participated in five drug treatment programs. As the juvenile court observed, the father "has a long history of drug abuse. It is unknown if he has ever been in full recovery." See *e.g.*, *In re T.C.*, 492 N.W.2d 425, 429 (Iowa 1992) ("The juvenile court was authorized to judicially notice the pleadings and exhibits from the previous child in need of assistance proceeding.").

The father has been able to manage his addiction and has appeared to provide a safe and stable home for L.G. on several occasions since 2007. However, these placements led to dangerous and traumatizing situations for L.G., and ultimately resulted in L.G.'s removal from the father's care. This termination occurred despite services being offered to and made available to the father for about three and one-half years. Despite several treatment programs,



the father has continued to relapse, indicating an inability to successfully respond to treatment. L.G. was four and one-half years old at the conclusion of the termination hearing and in need of permanency.

We find, as the juvenile court did, the father has a severe, chronic substance abuse problem, and his history and prognosis indicate L.G. will not be able to be returned to his custody within a reasonable period of time. Accordingly, we find the State proved by clear and convincing evidence the section 232.116(1)(l) grounds for termination of the father's parental rights.

#### **B. Factors in Termination.**

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L., 778 N.W.2d at 37.* The father contends termination is not in the child's best interests. However, his claim implicates on the factors weighing against termination in section 232.116(3). Therefore, we will address the father's specific claim below.

In determining the child's best interests, this court's primary considerations are "the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." *Id.* Taking these factors into account, we conclude the child's best interests require termination of the father's parental rights. As the juvenile court observed:

A substantial portion of L.G.'s childhood has passed. His parents have exposed him to trauma after trauma. Previous court involvement did not remediate his circumstances, but only returned him to the situation where both parents continued to expose him to

neglect and abuse. For L.G., the one positive has been his ability to have a continued relationship with his extended family.

There is a bond between the child and the parents which can only be described as negative by the time he was removed again in October 2010. He is almost five years old and has had a relationship with both parents all of his life. However, each has continued to expose him to danger. He cannot trust either of his parents to meet his daily needs and provide him with consistent nurture.

The bond between the child and the child's grandparents is present and growing. He knows them and his half-brother whom they have adopted. They have always protected him when he has been in their custody. They are willing and able to adopt him and have proved able to protect him from his parents.

### **C. Exceptions or Factors against Termination.**

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary, including the presence of evidence that "a relative has legal custody of the child," or "the 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)(a), (c). The father contends both those factors apply and should refute termination of his parental rights in this case.

The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38. 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). Here, the juvenile court acknowledged the existence of evidence that could weigh against termination, but exercised its discretion to terminate parental

rights under the facts and circumstances of this case. As the juvenile court observed:

The Court has considered whether it should exercise its discretion and not terminate parental rights as there are two statutory exceptions which potentially would allow it to maintain L.G.'s parental rights—even though the State has met its burden of proving the grounds for the termination of rights as to both parents.

The Court finds that it is not in L.G.'s best interests to maintain his parents' rights. The Court acknowledges that he has a bond with both parents and that he is placed with his maternal grandparents. Past events convince this judge that the only way that L.G. can be kept safe over time is to eliminate the parents' ability to make decisions about L.G.'s care.

It is likely that L.G. will be adopted by his grandparents. It is also likely that his parents will continue to have a relationship with him. Permanency for L.G. should be adoption. The parents' past acts establish that so long as they have rights L.G. will not have permanency. Unlike his brother, D.B., L.G.'s life has continued to be chaotic and unsafe due to his parents' ability to make decisions about his care.

We find the juvenile court properly exercised its discretion to terminate the father's parental rights in order to allow L.G. the safety and permanency he so desperately needs. Under these circumstances, we do not find any factors in section 232.116(3) are applicable to maintain a relationship between the child and the father.

#### **IV. Conclusion.**

There is clear and convincing evidence grounds for termination exist under section 232.116(1), termination of parental rights is in the child's best interests pursuant to section 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.**