

IN THE COURT OF APPEALS OF IOWA

No. 2-043 / 11-1989
Filed February 1, 2012

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

**B.M.L., Father,
Appellant,**

**R.M., Mother,
Appellant.**

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

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

William Bushell of Bushell Law Firm, Des Moines, for appellant father.

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

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

Kimberly Ayotte of the Youth Law Center, Des Moines, for minor child.

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

DOYLE, J.

A mother and father appeal separately from the termination of their parental rights to their child. Upon our review, we affirm on both appeals.

I. Background Facts and Proceedings.

B.L. is the father and R.M. is the mother of J.L, born January 2011. Both parents have a history of substance abuse. About a week after the child's birth, the father was arrested for possession with intent to deliver methamphetamine. He was incarcerated in the Polk County Jail, and then later prison, after he pled guilty to the charge. He was sentenced to twenty-five years, with a possibility of parole in 2013.

In April 2011, it was reported to the Iowa Department of Human Services (Department) that the mother was abusing substances, had mental health issues, and was not providing proper care for the child. The mother tested positive for methamphetamine and amphetamine, and the child was removed from her care. The child was placed in the care of the maternal grandmother.

Services were offered to the mother, including supervised visits with the child, random drug screens, and a substance abuse evaluation and treatment. The mother's participation was minimal at best. From June 2011 to October 2011, the mother was offered twenty-five fully-supervised visitations with the child, and she only participated in fourteen visits. She had minimal contact with the Department, and she did not participate in random drug screening or any substance abuse programming. In July 2011, the mother was arrested for possession of drug paraphernalia and two counts of possession of schedule I and schedule II substances.

The maternal grandmother determined she wanted to remain a grandmother figure to the child. The child was then placed in the care of his maternal great-aunt in September 2011, an adoptive placement for the child. The child is doing well in her care.

In October 2011, the State filed its petition seeking termination of the parents' parental rights. Following a hearing, the juvenile court terminated the mother's parental rights pursuant to Iowa Code section 232.116(1) paragraphs (d), (e), (h), and (l) (2011). The juvenile court terminated the father's parental rights pursuant to section 232.116(1) paragraphs (b), (d), (e), and (h). Both parents appeal separately.

II. Scope and Standards of Review.

We review the juvenile court's decision to terminate parental rights de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). The State must prove grounds for termination by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

III. Discussion.

On appeal, the father contends the juvenile court erred in finding the State proved the grounds for termination set forth in section 232.116(1) paragraphs (b), (d), and (e) by clear and convincing evidence. The mother argues the court should have entered a permanency order pursuant to section 232.104(2)(d), because the child was in the placement of a relative. Both parents maintain termination was not in the child's best interests because the child was in the care of a relative. We address their arguments in turn.

A. Grounds for Termination.

The father first argues the State failed to prove by clear and convincing evidence paragraphs (b), (d), and (e) as grounds for terminating the father's parental rights. However, he fails to challenge paragraph (h). Because we need only find termination proper under one ground to affirm, *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995), and find the State proved termination was appropriate under section 232.116(1)(h), we affirm on this issue.

We note termination is appropriate under section 232.116(1)(h) where there is clear and convincing evidence:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Here, the child is under three years of age, has been adjudicated a child in need of assistance pursuant to section 232.96, and he has been removed from his parents' care since April 2011, over six months. Further, the father admitted at the termination of parental rights hearing the child could not be returned to his care at that time. The State has met its burden as to paragraph (h). We affirm on this issue.

B. Best Interests.

Both parents maintain termination of their parental rights is not in the child's best interests. Both parents assert that because the child is in the care of a relative, their parental rights need not be terminated.

If a statutory ground for termination is determined to exist, the court may terminate a parent's parental rights. *P.L.*, 788 N.W.2d at 37. In considering whether to terminate, the court must then apply the best-interest framework established in section 232.116(2). *Id.* The legislature highlighted as primary considerations: 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.* see also Iowa Code § 232.116(2).

Taking these factors into account, we agree with the juvenile court that the child's best interests require termination of the parents' parental rights.

It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child.

P.L., 788 N.W.2d at 41.

The record reveals that the child cannot be returned to either parent's care at this time, and the child should not be forced to wait for permanency. Children are not equipped with pause buttons. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other*

grounds by P.L., 778 N.W.2d at 39–40. The child should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993).

We recognize the statutory exception to termination of parental rights set forth in section 232.116(3)(a) can serve to preclude termination of the parents' parental rights. That section states termination is not necessary if the court finds a relative has legal custody of the child. Iowa Code § 232.116(3)(a). However, section 232.116(3) has been interpreted to be permissive, not mandatory. *J.L.W.*, 570 N.W.2d at 781. A court has discretion, based on the unique circumstances of each case and the best interests of the children, 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).

Additionally, the mother suggests a guardianship pursuant to section 232.104(2)(d) is a better alternative so that “[s]hould the mother one day get herself together and be in a position to be a positive influence on the child’s life,” she will be able “to help in providing for this child.” However, a guardianship would only bring ongoing uncertainty to the child. So long as a parent retains her parental rights, the parent can challenge the guardianship and seek return of the child to the parent’s custody. See Iowa Code § 232.104 (providing the parent may seek to modify a permanency order). Termination of parental rights, followed by adoption is the preferred solution when a parent is unable to regain custody within the time frames of chapter 232. *Cf. In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997) (“An appropriate determination to terminate a parent-child

relationship is not to be countermanded by the ability and willingness of a family relative to take the child.”).

The juvenile court declined to invoke the exception to termination in section 232.116(3)(a) or create a guardianship, though the child was in the custody of her maternal great-aunt. We agree with the court’s decision. The child has been out of the parents’ care for over six months. He is doing very well in the care of his great-aunt, and she has expressed interest in adopting him. Considering the child’s long-term and immediate best interests, we agree with the juvenile court that termination will accordingly provide the child with the safety, security, and permanency he deserves. See *P.L.*, 778 N.W.2d at 41. Accordingly, we affirm the decision of the juvenile court as to both parents.

AFFIRMED ON BOTH APPEALS.