

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1105 / 12-1800  
Filed January 9, 2013

**IN THE INTEREST OF T.L., T.L., AND T.L.,  
Minor Children,**

**T.L., Grandmother,  
Appellant,**

**S.L., Mother.  
Appellant.**

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

A mother appeals from the termination of her parental rights. Additionally, both the mother and maternal grandmother appeal from the juvenile court's denial of placement of two of the children with the grandmother. **AFFIRMED.**

Jesse A. Macro Jr., Gaudineer, Comito & George, L.L.P., West Des Moines, for appellant grandmother.

Alexandra M. Nelissen of Nelissen Law Firm, P.C., Des Moines, for appellant mother.

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

Joey Hoover of Hoover Law Firm, P.L.L.C., Winterset, for appellee father.

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

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

**DOYLE, P.J.**

A mother appeals from the termination of her parental rights. Additionally, both the mother and maternal grandmother appeal from the juvenile court's denial of placement of two of the children with the grandmother. Upon our de novo review, we affirm.

***I. Background Facts and Proceedings.***

S.L. is the biological mother of three children. The oldest child was born in 1999, and the two youngest children, twins, were born in 2008. The twins were born prematurely and both have had developmental delays.

Around the time of the twins' birth, the mother and the oldest child lived with the children's maternal grandmother at her home in Illinois. In early 2010, the mother moved with the children to Des Moines, where the children's maternal grandfather lived. The mother did not tell the grandmother or the grandfather of her moving plans.

Shortly thereafter, the family came to the attention of the Iowa Department of Human Services (Department) because the mother left the children home alone on at least two occasions, leaving the twins in the care of the oldest child, then ten-years old. The mother initially minimized the dangers to the children of being left alone. It was also learned the mother had not enrolled the oldest child in school after moving. The Department ultimately confirmed the child abuse reports of denial of critical care, and a safety plan was initiated. Services were offered to the family, and a service provider began working with the family.

This case remained open for year with a variety of ongoing problems before court involvement. The mother was arrested several times for shoplifting,

and she was in and out of jail during that time. She was assaulted at her apartment by the father of the twins. In October 2010, the mother and children moved into a shelter, and the family remained there until February 2011, when the mother obtained housing.

In March 2011, the Department was notified the mother had been arrested when she showed up for an appointment with her probation officer intoxicated with the twins in tow. The mother was said to be over three times the legal limit. The mother reported to her probation officer that she was drinking beer and wine in the mornings, afternoons, and evenings, but the mother did not believe she had any alcohol issues. The children were removed from the mother's care and placed in the care of their maternal grandfather. The mother was released from jail about a week later.

Shortly thereafter, the State filed its petition asserting the children were children in need of assistance (CINA). The children were adjudicated CINA in April, and they continued to be placed in the care of their maternal grandfather. A safety plan was established and concerns were noted at that time of the mother's drinking, her incarcerations, and her follow-up with medical care for the twins.

In June, the grandfather asked that the children be removed from his care, and the children were placed in foster care. The mother and the children's maternal grandmother requested the children be placed in the grandmother's care in her home in a suburb of Chicago, Illinois. A home study was conducted via the Interstate Compact for the Placement of Children, and the grandmother's

home was approved for placement; however, the mother continued to work towards reunification with the children in Des Moines at that time.

Although the mother began to get involved in services, she struggled with consistency. The mother missed some appointments and therapy sessions. Additionally, the mother was not complying with her probation officer's expectations that she find a job and provide samples for urinalysis testing. The mother was then placed in the Women's Facility to ensure her follow-through with her probation officer's expectations.

In July 2011, the mother requested her oldest child be sent to live with the grandmother and that the twins live with her at the facility. A permanency hearing was held in August, and the parties agreed the oldest child should be placed in the maternal grandmother's care, due to his relationship and bond with the grandmother and his mother's family living in Illinois. However, the parties were not in agreement as to placement of the twins with the grandmother. At the hearing, the mother requested additional time for reunification, and permanency was continued for four months. The twins remained in the care of the foster family in Iowa to facilitate the mother's reunification with the children.

Nevertheless, the mother failed to progress. In November, she was back in jail for a probation violation, and she stopped addressing her alcohol and mental health issues. Additionally, she made no request that the twins be placed with the grandmother. The mother was given the opportunity to be placed back in the Women's Facility to keep trying to find employment and to have visits with the twins a few times per week, but the mother opted to serve a longer jail sentence and be discharged from probation. Since her release from jail, the

mother felt because she served her time things should revert back to the way they were. She did not believe she had a problem with alcohol, and she had little insight into how her decisions and choices had negatively affected her and her children.

In January 2012, a review hearing was held. The court directed the State to file a petition for termination of the mother's parental rights, and it set a date for the termination hearing. At the hearing, the grandmother and mother requested the twins be placed in the grandmother's care. The court declined their request, finding permanent placement options for the twins should be weighed. Shortly after the hearing, the mother moved to Chicago to live with her aunt.

A hearing on the petition for termination of the mother's parental rights and the placement request was held in March and April, 2012. In June 2012, the juvenile court, in its thorough, well-written, twenty-one page, single-spaced ruling, entered its order terminating the mother's parental rights pursuant to Iowa Code section 232.116(1)(d), (e), (f) (2011). The court further concluded termination of the mother's parental rights was in all of the children's best interests. Finally, the court found placement of the twins with the grandmother was not in the twins' best interests, and possibly not in the oldest child's best interests, despite their sibling relationship.

The mother and grandmother now appeal.

## ***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). In considering whether to terminate, our primary considerations are the children's safety; the physical, mental, and emotional condition and needs of the children; and the placement that best provides for the long-term nurturing and growth of the children. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37.

### ***III. Discussion.***

On appeal, the mother contends the State failed to prove the grounds for termination by clear and convincing evidence, and the juvenile court erred in finding termination of her parental rights was in all of her children's best interests. Additionally, the mother and the children's maternal grandmother appeal the juvenile court's finding that placement of the mother's two youngest children with the grandmother was not in the children's best interests. We address their arguments in turn.

#### ***A. Grounds for Termination of the Mother's Parental Rights.***

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). Termination is appropriate under section 232.116(1)(f) where:

- (1) The child is four years of age or older.
- (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 twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

The mother does not dispute the first three elements of section 232.116(1)(f). Rather, she contends the State failed to prove by clear and convincing evidence that the children could not be returned to her care. We disagree.

Here, the children have been removed from their mother's care since March 2011, despite the receipt of services for a year prior thereto. The mother was even given additional time to work toward reunification, but she did little to nothing to show she can protect and support her children. The mother has gained no insight into how her actions and bad choices have hurt her children. The mother has never completed substance abuse treatment, and she has put herself before her children by choosing not to address her issues.

The mother points to documentation that, at the time of the hearing on the petition, she had enrolled in a medical assist program and had participated in a few substance-abuse-treatment sessions in Illinois. While we commend her recent efforts, her participation is simply too little, too late. "A parent cannot wait until the eve of termination, after the statutory time periods for reunification have passed, to begin to express an interest in parenting." *C.B.*, 611 N.W.2d at 495.

Moreover:

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.*, 778 N.W.2d at 41.

Under the circumstances presented, it is clear the children could not be safely returned to the mother's care at the time of the hearing. Accordingly, we

agree the State proved by clear and convincing evidence that grounds for termination of the mother's parental rights exist under section 232.116(1)(f).

***B. Termination of the Mother's Parental Rights and Best Interests.***

If a statutory ground for termination is determined to exist, the court may terminate a parent's parental rights. *P.L.*, 778 N.W.2d at 37. In considering whether to terminate, the court must then apply the best-interests framework established in section 232.116(2). *Id.* The legislature highlighted as primary considerations: the children's safety, the best placement for furthering the long-term nurturing and growth of the children, and the physical, mental, and emotional condition and needs of the children. *Id.*; see also Iowa Code § 232.116(2). "A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially). Those best interests are to be determined by looking at the children's long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the children if the children are returned to their parents. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493–94 (Iowa 1990).

While it appears the mother loves her children, she has done little throughout the case to show it. We hope the mother is successful in her recent attempts at treatment and education. However, we must state the obvious: 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 33. “When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued.” *Id.*

Under the facts and circumstances in this case and considering the children’s long-term and immediate best interests, we agree with the juvenile court that termination of the mother’s parental rights is in all of the children’s best interests. During the pendency of the case, the mother has come and gone in and out of these children’s lives. She was given numerous opportunities to successfully complete her probation and work toward reunification with her children. She chose to do as she pleased, putting her own interests before the needs of her children, resulting in numerous placements in jail and requiring others to care for and parent her children.

Moreover, the twins are in need of protection and permanency. By all accounts, the twins are bonded with their foster parents and are doing very well in their care. The twins’ therapist testified that removal of them now from the foster parents is not in their best interests, and the children’s guardian ad litem agreed. Given the mother’s lack of progress in the case and her failure to address serious concerns regarding her ability to safely parent the children, we

agree with the juvenile court that termination of the mother's parental rights is in the twins' best interests.

Additionally, the evidence at trial established the oldest child is also in need of permanency. Unlike the twins, he is strongly bonded with the mother and her family. We agree the mother's failure to progress in the case requires termination of her parental rights to the oldest child. However, we note the mother still has a chance at having some sort of relationship with her oldest child by way of his placement with the grandmother, and we hope the mother takes advantage of the opportunity. It is time for her to grow up and act like a mother by putting the needs of that child before her own, especially since that child desperately loves but worries about his mother.

Given the mother's overall lack of progress and participation, further delaying termination is clearly not in the children's best interests. These children should not be forced to wait for permanency. We therefore agree that termination of the mother's parental rights was in the children's best interests.

***C. Placement with the Grandmother.***

Iowa Code section 232.116(3) lists exceptions to termination in certain enumerated circumstances, including "[a] relative has legal custody of the child." Iowa Code § 232.116(3)(a). The exception in section 232.116(3)(a) is permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38; *J.L.W.*, 570 N.W.2d at 781. 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. See *id.*

Additionally, section 232.116(3) provides options for the placement of children if the court terminates parental rights, including placing the children with the Department, a suitable child-placing agency, or a relative or suitable person. *Id.* § 232.116(3). Placement with a relative under a permanency order is not legally preferable to termination of parental rights. *In re L.M.F.*, 490 N.W.2d 66, 67–68 (Iowa Ct. App. 1992). As always, our primary concern is the best interests of the children. See *In re D.S.*, 563 N.W.2d 12, 14 (Iowa Ct. App. 1997).

The mother contends her parental rights need not be terminated because the oldest child was placed in the care of the grandmother, and the twins could be placed with the grandmother. The grandmother does not challenge the termination of the mother's parental rights, but similarly argues the twins should be placed with her. However, upon our *de novo* review of the issue presented, for the extensive reasons stated by the juvenile court and the facts set forth in the evidence summarized above, we agree with the juvenile court that the section 232.116(3)(a) exception should not preclude the otherwise appropriate termination of parental rights in this case, and we find no abuse of the juvenile court's discretion of not placing the twins with the grandmother. We note that the grandmother can still seek adoption of the child.

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

For the reasons stated above, we affirm the juvenile court's ruling terminating the mother's parental rights, as well as placing the children in the custody and guardianship of the Department.

**AFFIRMED.**

Bower, J., concurs; Mullins, J., concurs specially.

**MULLINS, J.** (concur specially)

I write separately to document my concern that the twin children were not placed with the maternal grandmother along with their older brother so that adoption could become an option. The twins have now lost a mother, a brother, and a loving and able grandmother. The older brother has lost his young twin siblings. The maternal grandmother has lost twin grandchildren. I understand the thorough and thoughtful ruling by the juvenile court, and I appreciate the difficulty it faced in balancing the competing interests under the facts of this case. The majority opinion is well-written and makes a compelling case for affirming the juvenile court. I reluctantly and specially concur.