

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1128 / 12-1480  
Filed January 9, 2013

**IN THE INTEREST OF L.R., A.R., and B.R.,  
Minor Children,**

**A.R., Father,**  
Appellant,

**B.P., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Linn County, Susan Flaherty,  
Associate Juvenile Judge.

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

John Bishop, Cedar Rapids, for appellant father.

Judy Goldberg, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, Jerry Vander Sanden, County Attorney, and Kelly Kaufman,  
Assistant County Attorney, for appellee State.

Michael Lindeman, Cedar Rapids, for minor children.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

**EISENHAUER, C.J.**

A mother and father appeal separately from the order terminating their parental rights to three children. They contend the State did not prove the statutory grounds for termination, termination is not in the children's best interests, and the court should have refused to terminate their parental rights because the children are in the custody of a relative or because of a strong parent-child bond. We affirm on both appeals.

**I. Background Facts and Proceedings**

The Iowa Department of Human Services became involved with this family in December 2009 based on reports the parents were using methamphetamine in the home. Both have long-term substance abuse problems. Their two children were removed in late December and adjudicated children in need of assistance. In January 2010, because the mother was in a residential substance abuse program, the children were returned to her on a trial basis. When she left the program five days later, the children were removed again. In late January all parties stipulated the children would remain in the department's custody for foster family placement.

The third child, born in April 2010, tested positive for methamphetamine at birth and was removed from the mother's care the next day. He was adjudicated in need of assistance in late April. The mother had returned to the residential treatment program, so the court authorized the department to place the newborn with her on a trial basis. Two days later, the court also authorized another trial placement of the older children with the mother. The father also entered a residential treatment program in April, but was discharged after two weeks. He

did not enroll in outpatient treatment as recommended, until after he relapsed, lost his job, and became homeless.

By August, the mother had successfully completed the residential program and moved into the half-way program. The court returned the children to the mother's custody under the protective supervision of the department. Throughout the fall of 2010, the parents made progress toward reunification. Both provided negative drug tests. The mother was employed. In December the father's visitation was expanded to semi-supervised. By the end of 2010, however, the mother was discharged from the half-way program because she was not meeting expectations and was not motivated to change. She did not participate in aftercare or relapse prevention programs after leaving the half-way program. When she obtained an apartment, she relapsed on methamphetamine. The father moved into the apartment, but neither parent told service providers or the department the father was living in the apartment.

In April 2011, the department sought and obtained an order removing the children because the father's drug tests were positive and the mother admitted they were using methamphetamine together in the apartment. The children were placed in the department's custody for relative or foster care. The department placed the children with the maternal grandfather and step-grandmother, where they have remained. The parents had supervised visitation. From April through August, they made little progress toward reunification. The father was jailed in July for violating his probation.

At a review hearing in late August, the department noted its intent to seek termination of the parents' parental rights. The father soon entered a residential

treatment program, then moved to outpatient treatment. In October he was jailed for a probation violation and for possession of precursors. In November he was sent to a community corrections program where he remained until his successful completion in mid-June 2012. The mother also entered an inpatient treatment program in September 2011, but was unsuccessful. She enrolled in outpatient treatment, but continued to use methamphetamine. She lost her employment and housing. In October she was arrested for possession of precursor chemicals, pleaded guilty, and received a deferred judgment.

By the time of a permanency hearing in March 2012, both parents had begun making progress toward reunification, but by then a petition to terminate their parental rights had been filed. The mother obtained employment and housing and continued substance abuse treatment. However, she tested positive for drugs in April. She also submitted several drug test patches considered invalid due to apparent tampering. The father obtained employment, participated in visitation, and provided clean drug tests. When he was released from community corrections, he moved back in with the mother.

The termination petition came on for hearing in mid-July. The court found clear and convincing evidence to terminate both parents' rights under Iowa Code section 232.116(1)(f), (h), and (l) (2011). Although the court acknowledged the parents' recent commitment to making needed changes, it concluded neither had shown an ability to provide the children a safe, stable, and drug-free home. It concluded their recent changes were "insufficient to predict future success, particularly when viewed against the many years of substance abuse, the cyclical efforts to gain sobriety without long-term success, and the very real instability

and risk of harm experienced by the children as a result of parental behavior and choices.”

## **II. Scope and Standards of Review**

We review terminations de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We examine both the facts and law, and adjudicate anew those issues properly preserved and presented. *In re L.G.*, 532 N.W.2d 478, 480-81 (Iowa Ct. App. 1995). We accord considerable weight to the findings of the trial court, especially concerning the credibility of witnesses, but are not bound by them. *Id.* at 481.

## **III. Merits**

### **A. Father**

1. *Statutory Grounds.* The father contends the State did not prove the statutory grounds for termination by clear and convincing evidence. When the court terminates parental rights on more than one statutory ground, we only need to find the evidence supports termination on one of the grounds cited by the court to affirm. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Both section 232.116(1)(f) and 232.116(1)(h) require a finding the children could not be returned to the parent’s custody “at the present time.” The father argues the court’s finding he “currently” was having success at maintaining sobriety equates to the “present time” statutory language, and he was a “fully-capable parent[], with a home and employment.” He contends the court based its ruling not on the “present time” but what might happen in the future.

A child cannot be returned to the custody of a parent when any of the grounds for adjudicating the child in need of assistance under Iowa Code section

232.2(6) can be established by clear and convincing evidence. *In re B.K.J. Jr.*, 483 N.W.2d 608, 610 (Iowa Ct. App. 1992). A child cannot be returned to a parent under section 232.102 if doing so would expose the child to any harm leading to a new child-in-need-of assistance adjudication. See *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). “The threat of probable harm will justify termination, and the perceived harm need not be the one that supported the child’s initial removal from the home.” *Id.*; see *In re C.M.T.*, 433 N.W.2d 55, 56 (Iowa Ct. App. 1988). The father, although recently showing he is not using illegal drugs, has no track record of success outside a custodial setting. The court’s finding the father “currently” was having success, does not mean it was possible to return the children to his custody “at the present time.”

“When the issue is a parent’s drug addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future.” *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). Where a parent has been unable to rise above the addiction, experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting. *Id.* Parents who have chronic, severe substance abuse problems “clearly” present a danger to their children. See *State v. Petithory*, 702 N.W.2d 854, 858-859 (Iowa 2005); *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993).

We concur with the trial court’s doubts about the inability of the father to avoid drug use and conclude the State established the statutory grounds for termination of the father’s parental rights under section 232.116(1)(f) and (h) by clear and convincing evidence. Therefore, we need not address his argument

concerning section 232.116(1)(f). We further conclude the court did not place the burden on the father to prove the children could be returned to his care.

2. *Best Interests*. The father contends termination is not in the children's best interests, citing to Iowa Code section 232.116(3). In considering whether to terminate, "the court shall give 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." Iowa Code § 232.116(2). We consider what the future likely holds for children if they are returned to their parents. We gain insight for that determination from evidence of the parents' past performance, for that performance may be indicative of the quality of future care the parents are capable of providing. *D.W.*, 791 N.W.2d at 709; *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). A parent does not have an unlimited amount of time to correct deficiencies. *In re H.L.B.R.*, 567 N.W.2d 675, 677 (Iowa Ct. App. 1997). We have repeatedly followed the principle the statutory time line must be followed and children should not be forced to wait for their parent to be able to care for them. *N.F.*, 579 N.W.2d at 341. The children are in a safe, stable home with family. This placement meets their physical, mental, and emotional condition and needs. It is not in their best interests to return them to their father, where his repeated unsuccessful struggles with substance abuse and criminal activity would put them at risk.

3. *Section 232.116(3)*. The father contends the court erred in finding no exceptions to termination apply. He argues termination was not necessary because the children are in the legal custody of a relative and termination would be detrimental because of the closeness of the parent-child relationship. See

Iowa Code § 232.116(3)(a) and (c). The provisions of subsection three are permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010).

The father asserts “termination will wreak devastation on the emotional health of these children” because of the close parent-child bond. However, we find returning the children to the father’s custody only to have them removed when he relapses, would be more devastating to them. Although it is clear the father loves his children, our consideration must center on whether they will be disadvantaged by termination, and whether the disadvantage overcomes the father’s inability to provide for their needs. See *D.W.*, 791 N.W.2d at 709. We agree with the trial court’s determination termination of the father’s parental right is in the best interests of the children.

The father also asserts the court erred in terminating his parental rights because the children are in the legal custody of a relative. 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).

The court factored the children’s placement with the paternal grandfather and step-grandmother into its consideration whether to terminate. It noted the parents still could have a place in the children’s lives after termination because the children are placed with relatives. We agree with the court’s determination the children’s best interests require termination of their parents’ rights. We also note the children are “placed” with relatives, but they are in the “legal custody” of the department. Section 232.116(3)(a) does not apply here.

We affirm the court's decision to terminate the father's parental rights.

***B. Mother***

1. *Statutory Grounds.* The mother also suffers from the effects of long-term methamphetamine use and likewise contends the State did not prove the statutory grounds for termination by clear and convincing evidence. The court terminated the mother's parental rights under section 232.116(1)(f), (h), and (l). Because we find clear and convincing evidence the children could not be returned to the mother's care at the time of the termination hearing, see section 232.116(1)(f)(4), (h)(4), we need not address section 232.116(1)(l). See *D.W.*, 791 N.W.2d at 706. Although the mother has participated in several substance abuse treatment programs, she has not demonstrated an ability to remain clean and sober or to avoid trigger situations, such as allowing her sister to live with her or be in the home. We are concerned by the multiple drug patches flagged as "tampered" and do not find the mother's explanation very credible. Because the issue is the mother's drug addiction, we must consider her treatment history to gauge whether she will be in a position to parent her children. See *N.F.*, 579 N.W.2d at 341. The mother suggests the phrase "at the present time" encompasses "within a reasonable time." "At the present time," as used in section 232.116(1)(f)(4) and (h)(4) means at the time of the termination hearing. The phrase concerning returning the children "within a reasonable time" appears in section 232.116(1)(i)(3) and (l)(3). Section 232.116(1)(i) is not implicated in this case. We conclude the mother was not in a position to have the children returned to her custody at the time of the termination hearing and affirm the termination on the statutory grounds in section 232.116(1)(f) and (h). Having

found statutory grounds for termination under section 232.116(1)(f) and (h), we need not address the mother's challenge to section 232.116(1)(l).

2. *Best Interests and Relative Placement.* The mother contends termination was not in the children's best interests and the court did not need to terminate parental rights "due to relative placement." She asserts error was preserved by "testimony about [her] bond with the children, the pending trial home placement, and the grandparents' plan to continue caring for the children." Her argument consists of a request for additional time to prove her commitment to a drug-free lifestyle and a conclusory statement termination would be detrimental to the children due to the closeness of the parent-child relationship.

We address her contentions in order. In determining the best interests of the children, we give primary consideration to their safety, to the best placement for furthering their long-term nurturing and growth, and to their physical, mental, and emotional condition and needs. See Iowa Code § 232.116(2). We also consider the length of time they've been in a stable, satisfactory environment, and the desirability of maintaining that environment and continuity for them. See *id.* § 232.116(2)(b)(1). We also consider the grandfather's testimony at the termination hearing. See *id.* § 232.116(2)(c).

By the time of the termination hearing, the children had been in the care of their grandfather and step-grandmother for nearly eighteen months. There is evidence it would be more damaging to the children to disrupt their stable, satisfactory placement and risk their subsequent removal from the parents than to maintain the children's placement and allow the grandparents to adopt them. The children have grown and thrived. They are safe, and their physical, mental,

and emotional needs are being met. The grandfather expressed concerns about disrupting the children's lives again. We conclude termination of the mother's parental rights is in the children's best interests.

For the reasons discussed above in addressing the father's section 232.116(3) claims, we conclude neither the children's placement with the grandparents nor severing their relationship with the mother serve to preclude an otherwise appropriate termination. See *P.L.*, 778 N.W.2d at 40.

We affirm the termination of the mother's parental rights.

**AFFIRMED ON BOTH APPEALS.**