

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1140 / 12-2074  
Filed January 9, 2013

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

**L.M., Mother.  
Appellant.**

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Appeal from the Iowa District Court for Webster County, James A. McGlynn, Associate Juvenile Judge.

A mother appeals from the termination of her parental rights. **AFFIRMED.**

Alyssa Kenville of Alyssa Kenville, P.C., Fort Dodge, for appellant mother.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, Ricki Osborn, County Attorney, and Joseph Tofilon, Assistant County Attorney, for appellee State.

Derek Johnson, Fort Dodge, for appellee father.

Christopher O'Brien, Fort Dodge, attorney and guardian ad litem for minor child.

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

**POTTERFIELD, P.J.**

A mother appeals from the termination of her parental rights to a child, L.M. Mother contends her rights were improperly terminated as termination was not in L.M.'s best interests. We affirm the district court, finding termination was in the child's best interests under Iowa Code section 232.116(2) (2011).

**I. Facts and Proceedings**

L.M. was born in June of 2011, testing positive for methamphetamine at birth. The mother has struggled with drug use for many years. The mother's parental rights to another child previously were terminated. She is presently serving a forty-eight month sentence in federal prison for the manufacture and distribution of methamphetamine.

L.M. remained in his mother's care after he tested positive for methamphetamine at birth. A child in need of assistance (CINA) hearing was held in September of 2011 and the mother tested positive for methamphetamine at that time. L.M. was not adjudicated CINA at that time, but was removed by ex parte removal order in October 2011, after his mother was arrested for methamphetamine use and manufacture. L.M. was placed with his grandmother at that time.

The mother was released from custody and entered an inpatient substance abuse treatment program in November of 2011. After she seemed to be doing well with treatment, L.M. was placed in his mother's care at the substance abuse facility in December of 2011. At the beginning of January, 2012, while L.M. was spending the weekend with his father, the mother admitted to relapsing after accepting methamphetamine from a person she met on a bus.

After admitting to her use, she left the treatment facility and told no one where she was going. L.M. was returned to his grandparents, who worked with L.M.'s father to acquaint him with L.M.'s daycare and doctor arrangements. The mother pleaded guilty to conspiracy to manufacture and distribute methamphetamine in February of 2012.

L.M. was moved to his father's care full time. The juvenile court waived reasonable efforts for reunification with the mother after a hearing in April of 2012. A permanency hearing was held in May of 2012. The mother was sentenced to four years in federal prison on the methamphetamine charges in July of 2012. A termination hearing was held in October of 2012. At the hearing, the mother volunteered to give L.M.'s father physical care and transfer custody to him with visitation at his discretion. The court noted the mother's history of drug use stretched over ten years, during which she had only been able to maintain sobriety for about two months. It also found L.M. to be thriving in his father's care. By the time of the termination hearing, L.M. had been removed from his mother's care for a year: most of his life. The court found termination the mother's parental rights to L.M. proven under Iowa Code sections 232.116(1)(g), (h), and (i). The mother appeals from this order, not contesting that termination was proper under those sections, but arguing that termination was not in L.M.'s best interests.

## **II. Analysis**

We review all termination decisions de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Our first step is to consider whether grounds for termination exist under Iowa Code section 232.116(1). *Id.* The mother does not challenge

termination under this step. Instead, her argument falls under the next step, where we consider whether termination is required under section 232.116(2).

*Id.*<sup>1</sup> This subsection provides, in relevant part:

In considering whether to terminate the rights of a parent under this section, 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. This consideration may include any of the following:

a. Whether the parent's ability to provide the needs of the child is affected by the parent's mental capacity or mental condition or the parent's imprisonment for a felony.

Iowa Code § 232.116(2). "The future can be gleaned from evidence of the parents' past performance and motivations." *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

We agree with the juvenile court that termination is appropriate in this case. Unresolved drug use can not only render a parent unfit to raise children, but subject a child to dangerous circumstances. *In re A.B.*, 815 N.W.2d 764, 776 (Iowa 2012). Our supreme court has stated, "[n]o parent should leave his small children in the care of a meth addict—the hazards are too great." *State v. Petithory*, 702 N.W.2d 854, 859 (Iowa 2005). The mother's history with drug addiction is long, and while she claims this time she will be clean, L.M. cannot wait indefinitely for his mother to become a sober, responsible parent. See *A.B.*,

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<sup>1</sup> The mother urges generally that termination was not in the best interest of the child. "Rather than a court using its own unstructured best-interest test, the court is required to use the best-interest framework established in section 232.116(2) when it decides what is in the best interest of the child." *Id.* at 37. Therefore, we interpret her appeal as a section 232.116(2) argument.

815 N.W.2d at 778. It is therefore in L.M.'s best interest for his mother's rights to be terminated.

**AFFIRMED.**