

IN THE COURT OF APPEALS OF IOWA

No. 2-1205 / 12-2093
Filed January 24, 2013

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

**R.V. JR., Father,
Appellant.**

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

A father appeals the termination of his parental rights to his two minor
children. **AFFIRMED.**

Douglas Cook of Cook Law Office, Jewell, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Eric R. Simonson, County Attorney, for appellee.

Derek Johnson, Fort Dodge, for mother of R.V.

Alesha M. Sigmeth Roberts of Elberg Law Office, P.L.C., Eagle Grove,
attorney and guardian ad litem for minor children.

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

DANILSON, J.

A father appeals the termination of his parental rights to his two minor children. He does not contest the grounds for termination by the juvenile court, but argues solely that termination is not in the best interests of the children. On our de novo review, we find termination is in the best interests of the children, and affirm the decision of the juvenile court.

I. Background Facts & Proceedings

Robert is the father of three children: R.V.,¹ born in 2003, and A.V., born in 2009² and M.V., who was born in 2005. This action only involves R.V. and A.V. because M.V. died on January 8, 2011, from severe head trauma. The mother of M.V., who is also the mother of A.V., entered a guilty plea to second-degree murder, and she is currently serving a fifty-year prison sentence. R.V. and A.V. were removed from the care of their parents at the time of the injuries to M.V., and placed in foster care. They were adjudicated to be in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (2011).

In June 2012, Robert was charged with child endangerment based on the serious injuries to and death of M.V. He entered a guilty plea to neglect or abandonment of a dependent person, in violation of Iowa Code section 726.3, a class "C" felony. On October 3, 2012, Robert was sentenced to a term of imprisonment not to exceed ten years. His tentative discharge date is February 11, 2017.

¹ The mother of R.V. consented to termination of her parental rights. She is not a party to this appeal.

² The parental rights of the mother of A.V. were terminated in separate proceedings in August 2012.

On June 20, 2012, the State filed a petition seeking to terminate Robert's parental rights to R.V. and A.V. Robert did not contest the grounds for termination, but argued termination was not in the best interests of the children. The juvenile court terminated his parental rights under sections 232.116(1)(c), (f) (R.V), (h) (A.V.), and (j). The court found termination was in the best interests of the children. Robert now appeals.

II. Standard of Review

The scope of review in termination cases is de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Clear and convincing evidence is needed to establish the grounds for termination. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Where there is clear and convincing evidence there is no serious or substantial doubt about the correctness of the conclusion drawn from the evidence. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). "The paramount concern in termination proceedings is the best interest of the child." *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011).

III. Best Interests

Robert contends termination of his parental rights is not in the best interests of the children. In considering the best interests of children, we "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); *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). One factor we may consider is whether the

parent's ability to provide for the child's needs is affected by "the parent's imprisonment for a felony." Iowa Code § 232.116(2)(a).

Robert is in prison for his responsibility in the events that led to the death of a sibling to these children. In his guilty plea, the father admitted he had knowledge the mother of M.V. and A.V. was placing the children in danger; that he had knowledge of the abuse, and he did nothing to stop it. Based on the factual history of this case, there are serious and deep concerns about the father's ability to meet the safety needs of the children.

Furthermore, Robert's ability to provide for the needs of his children is affected by the fact he is expected to be in prison until 2017. As the juvenile court noted, "by the time the father is released from prison, there will no longer be any relationship between the father and the children." "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. The juvenile court also concluded that even if the father would be released earlier than 2017, "it would take a period of at least one year of increasing visitation and intensive services following his release from prison before the father could be entrusted with these children." The children in this case should not be required to wait for a safe, stable, and secure home.

We next consider whether an exception to termination exists under section 232.116(3). Robert claims he had a bond with the children and had been their primary caretaker for most of their lives. A court may decide not to terminate

parental rights if “[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.” Iowa Code § 232.116(3)(c). A court has discretion as to whether to apply an exception to termination under section 232.116(3). *D.S.*, 806 N.W.2d at 475.

Our consideration centers on whether the children would be disadvantaged by the termination. *D.W.*, 791 N.W.2d at 709. We do not find clear and convincing evidence in the record that termination would be detrimental to the children. Even if Robert has a bond with the children, we find it is in the children’s best interests to terminate his parental rights. It is not in their best interests to make them wait longer for permanency. See *In re A.B.*, 815 N.W.2d 764, 777 (Iowa 2012) (noting children “simply cannot wait for responsible parenting”).

We affirm the decision of the juvenile court terminating Robert’s parental rights.

AFFIRMED.