

**IN THE COURT OF APPEALS OF IOWA**

No. 2-248 / 11-1822  
Filed April 25, 2012

**IN THE INTEREST OF A.M., M.M., and M.M.,  
Minor Children,**

**A.M., Father,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

Robert Wright, Des Moines, for appellant mother.

Jesse Macro of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee State.

Michelle Saveraid of the Youth Law Center, Des Moines, for minor children.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**EISENHAUER, C.J.**

A father appeals from the order terminating his parental rights to three children. He contends the statutory grounds for termination were not proved by clear and convincing evidence and termination is not in the children's best interests. The mother also appealed, but her appeal was dismissed by the supreme court because the petition on appeal was untimely. On de novo review of the father's appeal, see *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007), we affirm.

The father is the husband of the mother of these three children. A.M. will be three years old in August, and the two younger children will be two years old in October. The mother's six older children all have been removed from her care and are now in permanent placement with their fathers. When A.M. was born in 2009, the parents lived in Montana, but the child-in-need-of-assistance (CINA) cases for the mother's six older children were pending in Iowa. The State sought and obtained a removal order for A.M. based on the mother's mental health issues, the abusive relationship between the mother and father, the father's substance abuse, and the lack of progress resolving the issues with the six older children. When the mother returned to Iowa with A.M. for a hearing on the other children, she was jailed briefly for contempt because she would not reveal A.M.'s location to the court. The father came from Montana and took A.M. back with him. Montana's corresponding child welfare agency took custody of the child, and she was returned to Iowa. A.M. was adjudicated a CINA under Iowa Code section 232.2(6)(c)(2) (2009) in April 2010.

In late September A.M.'s guardian ad litem filed a petition to terminate the parental rights of both parents. In October, the mother gave birth to twins, who promptly were removed from the parents' care based on the mother's unresolved mental health issues, domestic violence, and the father's substance abuse. In December 2010 and January 2011 the court held a combined adjudicatory hearing concerning the twins and termination hearing concerning A.M. The State filed a petition to terminate the parental rights of both parents as to the twins in May 2011. The hearing on the termination petition relating to the twins took place in June. The court issued its combined termination order concerning all three children in July.

The court terminated the parental rights of both parents under section 232.116(1)(d) and (h) (2011). Relevant to this appeal, the court found the father continued to use illegal drugs and had not benefitted from substance abuse treatment or otherwise taken "real measures to obtain and maintain sobriety." It noted the father's "at least" 120 days in jail in the first six months of 2011, which hindered any progress toward reunification with the children. The father had not adequately addressed his continuing issues as a perpetrator of domestic violence. The court also expressed concern over the parents' tumultuous relationship.

After concluding grounds for termination existed, the court considered the best interests framework set forth in section 232.116(2). Concerning the father, the court pointed to his drug use and criminal behavior. It also considered the parents' marriage:

The marriage between these parents is truly irreconcilable. Yet neither will admit it. The Court is convinced they will continue to live together as a married couple, and would do so if the Children were returned to their custody. Domestic violence is likely to continue between them and the Children would be so exposed.

The court concluded:

All of these things lead this Court to be convinced that the long-term nurturing and growth of these children, along with their mental and emotional health in particular, are provided for outside the care of these birth parents.

The court also concluded “the only conceivable exception” to termination in section 232.116(3)(c), based on the parent-child bond between the mother and the children, did not prevent termination.

The father appeals.

*Statutory Grounds.* The father contends the court erred in finding clear and convincing evidence supports termination under section 232.116(1)(d) and (h). Specifically, he contends the reasons for the children’s adjudication no longer exist and he is “ready, able and willing” to parent his children safely. When the juvenile court bases termination on multiple grounds, we may affirm on any ground supported by clear and convincing evidence. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010).

The first three elements of section 232.116(1)(h) are not disputed. (The children are three years of age or younger, have been adjudicated CINA and have been removed from the physical custody of the 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). Only the final element is disputed. (Whether there is clear and convincing evidence the children cannot

be returned to the custody of the child's parents at the present time). The father argues the children could be returned to his care now. We disagree. Although he has completed a batterer's education class as a requirement of his probation, he still has a volatile relationship with the mother that would put the children at risk if they were returned to his care. The father and mother's relationship is so explosive, the visitation with the children not only was separate, but also was scheduled so the mother and father would not meet in passing. The father has not progressed beyond supervised visitation. The father acted properly with the children during visitation, but he relied on the help of supervising workers to care for the twins while he attended to A.M. He has not demonstrated the ability to care for all three children by himself, especially on any long-term basis.

The father's criminal activity has resulted in his incarceration. He was in jail and unable to care for or see the children for four months leading up to the June 2011 termination hearing concerning the twins. Yet he now argues he is ready, able, and willing to care for the children. We also are unconvinced the father has adequately addressed his substance abuse issues. The children cannot be returned to the father's care as provided in section 232.116(1)(h)(4) because they would be at risk of adjudicatory harm. Iowa's "statutory termination provisions are preventative as well as remedial." *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990). They are designed to prevent probable harm to children; the State is not required to wait until actual harm has occurred before moving to terminate a parent's rights. *Id.* We agree with the court the elements of section 232.116(1)(h) are established by clear and convincing evidence.

*Best Interests.* The father contends termination of his parental rights is not in the children's best interests because he "interacts well with his children," "they love each other," they have a "strong bond," and he has the parenting skills to care for and protect the children. He argues "more harm than good will befall these children" if his parental rights are terminated.

In deciding whether to terminate parental rights once a statutory ground is proved, we must give primary consideration to "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." Iowa Code § 232.116(2). We consider what the future likely holds for the children if they were to be returned to the parent. *In re S.N.*, 500 N.W.2d 32, 34 (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 future care the parent [is] capable of providing." *Id.* The same concerns we noted above in support of finding the children could not be returned to the father's care also lead us to conclude placement with the father is not the best placement to promote the children's long-term nurturing and growth or their mental and emotional health. We conclude the children's best interests are promoted by terminating the father's parental rights.

Having found clear and convincing evidence supporting termination under Iowa Code section 232.116(1)(h) and concluded termination of the father's parental rights promotes the children's best interests, we affirm.

**AFFIRMED.**