

**IN THE COURT OF APPEALS OF IOWA**

No. 2-526 / 12-0846  
Filed July 11, 2012

**IN THE INTEREST OF C.P., S.P., and C.R.,  
Minor Children,**

**R.D.P., Mother,  
Appellant.**

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

A mother appeals from an order terminating her parental rights.

**AFFIRMED.**

Ryan Gravett of Oliver Law Firm, Windsor Heights, for appellant mother.

Deborah Johnson of Debor L. Johnson Law Office, P.C., Altoona, for father of C.R.

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.

Paul White of Juvenile Public Defender's Office, Des Moines, for minor children.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

**DANILSON, J.**

R.P., the mother of C.P., born in November 1998; S.P., born in November 2000; and C.R., born in September 2005, appeals from the order terminating her parental rights.<sup>1</sup> She alleges the juvenile court failed to (1) consider the factors in Iowa Code section 232.116(2) (2011) to determine if termination was in the best interests of the children and (2) find that an exception found in section 232.116(3) applied. The mother is incarcerated as a result of her conviction following guilty pleas for neglect of a dependent minor and involuntary manslaughter (of her eldest child); secreted herself and the children subject to this action in another state while she was under investigation for these crimes; has a history of marijuana use; and did not fully exercise visitation. Under these facts, we agree that the children's best interests support termination and no exception in section 232.116(3) weighs against termination. We affirm.

**I. Background Facts and Proceedings.**

In March 2010, R.P. left her eldest child, severely disabled J.T.,<sup>2</sup> unattended in the bathtub where she drowned and died. An autopsy revealed J.T. had not received all of her medication for her severe seizure disorder. While under investigation for her role in J.T.'s death, R.P. fled with her three other children to Indiana, where she was found and arrested on multiple charges, including neglect of a dependent person, child endangerment resulting in death, and involuntary manslaughter.

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<sup>1</sup> The rights of the father of C.R. were also terminated; the father does not appeal. Diligent efforts were made to identify the fathers of C.P. and S.P., but none were confirmed.

<sup>2</sup> J.T. functioned developmentally like a twelve-month-old child. She was non-ambulatory and non-verbal.

Appellant, R.P., was not the custodial parent of C.P. or J.T. from 2003 through 2009. After a founded child abuse report<sup>3</sup> based on medical and educational neglect of J.T. and C.P., the children were placed with their maternal grandmother. A guardianship was purportedly established in the grandmother; her husband, Eugene, was added to the paperwork after his release from prison.<sup>4</sup>

In approximately January 2010, the maternal grandmother died. Eugene's father passed away the same week, so he asked R.P. to watch the children while he attended his father's funeral. R.P. then refused to return J.T. and C.P. to Eugene's care. Although J.T. was receiving substantial in-home services while under the care of her grandparents, R.P. refused services for J.T.

Eugene filed a motion to intervene, asserting an interest in providing a permanent placement option for the children. However, he struggled after suffering the loss of his wife, father, and J.T. in such a short period of time. He ultimately declined to consistently exercise visitation and participate in the permanency hearing.<sup>5</sup>

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<sup>3</sup> The abuse was documented and confirmed in Missouri in February 2004. While the report was not in the court file, Iowa DHS workers confirmed a founded abuse allegation. R.P. also had a founded report in 2000 when S.P. was born with THC in his body.

<sup>4</sup> No guardianship order was ever presented in Iowa courts. A copy of a certificate of guardianship was presented as State's Exhibit 4.

<sup>5</sup> During the pendency of the proceedings, Eugene lost his vehicle and did not have a reliable telephone number. He ultimately wishes to maintain contact with the children, but does not seek permanent placement.

The children were placed in foster care on January 27, 2011, and remained together in one home until the permanency hearing.<sup>6</sup> They were adjudicated children in need of assistance (CINA) on February 28, 2011.

R.P. bonded out of jail and moved to Davenport, purportedly to obtain employment and live with family. She failed to comply with an order to attend individual therapy and failed to maintain contact with her children's therapists. R.P. did not consistently cooperate, work toward reunification, or maintain contact with the children throughout the CINA proceedings.<sup>7</sup>

R.P. pled guilty to felony neglect of a dependent minor and involuntary manslaughter. She was sentenced to fifteen years in prison on October 27, 2011. Her tentative discharge date is July 18, 2018.

## **II. Standard of Review.**

We conduct a de novo review of termination of parental rights proceedings. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered "clear and convincing" when there are no "serious or

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<sup>6</sup> The foster parents were not able to adopt the children, but maternal relatives expressed interest in adoption. Placement processing was initiated after the permanency hearing.

<sup>7</sup> R.P. claims she moved to Davenport because she was unable to find stable housing and employment in Des Moines. R.P. had family in Davenport. She claims she had an unreliable vehicle, which prevented her from exercising visitation.

substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

### **III. Analysis.**

Iowa Code chapter 232 governing termination of parental rights follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

#### **A. Grounds for Termination.**

The juvenile court found the State established by clear and convincing evidence the following statutory grounds for termination of R.P.’s rights: (1) Iowa Code section 232.116(1)(b)—abandonment; (2) section 232.116(1)(f)—children have been adjudicated CINA, removed for twelve months without trial period returns, and the children cannot be returned to parental custody; and (3) section 232.116(1)(j)—the children have been adjudicated CINA, R.P. is imprisoned for a crime against their sibling, and it is unlikely she will be released from prison for a period of five or more years.

We need only find termination proper under one ground to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). Section 232.116(1)(f) provides termination may be ordered when there is clear and convincing evidence a child

four years of age or older who has been adjudicated a CINA and removed from the parent's care for at least the last twelve consecutive months cannot be returned to the parent's custody at the time of the termination hearing.

The children, ages six, eleven, and thirteen, were removed from R.P.'s care January 27, 2011,<sup>8</sup> and adjudicated CINA on February 28, 2011. At the time of the termination hearing, R.P. was incarcerated. The fathers of C.P. and S.P. were unknown, and the father of C.R. failed to exercise consistent visitation, did not have a stable residence, and did not appear for the permanency or termination hearings.<sup>9</sup> We find, and R.P. concedes, clear and convincing evidence that grounds for termination exist under Iowa Code section 232.116(1)(f).

#### **B. Factors in Termination.**

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interests, this court's primary considerations are "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." *Id.*

R.P. contends the juvenile court failed to consider whether termination was in the best interests of her children. In its termination ruling, the court noted its obligation to consider section 232.116(2) and outlined the statutory definition

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<sup>8</sup> R.P. was not eligible for any trial periods with the children in her custody, after removal.

<sup>9</sup> The father of C.R. also had a limited relationship with his son, spent time in the homeless community during the proceedings, and pled guilty to felony drug delivery charges as recently as 2008.

of best interests of the children. It then stated, “Best interests in this case dictate termination. The Mother [R.P.] is imprisoned and cannot meet any of the children’s needs.”

Conviction of a crime resulting in incarceration does not invariably result in termination. *In re M.M.S.*, 502 N.W.2d 4, 7 (Iowa 1993). However, “[w]e do not gamble with the children’s future by asking them to continuously wait for a stable biological parent, particularly at such tender ages.” *Id.* (quoting *In re D.W.*, 385 N.W.2d 570, 578 (Iowa 1986) (internal quotations omitted); see also *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (“Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable.”). “It is simply not in the best interests of children to continue to keep them in temporary foster homes while the natural parents get their lives together.” *In re A.B.*, \_\_\_ N.W.2d \_\_\_, \_\_\_, 2012 WL 2361730, at \*13 (Iowa 2012) (citation omitted).

R.P. asserts that termination is not in the best interests of her children because she is actively engaged in multiple services while incarcerated and placement with a relative is anticipated. However, R.P. is serving a fifteen-year sentence. Her tentative discharge date is in 2018. In that year, C.P. and S.P. will no longer be minors, and C.R. will have entered his teens. As the juvenile court aptly observed, “these children need to know where they are going to grow up and they need to be part of a family that will help them do so without the possibility of disruption.” Moreover, evidence of a parent’s past performance may be indicative of the quality of future care. *Id.*

We conclude the children's best interests require termination of R.P.'s parental rights. We agree with the juvenile court's conclusions that R.P. "cannot meet any of the children's needs."

### **C. Exceptions or Factors against Termination.**

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. A court may opt, in its discretion, 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).

The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). 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. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

R.P. contends the juvenile court failed to address the potential detriment termination would cause her children, due to the closeness of their relationship. R.P. alleges she has an "extremely tight bond" with all of her children and that her love and bond never wavered during the proceedings. However, she does not contest that one of the grounds upon which her parental rights were terminated was abandonment.<sup>10</sup>

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<sup>10</sup> A finding of abandonment does not require a showing of total desertion. *M.M.S.*, 502 N.W.2d at 7.



R.P. was offered regular visitation with her children upon removal. Between February 2011 and July 13, 2011, she was offered eighteen visits, but attended only seven. Of the seven visits she attended, she was late for three of them. She was invited, but failed to attend family team meetings on March 7, 2011, and July 13, 2011. Due to the number of missed visits, she was only offered therapeutic visits after July 13, 2011. She did not take advantage of any therapeutic visits.

R.P. has been incarcerated since September 20, 2011. However, her last visit prior to incarceration occurred on May 12, 2011. While R.P. alleges difficulty with distance and transportation prevented her from utilizing the visits while she was free on bond, she also failed to maintain consistent telephone contact with the children. R.P.'s lack of consistency manifested in negative behaviors in the children.<sup>11</sup>

R.P. attempts to buttress her arguments against termination by noting the anticipated placement with a relative. She insists that via a guardianship the children could gain permanency and the parent-child bond could be maintained. At the time of trial, the court noted the children's transition from the foster home to the relative's home was "on-going." However, this potential placement does not mandate an order against termination under either section 232.116(2)

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<sup>11</sup> C.P. had to go to respite care for a short period due to her anger and disruptive behaviors in the home. S.P. and C.R. were almost expelled from the YMCA program due to hitting other children and not listening to teachers. Other parents did not want their children around C.R. because he was "mean and inappropriate," going as far as urinating on other children. C.R. continues to struggle with bedwetting at age six. Caseworkers repeatedly opined that the children's behaviors were due to the unreliability of the adults in their lives, including R.P.

or (3).<sup>12</sup> Moreover, in its ruling, the court acknowledged termination was not mandatory even if one of the exceptions found in section 232.116(3) were met.

The court went on to state:

The court finds this is not a case where an exception should rule the day though it is anticipated that a relative placement will be providing permanency for these children. Given the extreme circumstances these children have faced since January 2010<sup>[13]</sup> . . . the undersigned is convinced that these children need to know where they are going to grow up and they need to be a part of a family that will help them do so without the possibility of disruption.

We agree. Upon our de novo review, we find no reason to disturb the juvenile court's ruling.

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

There is clear and convincing evidence that grounds for termination exist under section 232.116(1), termination of parental rights is in the children's best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm termination of the mother's parental rights.

#### **AFFIRMED.**

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<sup>12</sup> Section 232.116(3)(a) also provides an exception if a relative has legal custody of a child. While a relative placement was pending at the time of the termination hearing, it had not been achieved.

<sup>13</sup> Here, the court referenced fact findings, which stated:

The children have had significant upheaval and trauma throughout their lives in many regards, but just in highlighting a few things from the last two years: their maternal grandmother died (and for C.P., that was her primary caretaker), their sibling died while in their mother's care, they were moved to a different state while their mother was fleeing from investigation concerning their sister's death, their mother was abusing illegal substances while she was their caretaker, they were removed from their mother's care in that other state and brought back to a foster home in Iowa, multiple important adults . . . have fallen short at following through with visits and contact and have not "stepped up" on their behalf, and their mother is now imprisoned.