

**IN THE COURT OF APPEALS OF IOWA**

No. 2-619 / 12-0944  
Filed August 8, 2012

**IN THE INTEREST OF N.C.,  
Minor Child,**

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

**A.J., Father,**  
Appellant,

**D.J. and N.J., Grandparents,**  
Appellants.

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Appeal from the Iowa District Court for Fayette County, Alan D. Allbee,  
Associate Juvenile Judge.

A mother, father, and grandparents appeal from the order terminating the  
parents' parental rights. **AFFIRMED.**

Richard J. Buffington of Buffington Law Office, P.C., Oelwein, for appellant  
mother.

T. David Katsumes of Katsumes Law Office, Elgin, for appellant father.

James S. Updegraff, West Union, for appellant intervenors-grandparents.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, W. Wayne Saur, County Attorney, and Nathan James Lein,  
Assistant County Attorney, for appellee State.

Jeremiah W. White of Elwood, O'Donohoe, Braun & White, L.L.P., West Union, for appellee stepfather.

Andrew P. Thalacker of Public Defender's Office, Waterloo, guardian ad litem for minor child.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

**DOYLE, J.**

A mother, father, and paternal grandparents appeal from the juvenile court's order terminating the parents' parental rights. We affirm.

***I. Background Facts and Proceedings.***

M.L. is the mother and A.J. is the biological father of N.H., born in March 2010. At the time of the child's conception, the parents were dating and lived in Missouri. Shortly thereafter, the couple separated and the mother moved to Iowa. The mother later married G.L. ("step-father").<sup>1</sup>

Although the father had heard the mother was pregnant and rumors that he was the child's biological father, he did not request a determination of the child's paternity. He also did not seek to establish a relationship with the child nor offer support for the child. The paternal grandparents had also heard the rumors and had even seen the child in July 2010, but they too did not seek to establish a relationship with the child.

The child came to the attention of the Iowa Department of Human Services (Department) in January 2011 after it was reported that during an altercation with the mother the step-father had tossed the child onto a bed. The mother was on the bed at that time, and the child struck his head on the mother's ankle. Although the child was not seriously injured, concerns arose for the child's safety in the mother and step-father's care. Additionally, the family's home was found to be unsanitary and unsafe, and the family had scabies. The mother had a history of mental health issues. The child was removed from the family's home

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<sup>1</sup> The parental rights of the step-father are not at issue in this case. Additionally, the mother and step-father's parental rights to their son, C.L., are not at issue in this case.

and placed in foster care. He was later adjudicated a child in need of assistance (CINA).

The initial permanency goal in the case was reunification with the mother and step-father. To that end, the mother and step-father were offered numerous services. Although the child had been out of the mother's care for six months, the juvenile court in July 2011 granted the mother additional time for reunification.

Thereafter, a paternity test confirmed the father was the child's biological father. The father requested an interstate home study be performed in North Dakota, where he was living at that time. North Dakota refused because the father was living in a fifth-wheel camper. The father then requested his parents be considered for placement and a home study be conducted. At that time, the grandparents were in the process of adopting another of the father's biological children because the father and that child's mother were not able to care for the child.<sup>2</sup> The grandparents too requested N.C. be placed with them, and a home study of the grandparents' home was requested.

The mother and step-father continued to make progress in the case and in October 2011, they were again given additional time for reunification. Shortly thereafter, they moved to a different town where new services needed to be set up. Although the Department aided the mother and step-father in continuing services there, the mother and step-father's involvement with services declined. After moving, the parents lost their jobs and then their housing, and visitation with the child returned to supervised. The mother and step-father did not resume

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<sup>2</sup> The father's other biological child is not at issue in this appeal.

mental health counseling, and they were not taking their prescribed medications. The mother and step-father did not resume marital counseling, nor did the step-father resume anger management treatment. Although the mother and step-father gained employment and housing, the Department reported continued safety concerns in their home; a knife and a lighter were left out within the child's reach, and the mother's bedroom floor remained cluttered with clothing. Following a permanency review hearing in January 2012, the court entered its order directing the State to file a petition for termination of the parents' parental rights. The home study for the grandparents had still not been completed at that time.

A hearing on the State's petition was held in May 2012. The grandparents were permitted to intervene in the case. At the close of evidence on the first day of the hearing, the father requested the petition be dismissed as to him because there were no allegations specifically against him in the petition. The juvenile court overruled the motion. Following the hearing, the juvenile court entered its order and terminated the parents' parental rights pursuant to Iowa Code section 232.116(1)(h) (2011). Custody of the child was continued with the Department, and the Department was appointed to act as the guardian of the child. The Department was ordered to submit a case permanency plan to establish a stable placement for the child by adoption or other permanent placement.

The mother, father, and the grandparents now appeal. The father contends the juvenile court erred in overruling his motion to dismiss the petition as to him. All three parties challenge the sufficiency of the ground for termination. The mother and grandparents argue the juvenile court erred in not

establishing a guardianship with the grandparents to avoid termination of the parents' parental rights. The mother also contends the State failed to provide her reasonable services for reunification and termination of her parental rights was not in the child's best interests. We review the claims de novo, *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011), and we address their arguments in turn.

## ***II. Discussion.***

### ***A. Father's Motion to Dismiss Claim.***

The father asserts the petition for termination of his parental rights should have been dismissed because there were no allegations against the father nor was there "evidence produced during the trial that showed that any adjudicatory harm would come to the child if placed with the father." We disagree.

In overruling the father's motion, the juvenile court explained:

[The State] has pled ground (h), [Iowa Code section 232.116(1)(h),] and that is that the child is under three and that the child can't be returned to a parent . . . . And to this point, it was my understanding that until very recently [the father] had had no contact whatsoever with the child. . . . [W]hile he requested a North Dakota home study, they had refused it. I obviously, under the interstate compact laws, couldn't place the child with him.

We agree with the juvenile court's conclusion. The father had no contact with the child after hearing that he was the child's father, and the father's "home" was never approved for placement of the child there. We affirm on this issue.

### ***B. Mother's Reasonable Efforts Claim.***

While the State has an obligation to provide reasonable reunification services, the parent has an equal obligation to demand other, different, or additional services *prior to the termination hearing.* *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999) (emphasis added). When a parent alleging inadequate

services fails to demand services other than those provided, the issue of whether services were adequate is not preserved for appellate review. *Id.*; *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994).

Here, there is no evidence in the record the mother ever demanded any other, different, or additional services prior to the termination hearing. Indeed, the mother simply claims she preserved the issue by raising the issue at the termination hearing. We conclude the mother failed to preserve error on this claim.

### ***C. Grounds for Termination Claims.***

The juvenile court found the State proved by clear and convincing evidence the parents' parental rights should be terminated under Iowa Code section 232.116(1)(h). Under this ground, parental rights may be terminated if the court finds by clear and convincing evidence that the child is three years of age or younger, has been adjudicated a CINA, has been removed from the physical custody of his 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, and there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents at the present time. Iowa Code § 232.116(1)(h). The State must prove grounds for termination by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

#### ***1. Mother.***

At the time of the termination hearing, the child had been out of the mother's care for over a year. The court twice granted the mother additional time for reunification, but by the time of the January 2011 permanency hearing, many

of the concerns regarding the mother and her husband's ability to safely parent the child had returned, including the safety issues in the home, treatment of her mental health issues, and the marriage issues between the couple. We agree with the juvenile court's conclusion that the child could not be returned to the mother at the time of the termination hearing, and therefore affirm court's ruling on this issue.

### **2. Father.**

The child has never been in the father's care, and there is no home study to establish that the father and his home would be safe for the child. In fact, the father's other biological child was being adopted by the grandparents because he was unable to care for the child. We agree with the juvenile court's conclusion that the child could not be placed in the father's care at the time of the termination hearing, and therefore affirm court's ruling on this issue.

### **3. Grandparents.**

The grandparents contend the termination of the father's parental rights was improper because the State failed to prove the statutory grounds. In short, they are arguing the father's position for him. However, to have standing, "a complaining party must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." See *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004). The grandparents' argument does not raise "a specific personal or legal interest" of their own. Thus, they cannot stand in the place of their son and argue his parental rights and interests.



Moreover, “in termination of parental rights proceedings each parent’s parental rights are separate adjudications, both factually and legally.” *In re D.G.*, 704 N.W.2d 454, 459 (Iowa Ct. App. 2005). We have held that one parent does not have standing to assert the unique rights of the other. *Id.* at 459-60. We find this principle to be equally applicable to a grandparent attempting to assert the rights of a parent. Therefore, the grandparents have no standing to contest the sufficiency of the grounds for terminating the father’s parental rights.

***D. Mother’s Best Interests Claim.***

If a statutory ground for termination is determined to exist, the court may terminate a parent’s parental rights. *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). In considering whether to terminate, the court must then apply the best-interests framework established in section 232.116(2). *Id.* The legislature highlighted as primary considerations: 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.*; see also Iowa Code § 232.116(2). “A child’s safety and the need for a permanent home are now the primary concerns when determining a child’s best interests.” *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially). Those best interests are to be determined by looking at the child’s long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the child if the child is returned to their parents. *In re J.K.*, 495 N.W.2d 108, 110 (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 the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493–94 (Iowa 1990).

Under the facts and circumstances in this case and considering the child's long-term and immediate best interests, we agree with the juvenile court that termination of the mother's parental rights is in the child's best interests. We recognize and commend the efforts the mother has made in attempting to address her mental health and home safety issues; these concerns still remain. The child has been out of the mother's care for half of his life. While we do not doubt her love for the child, "[i]t 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. Children are not equipped with pause buttons. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by P.L.*, 778 N.W.2d at 39; *see also P.L.*, 778 N.W.2d at 39–40. The child should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993). We note the child is doing well in foster care, and the foster parents are willing to adopt the child. We therefore affirm on this issue.

## ***E. Guardianship and Relative Placement.***

### ***1. Grandparents.***

Under Iowa Code section 232.117(3), following the termination of parental rights, the juvenile court may transfer the guardianship and custody of a child to one of the following:

- a. The department of human services.
- b. A child-placing agency or other suitable private agency, facility or institution which is licensed or otherwise authorized by law to receive and provide care for the child.
- c. A parent who does not have physical care of the child, other relative, or other suitable person.

As always, our primary concern is the best interests of the children. See *In re D.S.*, 563 N.W.2d 12, 14 (Iowa Ct. App. 1997). Placement with a relative under a permanency order is not legally preferable to termination of parental rights. *In re L.M.F.*, 490 N.W.2d 66, 67-68 (Iowa Ct. App. 1992).

Upon our de novo review of the issue presented, for the reasons stated by the juvenile court and the facts set forth in the evidence summarized above, we agree with the juvenile court that the section 232.116(3)(a) exception should not preclude the otherwise appropriate termination of parental rights in this case. We note that the grandparents can still seek adoption of the child.

### ***2. Mother.***

Finally, the mother contends her parental rights need not be terminated because placement of the child with the grandparents was an option. Iowa Code section 232.116(3) lists exceptions to termination in certain enumerated circumstances, including “[a] relative has legal custody of the child.” Iowa Code § 232.116(3)(a). Here, a relative does not have legal custody of the child.

Consequently, we conclude the exception in section 232.116(3)(a) does not apply to the facts of this case.

Even assuming, *arguendo*, that the child was placed in the legal custody of the grandparents, the exception in section 232.116(3)(a) is permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38; *J.L.W.*, 570 N.W.2d at 781. 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). We find no error on this issue.

### ***III. Conclusion.***

For the reasons stated above, we affirm the juvenile court's ruling terminating the parents' parental rights, as well as placing the child in the custody and guardianship of the Department.

**AFFIRMED.**