

IN THE COURT OF APPEALS OF IOWA

No. 2-856 / 12-1239
Filed October 17, 2012

**IN THE INTEREST OF J.R. II, H.R., and H.R.,
Minor Children,**

J.R., Father,
Appellant,

J.N.H., Mother,
Appellant.

Appeal from the Iowa District Court for Madison County, Kevin Parker,
District Associate Judge.

A father and mother appeal separately from the order terminating their
parental rights. **AFFIRMED ON BOTH APPEALS.**

Thomas Graves of Graves Law Firm, P.C., Clive, for appellant father.

Cathleen Siebrecht of Siebrecht Law Firm, Des Moines, for appellant
mother.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, and Julie Forsyth, County Attorney, for appellee State.

Jane Rosien of Flander, Casper & Rosien, P.C., Winterset, for minor
children.

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

EISENHAUER, C.J.

A mother appeals from the order terminating her parental rights to her child, J.R. The legal father¹ appeals from the orders terminating his parental rights to J.R., and twins Hy.R., and Hn.R.² We affirm on both appeals.

Background Facts and Proceedings. For about eighteen months prior to the children's adjudication as children in need of assistance (CINA), they lived with their maternal grandmother who, along with their maternal great grandmother, was a co-guardian of the children. In May 2010 the State filed a CINA petition alleging the children were CINA because of past sexual abuse issues by the mother and her boyfriends, exposure to pornography, sexual activity between the children, and conflict between the co-guardians. In December the court adjudicated the children as CINA, but allowed them to remain in their grandmother's care. The January 2011 disposition order confirmed their CINA status and continued their placement with the grandmother.

In May 2011 the State sought to modify the disposition, alleging the grandmother was allowing the children to have contact with unapproved persons, including one who acknowledged sexual contact with one of the twins. The children were removed from the grandmother's home by ex parte order pending a hearing on the modification. In late May the court modified the disposition, placing the children in the custody of the Iowa Department of Human Services (DHS) for foster placement. J.R. was placed in residential treatment. The twins

¹ The three children were born during the mother and father's 1998-2008 marriage, but they are not his biological children. He learned they were not his children after the divorce.

² The mother consented to termination of her parental rights to Hy.R. and Hn.R. and does not appeal from those termination orders.

were placed together in foster care. The mother participated in supervised visitation. In October the children's guardian ad litem (GAL) requested Hn.'s temporary placement in shelter care to address behavioral changes the foster family could not address.

Following a disposition review hearing in January 2012, the court ordered increased visitation for the mother and great-grandmother and gas cards to assist with their transportation to visits. The guardian ad litem reported Hn. was ready to return to the foster home from shelter care. In March, Hn. was placed in shelter care again on the recommendation of the State and the GAL. In May the State filed petitions to terminate parental rights concerning all three children. In June, following a permanency hearing, Hn. was ordered placed in a psychiatric medical institute for children. The permanency order restricted contact with the children by the parents and guardians, except the parents "shall be permitted to contact the children" at DHS's discretion. The permanency goal was adoption or another planned permanent living arrangement.

During the two-day hearing in June, the mother voluntarily consented to termination of her parental rights to the twins. The court terminated the mother's parental rights to all three children under Iowa Code section 232.116(1)(d) and (f) (2011). It also terminated the mother's parental rights to the twins under 232.116(1)(a). The court terminated the father's parental rights to all three children under section 232.116(1)(e) and (f).

Mother. On appeal, the mother only challenges the termination of her parental rights to her son. Although stated as a single issue in her petition, the mother claims the court erred in terminating her parental rights (1) because the

fourteen-year-old child objects to the termination, (2) because termination would be detrimental to the child due to the closeness of the parent-child relationship, (3) because the child must be placed in a facility for treatment, so continuing the parent-child relationship would not prevent a permanent family placement for the child, and (4) because termination is not in the child's best interests. See Iowa Code § 232.116(2), (3). She also challenges the court's findings (1) her bond with the child is unhealthy, (2) reunification has not succeeded due to the parents' unavailability, lack of compliance, and ongoing abuse issues, and (3) her prognosis is poor.

Because the mother does not challenge the statutory grounds for termination, we need not discuss them. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) ("Because the father does not dispute the existence of the grounds . . . we do not have to discuss this step [in the analysis]."). Concerning her best-interests challenge, we consider the factors in section 232.116(2), giving "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).

The mother suffered sexual abuse as a child. The child has suffered sexual abuse and been exposed to pornography and sexual activity over a period of years since he was a toddler. He has continued the cycle of sexual abuse by becoming a perpetrator. His mental and emotional condition and needs required his placement in a residential facility for treatment. The mother has not yet dealt with her own abuse. Returning the child to her care after his release from treatment would not be "the best placement for furthering [his] long-term

nurturing and growth” or for meeting his mental and emotional needs. We conclude termination of her parental rights is in the child’s best interests.

The mother’s other challenges are based on the statutory language in section 232.116(3)(b), (c), and (d). The circumstances listed in subsection (3) allow the court to avoid an otherwise appropriate termination. See *P.L.*, 778 N.W.2d at 37-38, 41. The circumstances 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).

At the time of the termination, the child was fourteen years old. His therapist, who provided family therapy for the child, his mother, and great-grandmother, testified “he and Mom have a very close, close bond” and “he says he wants to stay with Mom.” She opined “I think that [the child’s] emotional damage to him of losing his family would be very hard to overcome.” The therapist said the child had about six more months of treatment remaining, but she could not say she would recommend returning the child to the mother’s care when he was released from treatment.

Although the child’s therapist recommended against terminating the mother’s parental rights and proposed starting unsupervised visitation outside the facility where the child is receiving treatment, the therapist was basing her opinion on limited information. She was not aware where the child would live after release from the treatment facility, and did not know about the past abuse of the children or the mother’s lack of progress in her own therapy. While we

consider the therapist's testimony in our determination whether terminating the mother's parental right should be avoided based on the child's apparent objection to termination or on the closeness of the parent-child bond, we conclude the child's best interests would not be served by maintaining the mother's parental rights with a view to returning him to his mother after his release from residential treatment. The factors in Iowa Code section 232.116(3)(b) and (c) do not serve to preclude termination of the mother's parental rights. See *In re D.W.*, 791 N.W.2d 703, 709 (Iowa 2010) (discussing section 232.116(3)(c)).

The mother also argues section 232.116(3)(d) should prevent termination. This section allows the court to deny termination if "it is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child." Iowa Code § 232.116(3)(d). It was necessary to put this child in a facility for treatment. At the time of the termination, the child's therapist testified the child still had around six months of therapy before he might be released. She could not say she would recommend he be returned to his mother upon his release. He will need a structured home that can keep him safe from abuse and help him avoid reoffending when he is with other children. His mother cannot provide that safe, structured home. Terminating her parental rights allows DHS to seek an adoptive placement for him upon his release. We conclude this section does not serve to prevent termination of the mother's parental rights.

Statutory grounds for termination of the mother's parental rights exist. Termination is in the child's best interests, considering the factors in section

232.116(2). None of the factors in section 232.116(3) preclude termination in this case. We therefore affirm the order terminating the mother's parental rights to this child.

Father. The father appeals the termination of his parental right to all three children. He first contends the court should not have terminated his parental rights because there is a preference for relative placement and the court need not terminate a parent's rights if the child is in relative placement. See Iowa Code § 232.116(3)(a) ("a relative has legal custody of the child"). He argues the children "can be placed, and have from time to time, been placed" with the maternal grandmother and great-grandmother. While it is true the children were placed with relatives in the past, they were in the legal custody of DHS for more than a year prior to the termination. This statutory factor does not apply.

The father also generally contends "evidence was not sufficient to support termination of parental rights." The father has not been involved in these children's lives for several years. He has seen them twice in three years, once intentionally and once accidentally. He testified he intentionally stepped back to allow the mother to pursue reunification. Clear and convincing evidence supports both statutory grounds for termination of his parental rights and that placement with him, considering the factors in section 232.116(2), is not in the children's best interests. We affirm on this issue.

Finally, the father claims there is no reason to terminate his parental rights to the oldest child if we do not affirm the termination of the mother's parental rights to that child. His argument relates primarily to the testimony of the family therapist that she could not support terminating the mother's parental rights to

the oldest child. He argues, “[i]f mother’s rights are not terminated, it cannot be in the best interest of the child to have father’s rights terminated.”

Assuming the issue was properly preserved, we reject the father’s claim termination must be a both-or-neither proposition to serve the child’s best interests. The juvenile court may terminate the rights of one parent and not the other. See *In re N.M.*, 491 N.W.2d 153, 155 (Iowa 1992); see also *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996). Even if the father were correct in his argument, we have already affirmed the termination of the mother’s parental rights and also concluded termination of the father’s parental rights is in the children’s best interests. We affirm on this issue.

AFFIRMED ON BOTH APPEALS.