

IN THE COURT OF APPEALS OF IOWA

No. 2-951 / 12-1611
Filed November 15, 2012

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

J.S., Mother,
Appellant,

J.P., Father,
Appellant.

Appeal from the Iowa District Court for Scott County, Christine Dalton,
District Associate Judge.

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

Eric D. Puryear of Puryear Law, P.C., Davenport, for appellant mother.

Barbara Maness, Davenport, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael J. Walton, County Attorney, and Julie A. Walton,
Assistant County Attorney, for appellee State.

Lauren M. Phelps, Davenport, for minor children.

Considered by Danilson, P.J., Tabor, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MAHAN, S.J.**I. Background Facts & Proceedings.**

Joshua and Jamie are the parents of two children who were born in 2009 and 2010. The parents have a history of domestic violence. Joshua also has problems with substance abuse. Although she was aware of Joshua's problems with anger management, Jamie left the children in his care for about a week in January 2011. In February 2011, Joshua physically abused the younger child by squeezing her head and ribcage. He also placed the child in a blanket and shook it, then dropped her on her head. Joshua was arrested and charged with child endangerment.

The children were adjudicated to be in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c)(2), (g), and (n) (2011). The children remained in Jamie's care. Despite a no-contact order between Joshua and the children, Jamie brought the children to stay in a hotel with Joshua over a long weekend. The children were removed from Jamie's care on July 5, 2011, and placed in foster care. Jamie participated in services, but continued to have contact with Joshua. Joshua started a batterer's education program, but quit and did not otherwise participate in services. In December 2011, Joshua was sentenced to five years in prison for child endangerment resulting in bodily injury.

On May 29, 2012, the State filed a petition seeking to terminate the parents' rights to the children. Jamie had been telling service providers she was no longer in a relationship with Joshua. Evidence presented at the termination hearing, however, showed she had continued to communicate with him by

telephone calls and letters, and they planned to marry when he got out of prison. Joshua testified he expected to be released from prison in March 2014.

The juvenile court entered an order terminating the mother's parental rights under sections 232.116(1)(d), (f), (h), and (i), and the father's rights under sections 232.116(1)(d), (e), (f), (h), (i), (l), and (m).¹ The court found the children could not be safely returned to the care of the mother or the father. The court found the State had engaged in reasonable efforts to reunite the children with the parents. The court concluded termination of the parents' rights was in the best interests of the children. The parents separately appeal.

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).

¹ We note although the mother's and father's parental rights were terminated under section 232.116(1)(f), neither of the children was yet four years of age, so that section would not apply. Additionally, at one point the termination order states the mother's rights were also terminated under section 232.116(1)(e), but at another point does not include that section. Section 232.116(1)(e) involves lack of significant and meaningful contact with the children, which we do not believe applies to the mother.

III. Mother.

Jamie contends there is insufficient evidence in the record to support termination of her parental rights. In particular, she asserts the main danger to the children came from Joshua, and now that he is in prison the children could be returned to her care. She also points out that she participated in services.

If the juvenile court terminates parental rights on more than one ground, we may affirm on any one of them. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We find there is clear and convincing evidence in the record to support termination of the mother's parental rights under section 232.116(1)(h).² The evidence presented at the termination hearing makes clear that Jamie has not internalized the need to keep the children safe. Despite the fact Joshua was in prison for physically abusing the younger child, Jamie maintained a romantic relationship with him and planned to marry him when he got out of prison. The children could not be returned to her care because she has not shown she would make their safety a priority. We affirm the termination of the mother's parental rights.

IV. Father.

A. Joshua claims the State did not present sufficient evidence to support termination of his parental rights. He does not argue, however, that the children could be returned to his care, but asserts the children could be returned to the mother's care. We note Joshua does not have standing to assert an argument on behalf of the mother's parental rights. See *In re K.R.*, 737 N.W.2d 321, 323

² Although we do not discuss the other grounds for termination of the mother's parental rights, sections 232.116(1)(d) and (i), we believe her parental rights were properly terminated on these grounds as well.

(Iowa Ct. App. 2007). It is clear the children could not be placed in Joshua's care. As noted above, he is in prison for physically abusing and injuring the younger child. We conclude there is sufficient evidence in the record to warrant the termination of his parental rights.³

B. Joshua also asserts termination of his parental rights is not in the children's best interests. Again, his best-interests argument is based on the rights of the mother. *See id.*

On the issue of best interests we apply the analysis found in section 232.116(2). *See D.W.*, 791 N.W.2d at 706-07. Section 232.116(2) provides:

In considering whether to terminate the rights of a parent under this section, the court shall 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.

See In re P.L., 778 N.W.2d 33, 40 (Iowa 2010) (applying the provisions of section 232.116(2)). Additionally, "[w]e gain insight into the child's prospects by reviewing evidence of the parent's past performance—for it may be indicative of the parent's future capabilities." *D.W.*, 791 N.W.2d at 709 (citation omitted).

Looking at the parents' past performance, we conclude termination of the father's parental rights, and those of the mother, is in the best interests of the children. We affirm the decision of the juvenile court.

AFFIRMED.

³ We determine there is sufficient evidence to terminate the father's parental rights on all of the grounds cited by the juvenile court except section 232.116(1)(f), as discussed above.