

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1126 / 13-1492  
Filed December 5, 2013

**IN THE INTEREST OF A.K.,  
Minor Child,**

**D.F., Father,**  
Appellant.

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

A father appeals the termination of his parental rights. **AFFIRMED.**

William E. Sales III of Sales Law Firm, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Susan Cox, Assistant County Attorney, for appellee.

Patrick O'Bryan of O'Bryan Law Firm, Des Moines, for mother.

Nicole Garbis Nolan and Joseph Strong of Youth Law Center, Des Moines, attorneys and guardians ad litem for minor child.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

**TABOR, J.**

An incarcerated father, Dale, appeals an order terminating his parental rights to his nine-year-old daughter A.K., whom he has met only once. He concedes the State proved the statutory grounds for termination, but contends severing his legal tie to A.K. is not in her best interests. Like the juvenile court, we defer to the opinion of A.K.'s therapist and the report of the court appointed special advocate (CASA) in finding termination to be in the child's best interests.

**I. Background Facts and Proceedings**

A.K. was born in September 2004. At the time of the birth, A.K.'s mother was married to Eric, who is her legal father. In July 2010, a clandestine methamphetamine laboratory exploded at the home where A.K. lived with her mother. A.K. and her sister went to live with Eric.<sup>1</sup> The mother was convicted and incarcerated for manufacturing methamphetamine.

In January 2011, the juvenile court adjudicated A.K. as a child in need of assistance (CINA), based on allegations of sexual abuse by one older sibling against another while in Eric's custody. The Department of Human Services (DHS) placed A.K. in foster care. In February 2011, it came to the attention of the juvenile court that there was a material question of A.K.'s paternity. The court ordered testing of a putative father, who was involved in the lab explosion with the mother, but he did not turn out to be the biological father. In April 2011, the court ordered paternity testing of Dale, who was confirmed as A.K.'s

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<sup>1</sup> Eric also has a criminal record. He was convicted of voluntary manslaughter in 2000 and was released from prison in 2003.

biological father. He was incarcerated for burglary at the time of the testing, so his initial contact with A.K. was through letters.

During 2011, Eric engaged in therapy and complied with other services recommended by the DHS. Because of his efforts, A.K. was returned to his care in January 2012. But that placement was short-lived. Eric struggled to maintain consistent supervision of two older siblings, as well as A.K. and another sister. A.K. was again removed from Eric's home in May 2012. In October 2012, the juvenile court found A.K. "endured a lot" going into foster care, and found Eric had "made changes and engaged in requisite therapeutic and protective services sufficiently since end of spring 2012."

Dale was paroled from prison in December 2012. While on parole he briefly met with A.K. for the first and only time in early 2013. Dale violated his parole in March 2013 by verbally abusing a female employee of the work release center and he returned to prison. His discharge date is tentatively set for May 2015.

The State filed a petition to terminate Dale's parental rights on July 15, 2013.<sup>2</sup> The court held a hearing on the petition on August 12, 2013. A.K.'s therapist testified it was not in A.K.'s best interest to continue to worry about "who's going to be dad." The therapist explained that after A.K.'s one supervised visit with Dale she was "very on edge" and "very irritable." Close on the heels of the visit with Dale, A.K. started a fight at school and was suspended. The therapist believed A.K. benefited from the stable living arrangement with her legal

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<sup>2</sup> Although not in her mother's care, A.K. has been rebuilding her relationship with her mother. The petition in this case did not seek to terminate the mother's parental rights.

father, Eric, his girlfriend, and her half-sister. The juvenile court also received a CASA report which recommended terminating Dale's rights because of A.K.'s confusion and insecurity concerning his role in her life.

Dale testified he did not want to cause confusion in A.K.'s life or disrupt her relationship with Eric, but wanted her to meet his older children and "be a part of her life" when he leaves prison.

The court issued its order terminating Dale's parental rights to A.K. on September 9, 2013. Dale now appeals.

## **II. Standard of Review**

We review a juvenile court order terminating parental rights de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We give weight to the factual determinations of the juvenile court but are not bound by them. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

## **III. Analysis**

The only question in this appeal is whether termination of the parental rights of her biological father, Dale, is in A.K.'s best interests. Best interests are measured under the framework in Iowa Code section 232.116(2) (2013). *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). That provision requires us to "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." Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 40.

In analyzing A.K.'s best interests, the juvenile court gave "controlling weight to the testimony of the Child's therapist" because A.K. has significant behavioral issues. "Additionally the court considered the CASA report and accept[ed] its recommendations as well." The court noted A.K. suffers "significant anxiousness associated with her permanency and caretaking needs." The court emphasized that A.K. has always viewed Eric as her father and that she is currently comfortable and being nurtured in his custody. The court concluded A.K.'s "mental and emotional needs are best met by terminating [Dale's] rights so that it will be completely up to [A.K.] when she is old enough as to whether she wants to have any contact with him."

On appeal, Dale questions the stability of A.K.'s placement with Eric: "The CINA record for [A.K.] and her siblings shows a family in regular upheaval and by no means presents a comfortable setting that is unlikely to be disrupted again in the future." He lobbies to remain an available option for A.K. if Eric is not able to care for her long term. He asks that a guardianship be established instead of terminating his parental rights.

We find the best-interest framework in section 232.116(2) supports termination of Dale's parental rights. We recognize Dale did not realize he was A.K.'s biological father until May 2011—when she was already eight years old. But his contact with A.K. has not been a positive force in her life. A.K.'s therapist described A.K.'s stressful reaction to her one and only visit with Dale, including oppositional behavior at home and fighting at school. Shortly after that one visit with his daughter, Dale was verbally abusive to a female worker and had his

work release revoked. He had a small window to develop rapport with his daughter, and failed to do so. A.K. told her therapist she has no interest in an ongoing relationship with Dale, and is anxious about who will have custody of her in the future if Dale's rights are not terminated.

Meanwhile, A.K. currently lives with her sister in the home of her legal father Eric and his girlfriend. A.K.'s therapist testified the home is now stable. A.K. views Eric as her "real father" and he is able to meet her mental and emotional needs. DHS workers have noticed A.K.'s behavior is improving in Eric's care.

Finally, we reject Dale's suggestion that a guardianship would be preferable to termination. Termination is the favored solution when a parent is unable to regain custody within the time frames of chapter 232. See *In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997). A guardianship would only prolong the uncertainty for the A.K, because Dale, as the biological father, could at some point challenge a guardianship and seek to have the child placed in his care. See Iowa Code § 232.104(2) (allowing a parent to seek modification or termination of a permanency order). A.K. should not be deprived of permanency and peace of mind in the hope that someday her biological father might be available as a parent. See *P.L.*, 778 N.W.2d at 41.

**AFFIRMED.**