

IN THE COURT OF APPEALS OF IOWA

No. 3-320 / 13-0219
Filed April 10, 2013

**IN THE INTEREST OF D.M.M.,
Minor Child,**

**R.M., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Rachel E. Seymour,
District Associate Judge.

A father appeals the district court order terminating his parental rights.

AFFIRMED.

Aaron Ginkens of Ginkens & McConnell, P.L.C., Clive, for appellant father.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney
General, John Sarcone, County Attorney, and Jennifer Galloway, Assistant
County Attorney, for appellee State.

Erin Mayfield of the Youth Law Center, Des Moines, attorney and guardian
ad litem for minor child.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

VOGEL, P.J.

Ricky Jr. appeals the district court's order terminating his parental rights to his daughter, D.M.M. (born 2009).¹ He does not argue the district court erred in finding the statutory elements were satisfied, but rather that termination was not in the best interests of the child, a close parent-child bond makes termination improper, and termination was not proper under Iowa Code section 232.116(3)(e) (2011), because he was incarcerated.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). We are primarily concerned with the child's best interests and even when the statutory grounds for termination are met, the decision to terminate parental rights must still reflect the child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

When we consider the child's best interests, we look to the child's long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The factors militating against termination set forth in section 232.116(3) have been interpreted by the courts as permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). The factor in the code that the court need not terminate the parent-child relationship where certain extenuating circumstances exist, such as "[t]he absence of a parent is due to the parent's admission or commitment to any *institution*, hospital, or health facility. . ." is not applicable to Ricky because our supreme court has held "institution" was not intended to include penal institution. *In re J.V.*, 464 N.W.2d 887 (Iowa Ct.

¹ D.M.M.'s mother's parental rights were also terminated. She does not appeal.

App. 1990) *overruled on other grounds by In re P.L.*, 778 N.W.2d 33 (Iowa 2010); Iowa Code § 232.116(3)(e).

Ricky testified he has not seen the child since she was six months old. She was three and one-half years old at the time of the hearing. D.M.M.'s therapist testified D.M.M. has no knowledge of Ricky and introducing him to her would be very confusing and traumatic. He has been incarcerated in Pennsylvania for failing to register as a sex-offender.² He testified he believed he would be released within a matter of months, though he must spend time in a half-way house after release.

The child has been in therapy for attachment disorder related issues because of the lack of stability in her life, including several foster placements, up until her placement with her current foster family. Her therapist testified she "recommended that [D.M.M.] be able to stay with her current foster parents . . . any disruption in that relationship would really set her back developmentally, emotionally." The therapist recommended against contact between D.M.M. and Ricky, even without knowing Ricky had a history of sexually assaulting a child.

At the time of the hearing, D.M.M. had been placed with the same foster family for nearly a year, and her half-sibling is also placed with that same family. The guardian ad litem testified, D.M.M. has "transitioned well and integrated into the family and with that family has made great improvements over the last year and [I] believe that it is in her best interest to remain with that family and be

² Although Ricky has a prior conviction for "indecent assault" of a minor, this crime was not against D.M.M. but rather another female child. Ricky has not provided the Department of Human Services with any documentation that suggests his parole or probation would approve of him being the sole caretaker of a female child.

adopted by that family.” We agree. Termination is in the child’s best interests, and there is no bond between Ricky and D.M.M that would make termination detrimental to D.M.M.

AFFIRMED.