

**IN THE COURT OF APPEALS OF IOWA**

No. 3-569 / 13-0615  
Filed June 26, 2013

**IN THE INTEREST OF K.C.B. Jr.,  
Minor Child,**

**K.B., Father,**  
Appellant,

**N.B., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Washington County, Crystal Cronk,  
District Associate Judge.

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

Katie Mitchell of Tindal Law Office, P.L.C., Washington, for appellant  
father.

Jeffrey Powell, Washington, for appellant mother.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney  
General, Larry J. Brock, County Attorney, and Patrick J. McAvan, Special County  
Attorney, for appellee State.

Katherine E. M. Lujan of Lloyd, McConnell, Davis & Lujan, L.L.P.,  
Washington, for minor child.

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

**EISENHAUER, C.J.**

A father<sup>1</sup> and mother appeal separately from the order terminating their parental rights. Both parents contend the court erred in denying the application to have the child placed with an adult half-sister and termination is not in the best interests of the child. The mother also contends the State did not make reasonable efforts to place the child with a sibling as required by Iowa Code section 232.108 (2011). The father also contends denying the request to have the child placed with the half-sister prevented the court from finding an exception to termination under section 232.116(3)(a).

The child was born in January 2012 and removed from the parents' care in March following their arrests on federal drug charges. Throughout these proceedings, the parents have been in jail awaiting trial. After a brief, voluntary placement with a maternal aunt, the child was placed with the paternal grandmother. After a few days, the child was removed from the grandmother's care pending a home study and placed in foster care. When the home study of the grandmother raised concerns, the child's placement in foster care was confirmed in the dispositional order as being the least restrictive placement appropriate in the circumstances. In the summer of 2012 the father's adult daughter moved to Iowa with her two young children and fiancé. After she completed a home study and was approved as a possible placement option, the father filed a motion for change of placement, seeking to have the child placed with the half-sister. Following a hearing, the court denied the motion. The father

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<sup>1</sup> The child's biological father. The court also terminated the parental rights of the child's legal father. He did not appeal.

filed a motion to enlarge, requesting the half-sister have at least forty hours of visitation weekly or be considered as a caregiver in the event the foster mother needed respite care. The court ordered the half-sister be permitted to provide respite care and further ordered visitation with the child as arranged by the department of human services.

The State petitioned to terminate the parental rights of both parents in January 2013. Following a contested hearing in March, at which the father again requested the child be placed with the half-sister, the court denied the father's request and terminated both the mother's and father's parental rights under Iowa Code section 232.116(1)(h). Both parents appealed.

We review terminations de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We examine both the facts and law and adjudicate anew those issues properly preserved and presented. *In re L.G.*, 532 N.W.2d 478, 480-81 (Iowa Ct. App. 1995). We accord considerable weight to the findings of the juvenile court, especially concerning the credibility of witnesses, but are not bound by them. *Id.* at 481.

On appeal, neither parent challenges the statutory ground for termination. At the time of the termination, both parents were in jail awaiting trial on serious drug charges. They were not available to parent the child. Clear and convincing evidence supports termination of their parental rights under section 232.116(1)(h).

Both parents argue termination was not in the best interests of the child, asserting they have only been charged with, not convicted of a crime. The mother argues the child would not be harmed if the court were to give her

additional time to obtain her release from jail and establish herself as an appropriate parent. The father acknowledges permanency should be fixed as soon as possible, but argues “that does not mean that the guidelines should be followed irrespective of the facts of the case.”

The legislature has determined the interval for which patience with parents may last. “This period must be reasonably limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children.” *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989); see *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). Our supreme court has been emphatic these cases must be viewed with a sense of urgency once the statutory time limits have expired. *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997); *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990); *In re A.C.*, 415 N.W.2d 609, 614 (Iowa 1987). At the time of the termination hearing, the child had been removed from the parents’ care for nearly a year, almost twice the statutory time period. Delays in permanency are not in a child’s best interests. See *C.K.*, 558 N.W.2d at 175. Looking at the child’s immediate and long-term best interests, and giving primary consideration to “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,” Iowa Code § 232.116(2), we conclude terminating the parental rights of both parents is in the best interests of the child.

The mother contends the State failed to make reasonable efforts under Iowa Code section 232.108 to place the child with his half-sister. The requirement the State “make a reasonable effort to place the child and siblings together” applies to situations where “the court orders the transfer of custody of a

child and siblings to the department or other agency for placement.” Iowa Code § 232.108(1). This provision is to avoid separation of siblings when they are removed from their home. It does not apply where an adult half-sibling is the proposed placement.

The father contends the court erred in denying his motion to have the child placed with his adult daughter. He argues there is a statutory preference for relative placement. See *id.* § 232.99(4) (providing “when the dispositional hearing is concluded, the court shall make the least restrictive disposition appropriate considering all the circumstances of the case”). At the time of the dispositional hearing in May 2012, the home study of the paternal grandmother raised concerns about her mental health. The court determined the least restrictive placement was foster care. Although the dispositional order notes the presence of the adult half-sister at the hearing, the father’s motion for change of placement was not made until about three months after the dispositional hearing.<sup>2</sup> The court made the least restrictive placement appropriate under the circumstances after the dispositional hearing. See *id.* The father did not appeal from the dispositional order.

The father’s subsequent motion for change of placement was, in substance, a request to modify the dispositional order. See *id.* § 232.103. The court held a combined dispositional review and hearing on the father’s motion. The home study on the half-sister approved her for placement of the child, but

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<sup>2</sup> Section 232.108(3) allows a person “who wishes to assert a sibling relationship” with a child that has been removed from the home to petition the court for “frequent visitation or other ongoing interaction with the child.” This subsection does not apply to a request for placement of a child. This subsection is not implicated in the father’s request for placement.

noted her family “would need to demonstrate more stability in housing and finances in order to be a suitable long term option” for the child. The guardian ad litem for the child expressed the same reservations and recommended continued foster care placement. By the time of the hearing on the father’s motion for change of placement, it was becoming clear the child probably could not be returned to the parents’ care in the foreseeable future because of their pending federal criminal charges, and it was likely the State would seek termination of their parental rights. As the half-sister was not a suitable long-term placement for the child at that time, we agree with the court’s denial of the father’s motion for change of placement.

The father contends the court “was prevented from finding that an exception to termination of parental rights exists under Iowa Code section 232.116(3)” because the parents’ request to have the child placed with his half-sister was denied. The father is correct none of the exceptions to termination in section 232.116(3) apply. We have already determined the court properly denied the father’s request for change of placement. This claim is without merit.

We affirm the order terminating the parental rights of both parents.

**AFFIRMED ON BOTH APPEALS.**