

IN THE COURT OF APPEALS OF IOWA

No. 3-602 / 13-0679
Filed June 26, 2013

**IN THE INTEREST OF T.C.,
Minor Child,**

**S.R., Father,
Appellant.**

Appeal from the Iowa District Court for Linn County, Susan F. Flaherty,
Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

John Bishop, Cedar Rapids, for appellant biological father S.R.

Zachary Crowdes, Cedar Rapids, for mother.

Henry Keyes, Cedar Rapids, for legal father J.C.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Jerry Vander Sanden, County Attorney, and Rebecca Belcher,
Assistant County Attorney, for appellee State.

Kimberly Opatz of Linn County Advocate, Cedar Rapids, for minor child.

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

EISENHAUER, C.J.

A biological father¹ appeals from the order terminating his parental rights to his child. He contends termination is not in the child's best interests. We affirm.

The child was born in 2011. During the first seven months of the child's life, Steven, the child's biological father, had some visitation with the child, although the visits were kept secret from the legal father. Then Steven spent nearly three months in jail on a conviction of conspiracy to manufacture methamphetamine. He resumed visitation for about four months, then was returned to jail for violating his probation. The same day, the child was removed from the parents' home because the parents were using illegal drugs. Throughout these proceedings, the child has been in the care of the legal father's brother. That uncle adopted the child's older half-brother after termination of the parents' parental rights.

In April 2013 the court terminated the parental rights of all the parents under Iowa Code section 232.116(1)(h) and (l) (2013). The court noted Steven was incarcerated at the time and "will continue to be incarcerated into the foreseeable future."² The court concluded termination was in the child's best interests, considering the child's "need for permanency, security, safety, [and] physical and intellectual health." The court noted Steven's unavailability because of his incarceration and his "history of significant substance abuse and criminal

¹ The court also terminated the parental rights of the mother and legal father, but their parental rights are not at issue in this appeal.

² Steven's discharge date is in October 2016, but he hopes to be paroled in October 2013.

activity which would prevent him from being able to immediately become the sole caretaker for his son upon his release from prison.”

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).

Steven does not challenge the statutory grounds for termination. Because he was incarcerated at the time of the termination, clear and convincing evidence supports termination under section 232.116(1)(h) (requiring a finding the child could not be returned to the parent’s care “at the present time”).

Steven claims termination is not in the child’s best interests and seeks additional time “to complete his prison sentence and to establish himself as the custodial parent.” The caseworker testified she did not recommend additional time for any of the parents and additional time would not resolve the parents’ issues. It is not clear the court considered Steven’s request for additional time, but the court implicitly denied any request in its finding Steven would need “substantial time” after his release to show he could provide the child a drug-free home. In order to give a parent an additional six months, the court must “enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination the need for removal of the child from the child’s home will no longer exist at the end of the additional six-month period.” Iowa Code § 232.104(2)(b). Steven’s earliest chance for release was six months after the termination hearing. Upon his release, he would need additional time to demonstrate his parenting ability, show he has resolved his

substance abuse issues, and obtain suitable housing and employment in order to be able to provide for the child. It is clear the child could not be returned to his father even if he were given an additional six months. Steven also argues the child was in the care of his uncle and was with his older half-brother, so no harm would come from giving Steven more time to be reunited with the child. He further argues there was a strong parent-child bond.

The child was in the care of his uncle, who had adopted his older half-brother. The uncle was a willing and suitable adoptive option for the child. Steven had not seen the child for at least nine months at the time of the termination, nearly half the child's life. Giving consideration to the statutory best-interest factors in section 232.116(2), we, like the trial court, conclude termination of Steven's parental rights to free the child for adoption is in the child's best interests.

The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re D.S.*, 806 N.W.2d 458, 474 (Iowa Ct. App. 2011). "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." *Id.* Neither the child's placement with a relative nor any parent-child bond existing after the child had not seen Steven for at least nine months serve to prevent termination. See Iowa Code § 232.116(3)(a), (c).

AFFIRMED.