

IN THE COURT OF APPEALS OF IOWA

No. 6-403 / 06-0563

Filed June 14, 2006

**IN THE INTEREST OF D.V.H., D.V.H., and D.V.H.
Minor Children,**

M.V.H., Father
Appellant,

S.V.H., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A mother and father appeal the juvenile court order terminating their
parental rights. **AFFIRMED.**

Craig S. Long of Oliver Law Firm, Des Moines, for appellant father.

Bryan J. Tingle of Kragnes, Tingle, & Koenig, P.C., Des Moines, for
appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Andrea Vitzthum,
Assistant County Attorney, for appellee State.

Kathryn Miller, Des Moines, for minor children.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

MAHAN, P.J.**I. Background Facts and Proceedings**

Sabrina and Michael are the parents of Dustin, born in September 1995; Dylan, born in May 2000; and Destiny, born in April 2002. Dustin and Dylan were first removed from their parents' custody and placed in foster care in November 2001, after child protective assessments were confirmed for denial of critical care and failure to provide proper supervision. A report of physical abuse was also made, with Dylan the alleged victim and Michael the alleged perpetrator. Destiny was placed in foster care in June 2002. All three children were adjudicated CINA. The children were returned to their parents' custody under DHS supervision in April 2003. The case was closed in January 2004.

The case was opened again in May 2004, when Michael tested positive for marijuana after allegations of substance use. The children were not removed, and the case was closed in November 2004.

In March 2005 the children were removed from the home and placed in foster care after once again being exposed to physical abuse and neglect. The children were adjudicated CINA. The State filed a petition to terminate parental rights in January 2006. A termination hearing was held on March 23.

In an order filed March 28, 2006, the juvenile court terminated Sabrina's and Michael's parental rights pursuant to Iowa Code sections 232.116(1)(d) (2005), (f) (Dustin and Dylan), and (h) (Destiny). In addition, the court terminated Michael's parental rights pursuant to section 232.116(1)(l). Sabrina and Michael filed separate appeals. Our review is de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

II. Discussion

Michael waives any claim of error concerning the statutory grounds for termination by failing to raise such claims in his appeal. See Iowa R. App. P. 6.14(1)(c). Therefore, we affirm the termination of Michael's parental rights on statutory grounds.

Sabrina concedes the State met its burden of proving by clear and convincing evidence that termination pursuant to sections 232.116(1)(f) and (h) was appropriate. Therefore, we can affirm the termination of her parental rights on statutory grounds. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (“When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.”).

However, even if the statutory requirements for termination are met, the decision to terminate must still be in the children's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). Sabrina and Michael claim termination was not in the children's best interest. In support of their claims, Michael and Sabrina rely on section 232.116(3)(c), which provides that the juvenile court need not terminate parental rights based on “clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.” Sabrina additionally relies on section 232.116(3)(b), which provides that the juvenile court need not terminate parental rights if the court finds “the child is over ten years old and objects to the termination.”

The provisions of section 232.116(3) are permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). It is within the sound discretion of the juvenile court, based upon the circumstances before it and the best interests of the children, whether to apply these sections. *Id.*; see also *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (noting that a strong bond between a parent and child is “not an overriding consideration, but merely a factor to consider”).

Based upon our de novo review of the record, we conclude termination is in the children’s best interests. The children remain in foster care and have had no trial periods at home. They have spent nearly five years in and out of foster care. After one year of services since the most recent removal, visitations remain strictly supervised due to the parents’ inconsistent progress. Michael has a history of substance abuse and has done nothing to address the problem. Neither parent has adequately addressed their respective mental health problems. The parents remain unemployed with no prospects for employment in the foreseeable future. They reside with another couple who have a known history of illegal drug use.

The juvenile court made the following findings related to the children’s best interests:

There is no question that Michael and Sabrina love their children and the children love Michael and Sabrina. There is a strong bond, and Dustin especially feels a great tug of loyalty to his parents even though they have repeatedly disappointed him. It would be very painful for the children to lose their parents, but given the totality of the circumstances, the Court finds that termination is in the children’s best interest and would be less detrimental than the harm that would be caused to them by continuing them in foster care limbo. The children currently reside together in a preadoptive

home. They have bonded to their foster parents and are comfortable living with them. These skilled foster parents have been able to provide the consistency and predictability that the children need and deserve. Even Dustin is beginning to feel that he has permission to be a child. At ten and a half years of age, the Court does give weight to [Dustin's] desires, and, if asked, the Court has no doubt that [Dustin] would resist termination of parental rights. However, [Dustin's] wishes are not dispositive. The only chance these children have for a successful emotional journey through childhood is to have an answer as to where they will grow up and a safe and stable environment.

The juvenile court's findings are fully supported by the record, and we adopt them as our own. We affirm the juvenile court's order terminating Sabrina's and Michael's parental rights to their three children.

AFFIRMED.