

**IN THE COURT OF APPEALS OF IOWA**

No. 6-406 / 06-0626

Filed June 28, 2006

**IN THE INTEREST OF J.Y. and J.Y.,  
Minor Children,**

**L.Y., Father,  
Appellant.**

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

A father appeals from the juvenile court order terminating his parental  
rights to two children. **AFFIRMED.**

J. Michael Mayer, Des Moines, for appellant-father.

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

Kayla Stratton, Des Moines, guardian ad litem for minor children.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

**SACKETT, C.J.**

The juvenile court terminated the parental rights of Lawrence to his children, Josie, born in 1999, and Joseph, born in 2002. Lawrence has filed a petition on appeal asking that we reverse the termination order or that we order full briefing. Lawrence contends that the State failed to prove by clear and convincing evidence his parental rights should be terminated and that terminating his parental rights is not in the children's best interest. We affirm.

Our review of termination proceedings is de novo. Iowa R. App. P. 6.4; *In re J.J.S., Jr.*, 628 N.W.2d 25, 28 (Iowa Ct. App. 2001). The State must prove the grounds for termination by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa Ct. App. 1997). If the juvenile court terminates parental rights on more than one statutory ground, “[w]e only need to find grounds to terminate parental rights under one of the sections cited by the [juvenile] court in order to affirm its ruling.” *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2002).

The parental rights of the children's mother, Lawrence's wife, were terminated in January of 2004. The family had first come to the attention of the juvenile court in late 2000 when both parents, who were using methamphetamine, agreed to the children's removal. The children were returned to Lawrence's custody in November of 2003 and the initial case was closed in March of 2004.

In October of 2005 Lawrence was found to be using marijuana and methamphetamine, and he consented to the children being placed in foster care. They were found to be children in need of assistance and Lawrence was ordered

to have drug screens and treatment and home centered services. The State filed a petition to terminate his parental rights in January of 2006.

The matter came on for hearing on March 16, 2006. Lawrence admitted he has used drugs for ten years and has made numerous efforts to abstain from them. He was in residential treatment three times and has had several periods of sobriety, including one for a two-year period. At the time of the hearing he had been sober for a little over two months. Lawrence also testified he suffers from depression and is successfully being treated for that. He said that he was living with his mother, who is not and never has used drugs, and he had adequate quarters to care for the children. Lawrence is receiving SSI benefits and testified he would receive an additional payment for the children so he would be able to pay for their financial needs.

The juvenile court terminated Lawrence's parental rights under Iowa Code sections 232.116(1)(d), (g) and (l) (2005) which provide in relevant part:

232.116. Grounds for termination

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds: .....

d. The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services. . . .

g. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

...

I. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

We first address Lawrence's claim that the State failed to prove the grounds for termination under 232.116(1)(g) because there was no finding that there was a prior termination of his parental rights. He contends the termination of his wife's parental rights to these children does not bring this section into play. We agree with this argument as the statute refers to "another child." We modify the juvenile court order accordingly.

Lawrence further argues the State has failed to prove the grounds for termination under 232.116(1)(l) because the services the State offered have enabled him to take custody of his children and there is not clear and convincing evidence the children cannot be returned to him at this time.

Lawrence clearly has made efforts to seek his children's return. He has utilized services offered and he has visited the children religiously. He believes he will be able to stay sober and that his problems with depression are under

control. He appears to be cooperative with service providers and did an adequate job of caring for his children when he was sober. It is clear he loves his children and the evidence was that they have a bond with him.

While noting his sobriety at the time of trial the juvenile court also considered his relapses and was not convinced he would not relapse.

This is a difficult case. Lawrence has taken care of these children and loves them. He has a substance abuse problem and mental health problems. He has affirmatively worked towards conquering all of these problems and at the time of trial appeared to have succeeded. The question is whether this success is temporary or permanent. Lawrence's history would suggest it will only be temporary. We recognize substance abuse and mental health issues are difficult to conquer. We also recognize that some persons who are able to conquer them have numerous prior failures.

The juvenile court saw Lawrence and heard his considerable testimony and is of the opinion that Lawrence continues to struggle with maintaining sobriety and has not resolved his mental health issues. Giving the required deference to the juvenile court's findings we affirm the termination on this ground.

We next address Lawrence's claim that termination is not in the children's best interest.

Under section 232.116(3)(c) a court need not terminate upon "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." The factors in 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 in the court's discretion, based upon the unique

circumstances of each case and the best interests of the child, whether to apply the factors in section 232.116(3).” *In re A.J.*, 553 N.W.2d 909, 916 (Iowa Ct. App. 1996). There is evidence of a bond between Lawrence and the children. The evidence is that they are glad to see him and the older child vacillates between wanting to be with her foster parents and her father. There is also evidence the children have a stronger bond with their foster parents who apparently want to adopt them. There was testimony from the service providers that the children need stability. We trust the State having sought termination will make every effort to see that these children quickly have a permanent home.

**AFFIRMED.**