

**IN THE COURT OF APPEALS OF IOWA**

No. 7-011 / 06-2012  
Filed January 31, 2007

**IN THE INTEREST OF H.P.,  
Minor Child,**

**C.G.P., Father,  
Appellant.**

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

C.G.P. appeals from the order terminating his parental rights. **AFFIRMED.**

John Broz, Cedar Rapids, for appellant father.

Sara Smith, Cedar Rapids, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, Harold Denton, County Attorney, and Troy Powell, Assistant  
County Attorney, for appellee State.

Janice Binder, Mount Vernon, for minor child.

Considered by Huitink, P.J., and Mahan and Vaitheswaran, JJ.

**HUITINK, P.J.**

C.G.P. appeals the juvenile court's order terminating his parental rights concerning his child, H.P. He argues the State failed to prove the statutory grounds for termination and that termination is not in the best interest of H.P. We review his claims de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

C.G.P.'s parental rights were terminated pursuant to Iowa Code section 232.116(1)(h) (2005) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home). There is no dispute concerning the sufficiency of the State's proof concerning the first three elements of section 232.116(1)(h). H.P. is three years of age or younger, adjudicated a child in need of assistance and removed from C.G.P.'s care for at least thirteen months. C.G.P. claims the State failed to prove H.P. could not be returned to his custody and terminating his parental rights is not in H.P.'s best interest. We disagree.

The requirement of section 232.116(1)(h)(4) "is met when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance, Iowa Code section 232.2(6), exist." *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). If any one of the grounds listed in section 232.2(6) can be proven by clear and convincing evidence, there is sufficient basis for termination. *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990). The threat of probable harm will justify the termination of parental rights, and the perceived harm need not be one that supported the child's initial removal from the home. *In re M.M.*, 483 N.W.2d 812, 815 (Iowa 1992). A parent cannot use incarceration as a justification for the lack of his relationship with his or her child. *In re M.M.S.*,

502 N.W.2d 4, 8 (Iowa 1993). “While recognizing the law requires a ‘full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,’ Iowa has built this patience into the statutory scheme of Iowa Code chapter 232.” *In re C.B.*, 611 N.W.2d at 494 (quoting *In re D.A., Jr.*, 506 N.W.2d 478, 479 (Iowa Ct. App. 1993)). “Children simply cannot wait for responsible parenting.” *In re L.L.*, 459 N.W.3d 489, 495 (Iowa 1990). “Parenting cannot be turned off and on like spigot.” *Id.* “It must be constant, responsible, and reliable.” *Id.* “Children should not endlessly await the maturity of their parents.” *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983).

The court can, however, deny the State’s requested termination of parental rights if circumstances indicate that termination is not in the child’s best interests. *In re A.L.*, 492 N.W.2d 198, 200 (Iowa Ct. App. 1992). Termination is not in the child’s best interest if “[t]here is 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.” Iowa Code § 232.116(3)(c) (2005). The factors under section 232.116(3) have been interpreted by the courts as being permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 453 (Iowa 1993). The appellate court has deferred to the trial court in such matters because the trial court is closer to the parties and is able to observe the family dynamic. *In re D.E.D.*, 476 N.W.2d 737, 738 (Iowa Ct. App. 1991).

The juvenile court’s order terminating C.G.P.’s parental rights includes the following findings of fact:

The evidence presented during this trial establishes that substance abuse, domestic violence, untreated mental health issues and criminal activity have rendered [H.P.’s mother, S.S.] and

[C.G.P.] unavailable and unsuitable to provide ongoing care for [H.P.]; that [H.P.] has been in the care and custody of others for over one year; and that attempts had been made to assist the parents to remedy these issues and resume care of [H.P.], but that those efforts had not been successful. [S.S.] acknowledges her shortcomings and has consented to this termination action. While [C.G.P.] testified to this Court that he believes he should be given an opportunity to parent [H.P.], his behavior since achieving parole causes this Court to conclude that to do so would continue to place [H.P.] [at risk] of abuse and neglect. [C.G.P.] believes that, with some transition time, he could assume full time care of [H.P.]. While the Court could continue [H.P.] in temporary care and allow [C.G.P.] additional time to demonstrate that he will refrain from drug use and criminal activity and that he will provide a safe, stable home for [H.P.], the Court does not believe that such a decision would alter the outcome, nor would it be in [H.P.'s] best interest.

Based on our de novo review of the record, we find clear and convincing evidence supporting the juvenile court's findings of fact, and we adopt them as our own. We especially note C.G.P.'s substantial violent criminal history and resulting incarceration. C.G.P.'s criminal and substance abuse history is accurately described in the following excerpt from an Iowa Department of Human Services report included in the termination record:

[H.P.'s] father, [C.G.P.], has a very long criminal history and was incarcerated at the Anamosa State Penitentiary at the time this case began in June, 2005 until his release in June, 2006. This was [C.G.P.'s] third prison sentence at Anamosa. . . . He has a significant history of criminal behavior, domestic violence and substance abuse (including methamphetamine, marijuana and cocaine). He had been physically abusive to [H.P.'s mother] causing her bodily injury on occasion. The abuse occurred both before and after she gave birth to [H.P.] He went to prison this most recent time after he set fire to a home vacated by [H.P. and her mother]. [C.G.P. and H.P.] have not had a visit with each other for over 1 1/2 years now, and they are not bonded with each other.

We additionally note C.G.P.'s testimony indicating he has violated conditions of his release from incarceration concerning alcohol abuse and curfew restrictions.

Lastly, we conclude termination of C.G.P.'s parental rights is in H.P.'s best interests. "[A] child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801-02 (Iowa 2006) (Cady, J., concurring specially). Both the facts of this case as well as the consensus opinions of H.P.'s therapist, social workers, and guardian ad litem indicate H.P.'s needs for permanency are immediate and compelling. Contrary to C.G.P.'s claims, it is not in H.P.'s best interests to grant him additional time to demonstrate his ability to care for H.P.

The juvenile court's decision terminating C.G.P.'s parental rights with respect to H.P. is affirmed.

**AFFIRMED.**