

**IN THE COURT OF APPEALS OF IOWA**

No. 7-094 / 07-0032  
Filed March 14, 2007

**IN THE INTEREST OF A.B., Minor Child,**

**J.B., Father,**  
Appellant,

**R.K.C., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Polk County, Karla J. Fultz,  
Associate Juvenile Judge.

A father and mother each appeal the termination of their parental rights to  
their daughter. **AFFIRMED.**

Tracie Sehnert of Kragnes, Tingle & Koenig, P.L.C., Des Moines, for  
appellant-father.

Jennifer Oetker of Parrish, Kruidenier, Moss, Dunn, Boles, Gribble &  
Cook, L.L.P., Des Moines, for appellant-mother.

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

Alexandra Nelissen of Nelissen & Juckette, P.C., Des Moines, guardian ad  
litem for minor child.

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

**SACKETT, C.J.**

A mother and father appeal from the juvenile court order terminating their parental rights to their daughter. They contend clear and convincing evidence does not support the statutory grounds cited by the court and termination is not in their daughter's best interest. We affirm on both appeals.

Ashley, born in July of 2006, is the daughter of Rebecca and Jack. The Department of Human Services became involved at Ashley's birth because Rebecca's parental rights to two other children had been terminated—the more recent in March of 2006. Ashley was placed in foster care, where she remained during the pendency of this case. In September, she was found to be in need of assistance. The court also waived reasonable efforts in September. Following a combined permanency/termination hearing in November, the court terminated Rebecca's parental rights under Iowa Code sections 232.116(1)(d), (g), and (i) and Jack's parental rights under 232.116(1)(b), (d), (i), and (j) (2005).

Our review is *de novo*. Iowa R. App. P. 6.4. Although we give weight to the juvenile court's factual findings, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). 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 court to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

*The Father.* Jack asserts the State did not prove the statutory grounds for termination by clear and convincing evidence. Jack was incarcerated for willful injury causing bodily injury before Ashley was born and remained there throughout the pendency of the juvenile proceedings. He has a history of

domestic violence that resulted in a no-contact order to protect Rebecca from him. He also has a history of alcohol abuse and driving while intoxicated. Concerns about Rebecca's continuing relationship with Jack were a factor in Ashley's removal.

While incarcerated, Jack attended anger management classes and Alcoholics Anonymous meetings. Parenting classes were not available. He was unavailable for other services because of his incarceration. The court waived the reasonable efforts requirement, noting:

[Jack] is unavailable to parent his child by reason of his own actions. He has not provided emotional or financial support to her. He will not be available to do so for some time. [Jack] has abandoned his daughter.

Abandonment is "characterized as a giving up of parental rights and responsibilities accompanied by an intent to forego them." *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996). Giving up parental rights is evidenced by conduct of the parent, while intent refers to the parent's state of mind. *Id.* The exercise of parental rights requires more than a subjective interest in the child. A parent must actively demonstrate involvement to the extent feasible. *Id.* Total desertion is not required to show abandonment. *In re Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981). Generally, incarceration provides no excuse for an absent parent's failure to provide the comfort, guidance, and support owed by a parent to his children. See *In re J.L.W.*, 523 N.W.2d 622, 624-25 (Iowa Ct. App. 1994). A parent "must take full responsibility for the conduct [that] resulted in his confinement." *Id.* at 624. We find termination of Jack's parental rights proper under section 232.116(1)(b).

Jack's past history of violence, especially toward Rebecca, and his history of driving while intoxicated convince us he poses significant risk to Ashley's life. Services likely would not correct these conditions within a reasonable time. We find termination of Jack's parental rights proper under section 232.116(1)(i).

Jack also asserts termination of his parental rights is not in Ashley's best interest. In part, he argues Ashley could be returned to Rebecca's care until he is available to care for her after his release from prison. Iowa Code section 232.116(2) provides:

In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.

Our consideration may include "[w]hether the parent's ability to provide the needs of the child is affected by the parent's mental capacity or mental condition or the parent's imprisonment for a felony." *Id.* § 232.116(2)(a). We consider what the future likely holds for Ashley if she is returned to her parents. Insight for that determination may be gained from evidence of her parents' past performance, as it may be indicative of the quality of future care her parents are capable of providing. See *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

Jack's history of domestic violence and his imprisonment for a felony convince us that termination of his parental rights serves Ashley's interest. To the extent his argument concerns Ashley's return to Rebecca's care, he lacks standing. See *In re D.G.*, 704 N.W.2d 454, 459 (Iowa Ct. App. 2005) (noting one parent cannot join in another parent's "best interest" claim).

*The Mother.* Rebecca contends the State did not prove the statutory grounds for termination by clear and convincing evidence. She argues the conditions that led to Ashley's removal no longer exist and an additional period of rehabilitation would allow her to resume Ashley's care.

Rebecca's efforts to comply with case plan requirements came very late in the proceedings. Her parental rights to two other children have been terminated. She has not addressed her parenting deficiencies and mental health issues. Ashley could not be returned to Rebecca's care at the time of the termination. We affirm the termination of her parental rights under section 232.116(1)(g).

Rebecca also contends the court should have entered a permanency order giving her an additional six months to regain custody of Ashley. Case history records are entitled to much probative value when a parent's record is being examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). Rebecca has had more than enough time to demonstrate her ability to parent her children. "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987), *cert. denied sub nom A.C. v. Iowa*, 485 U.S. 1008, 108 S. Ct. 1474, 99 L. Ed. 2d 702 (1988). A permanency order allowing Rebecca an additional six months would not be appropriate.

Rebecca claims the court failed to review the factors in sections 232.116(2) and 232.116(3)(c) to determine whether termination was in Ashley's

interest. 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). Our review of the court's order convinces us the court considered the factors in section 232.116(2) concerning Ashley's safety, the best long-term placement, Rebecca's ability to provide for Ashley's needs, and Ashley's placement in foster care with a family who wants to adopt her. We find no merit in this claim.

**AFFIRMED ON BOTH APPEALS.**