

**IN THE COURT OF APPEALS OF IOWA**

No. 7-178 / 07-0229

Filed April 11, 2007

**IN THE INTEREST OF N.C. and J.C.,  
Minor Children,**

**J.C., Father,**  
Appellant.

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Appeal from the Iowa District Court for Hardin County, Kim Riley, District Associate Judge.

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

Randal J. Giannetto of Mowry Law Firm, Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, and Randall Tilton, County Attorney, for appellee State.

Michael Bandstra, Des Moines, attorney and guardian ad litem for minor children appellees.

Angela Shutts of Whitfield & Eddy P.L.C., Des Moines, for intervenors/grandparents.

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

**HUITINK, J.**

Jess appeals the termination of his parental rights with respect to his daughters Nicole, age thirteen, and Jaime, age ten. We affirm.

**I. Background Facts and Proceedings**

Jess and his estranged wife, Brenda, were in the midst of dissolution proceedings when a mysterious fire took Brenda's life at her home in Hardin County. Jess did not allow Nicole or Jaime to attend their mother's funeral.

The Iowa Department of Human Services (DHS) became involved shortly thereafter when Nicole began making suicidal statements. Jess minimized Nicole's suicidal statements as exaggerations and attempts to get attention. His callous attitude, combined with evidence he possessed prescription drugs without a prescription and the fact he was the prime suspect in the homicide investigation concerning Brenda's death, led DHS to commence temporary removal proceedings. Both children were temporarily placed with their maternal grandparents on October 22, 2005.<sup>1</sup> The State then filed a chapter 232 child in need of assistance (CINA) petition.

In November Jess had one supervised visit with Nicole and Jaime. The visit ended prematurely when Nicole indicated she wanted to leave immediately. In December the juvenile court confirmed the prior removal and placed temporary legal custody of the children with their maternal grandparents. After the removal hearing, Jess moved to an unknown location. Because of extensive discovery requests and numerous issues related to the proper venue for this case, the children were not adjudicated CINA until November 6, 2006. One week after the

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<sup>1</sup> The children have remained with their maternal grandparents ever since.

children were adjudicated CINA, the attorney for the children/guardian ad litem (GAL) filed the present termination petition. On January 30, 2007, the court terminated Jess's parental rights pursuant to Iowa Code section 232.116(1)(e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with child) and (f) (child four or older, child CINA, removed from home twelve of last eighteen months, and child cannot be returned home) (2005).

Except for the one supervised visitation discussed above, Jess had no interaction with Nicole and Jaime during the period between the removal and the petition for termination. He did not inquire about the welfare of his children or attempt to phone or write them for nearly twelve months, even ignoring them on holidays and their birthdays. Jess would only communicate with DHS through his attorney. He also refused to provide his address or emergency contact information.

Although Jess refused to cooperate with DHS, his attorney, Robert Montgomery, made several unsuccessful attempts to start visitation. At one point, Montgomery attempted to barter Jess's address and telephone information for visitation privileges. In August 2006 Jess filed a petition requesting an order to direct visitation. This request was denied because of his lack of cooperation with DHS and reports from service providers and therapists indicating the children's extreme level of fear and anxiety towards him. Even though the court denied visitation at that time, it specifically indicated that Jess could send letters or gifts to the children.

Weeks later, Jess was arrested and charged with first-degree murder for Brenda's death. While in jail, Jess still did not send letters or inquire about his children's welfare. He only began to send letters three months later, after the petition for termination was filed.

Nicole and Jamie have participated in extensive therapy since their mother's death. They both strongly believe Jess killed their mother. This belief is based on Jess's past physical abuse towards Brenda and their interactions with him in the days surrounding her death. They both fear their father, and neither wants to visit or have any further interaction with him. They have made great progress in their therapy, and both adamantly wish to be adopted by their maternal grandparents.

## **II. Standard of Review**

We review termination proceedings de novo. *In re L.M.W.*, 518 N.W.2d 804, 805 (Iowa Ct. App. 1994). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the children. *Id.*

## **III. Merits**

On appeal, Jess contends the evidence does not support termination. Because we find statutory grounds for termination under section 232.116(1)(f), we need not address whether termination was appropriate under section 232.116(1)(e). See *id.* ("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.”).

Section 232.116(1)(f) provides that parental rights can be terminated if the GAL proves by clear and convincing evidence that the children: (1) are four years of age or older; (2) have been adjudicated CINA; (3) have been removed from the physical custody of their parents for the last twelve consecutive months with any trial period at home lasting less than thirty days; and (4) cannot be returned to the custody of their parents as provided in section 232.102. Beyond these statutory requirements for termination, there is also a requirement that reasonable services be offered to preserve the family unit. *L.M.W.*, 518 N.W.2d at 807; see also Iowa Code § 232.102(10).

On appeal, Jess does not dispute the grounds for termination under section 232.116(1)(f). Instead, he contends termination was improper because DHS “did not make any reasonable effort” to reunite him with his children during the twelve-month period between removal and adjudication. We disagree.

In February 2006 DHS sent a letter to Jess (through counsel) requesting a substance abuse evaluation and a psycho-social evaluation. Neither Jess nor his counsel responded to these requests. DHS sent a similar letter three months later. Jess’s counsel responded by disputing the need for a psycho-social evaluation and requesting that Jess be allowed to select his own substance abuse evaluator. In response, DHS indicated Jess could choose his own substance abuse evaluator and offered him the opportunity to begin individual family therapy. DHS also requested an in-person meeting to discuss the case and to prepare a social history. Jess did not procure his own substance abuse

evaluation, arrange a meeting, or follow through with a single service recommended by DHS. His actions effectively thwarted any opportunity to develop a case permanency plan. DHS made reasonable efforts towards reunification; Jess simply chose to ignore them.<sup>2</sup> We find statutory grounds for termination exist under section 232.116(1)(f).

We also conclude termination is in the children's best interests. Jess is currently incarcerated while he waits for his criminal trial. Even if he were freed tomorrow, mental health professionals would not recommend immediate contact with Nicole or Jamie. Both children are scared of Jess and do not want him involved in their lives. Because Jess did not cooperate with services or build any relationship with his daughters during the past twelve months, any road to reunification would be long and uncertain. On the other hand, if his parental rights were terminated, the children would be adopted into the loving home of their grandparents. They would continue with their therapy and live in a stable and supportive environment.

Based upon the evidence and considering the children's best interests, we conclude the district court properly terminated Jess's parental rights.

**AFFIRMED.**

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<sup>2</sup> We acknowledge Jess's decision not to participate in services may have been influenced by the ongoing criminal investigation, but this does not diminish the State's reasonable efforts towards reunification.