

IN THE COURT OF APPEALS OF IOWA

No. 7-351 / 06-1359

Filed June 13, 2007

**IN THE INTEREST OF K.S. Jr., J.S., and L.S.,
Minor Children,**

**K.W.S. Sr., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Jesse A. Macro, Jr., Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Corey McClure,
Assistant County Attorney, for appellee State.

David Backstrom, Assistant Public Defender, Des Moines, for minor child.

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

MAHAN, P.J.

A father appeals the termination of his parental rights to his three children. The father, Kevin, claims there were insufficient statutory grounds for termination and that the court should not have terminated his parental rights because the children were placed with a relative. We affirm.

I. Facts and Prior Proceedings

K.S. Jr., J.S., and L.S. were removed by temporary order from their parents' care in April of 2005 amidst allegations of child abandonment and substance abuse. At the time of removal, Kevin was not living in the family home. The children were adjudicated children in need of assistance (CINA) on June 28, 2005, based on the mother's unresolved substance abuse issues and also because Kevin was, at that time, incarcerated. Kevin was released from jail shortly after the date of adjudication, but he only saw his children once during the time between removal and the termination hearing.

At the time of the termination proceeding, the children were living with their maternal aunt, and the mother consented to the termination of her parental rights. After a full hearing, the court terminated Kevin's parental rights pursuant to sections 232.116(1)(d), (e), and (f) of the Iowa Code (2005).

II. Standard of Review

We review termination proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* The State must prove the grounds for termination 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

Kevin contends the evidence does not support termination under sections 232.116(1)(d), (e), or (f). Because we find statutory grounds for termination under section 232.116(1)(f), we need not address the arguments pertaining to the other statutory grounds listed by the district court. See *S.R.*, 600 N.W.2d at 64 (“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 State proves by clear and convincing evidence that the children are four years of age or older; that the children have been adjudicated CINA; the children have been removed from the physical custody of their parents for at least twelve of the last eighteen months or for the last twelve consecutive months and any trial period at home has been less than thirty days; and there is clear and convincing evidence that at the present time the children cannot be returned to the custody of the parents as provided in section 232.102. The first three elements were clearly proved and are not in dispute.

On appeal, Kevin claims that, “within a reasonable time, he would have a home and a safe place to have the children.” At the time of the termination hearing, Kevin was incarcerated on charges of domestic abuse against the children’s mother. The following colloquy between Kevin and the assistant county attorney illustrates Kevin’s position at the termination proceeding:

Q. What is it you’re proposing the Court do today with regard to your parental rights? A. I want to keep my rights. I do

not mind [the relative] having my children. I was kind of going to insist upon that. I've always respected her.

Q. So you would like the children to stay with [the relative] through the future? A. Yes, yes, I really would.

Q. And you're not asking the Court to return the children today to you? A. No, I'm not, because I'm not prepared for it at the moment.

....

Q. You're not asking the Court when you are discharged from jail in July to have the children placed with you, are you? A. I want to have custody and have them placed with me right now. I'm just not prepared.

Kevin also confirmed that he had previously told a social worker that he could not raise a girl and that the boys would not need him until they were fourteen years old.¹ Our inquiry under section 232.116(1)(f) is whether the children can be returned to his care "at the present time." By his own admission, Kevin was not prepared to have the children returned to his care at the time of the termination proceeding. We therefore affirm the termination of his parental rights under the statutory grounds set forth in section 232.116(1)(f). See *in re M.Z.*, 481 N.W.2d 532, 536 (Iowa Ct. App. 1991) ("Termination should occur if the statutory time period has elapsed and the parent is still unable to care for the child.").

Kevin also contends termination was not appropriate under Iowa Code section 232.116(3)(a)² because the children were residing with a relative and could continue to live there until he was able to provide for their care. Placement with relatives is not presumptively preferred over termination of parental rights. *In re L.M.F.*, 490 N.W.2d 66, 67 (Iowa Ct. App. 1992). The exceptions to termination set forth in section 232.116(3) are permissive, not mandatory. *In re*

¹ Two of the children were boys, and one was a girl. All three children were less than thirteen years old at the time of the termination hearing.

² Under section 232.116(3)(a), "The court need not terminate the relationship between the parent and child if . . . [a] relative has legal custody of the child."

C.L.H., 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). It is within the juvenile court's sound discretion based upon the unique circumstances of the case before it and the best interests of the children whether to apply a factor in section 232.116(3). *Id.* The trial court's stated reasons for rejecting the father's proposed placement include the following:

The father's belief that his real responsibilities as a parent would likely *begin* when the kids reached adolescence and the demonstration of that belief in his failure to assume basic responsibilities of a parent up to this point in time clearly establish that there is no significant parental relationship between the father and the children. . . . There is no significant bond that must be or should be protected.

The father's poor decision making as demonstrated by his lengthy criminal record indicates that he is not likely to be a positive role model for the children. His instability, both in frequent jail stays and in his failure to maintain stable housing, are detrimental to the children's need for stability. There is no reasonable likelihood that the children could be placed with their father within six months. No compelling reasons exist not to terminate.

. . . There is no reason or basis to believe that termination would be detrimental to the children. The evidence establishes that, in fact, it would [be] a detriment to the children to *not* terminate the parental rights of the father as it would interfere with their ability to become a part of a forever family.

We agree with the juvenile court's conclusion that long-term relative placement or a guardianship is not in the children's best interests. These children deserve stability and permanency, which Kevin cannot provide. See *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests."). The children have been placed outside of the family home for more than a year with limited contact from their father. They should not be made to wait any longer for their father to become a responsible parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The maternal

aunt would like to adopt the children, and all parties agree she would provide a safe and loving environment. We conclude the court did not abuse its discretion by not applying section 232.116(3)(a) to save the parent-child relationship and conclude termination of Kevin's parental rights is in the children's best interests.

AFFIRMED.