

**IN THE COURT OF APPEALS OF IOWA**

No. 7-677 / 07-1296  
Filed October 12, 2007

**IN THE INTEREST OF J.S. and J.A.,  
Minor Children,**

**H.A.G., Father,**  
Appellant,

**H.L.S., 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 appeal from the order terminating their parental  
rights. **AFFIRMED.**

Dawn Bowman of Bowman Law Office, Pleasantville, for appellant father.

Christopher Kragnes of Kragnes & Associates, P.C., Des Moines, for  
appellant mother.

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

Jessica Miskimins of the Youth Law Center, Des Moines, for minor  
children.

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

**HUITINK, P.J.**

A father and mother appeal from the order terminating their parental rights. We affirm.

**I. Background Facts and Prior Proceedings**

Jisela, the eldest of the two children in interest, was born to Heidi in July 2002. Jisela's father, Humberto, was imprisoned on drug charges one week before she was born. When Humberto was released from incarceration, he was deported to Mexico. Humberto has never met Jisela. His only contact with Jisela has been through occasional phone conversations and letters.

Jonathan, the second child in interest, is Jisela's younger half-brother. The identity of his father is unknown. In May 2005 both children were removed and placed in foster care after a drug raid at their residence revealed marijuana, methamphetamine, drug paraphernalia, and a loaded handgun. Heidi was incarcerated on several drug charges. The children were adjudicated children in need of assistance (CINA) on July 12, 2005. The children were subsequently placed with their maternal grandparents.

Heidi remained incarcerated until October 2005. Once released, she participated in services offered by the Iowa Department of Human Services and began visitation with her children. On May 2, 2006, the court found that Heidi was making good progress and granted her an additional six months to regain custody of her children.

In June 2006 the children were placed with Heidi at Clearview Recovery Center. However, the children were removed four months later when Heidi was unsuccessfully discharged from Clearview Recovery Center. The children were

placed in foster care. Heidi was granted liberal visitation with the children and was expected to go back to drug treatment, perform random drug screenings, attend mental health therapy, find stable employment, and find safe housing. Heidi did not follow through with these goals. In addition, her random drug screenings in November and December of 2006 tested positive for methamphetamine. In January 2007 she stopped cooperating with the drug screening program.

The guardian ad litem filed a petition to terminate the parental rights of both parents in April 2007. The petition indicated Heidi's parental rights in regards to both children should be terminated pursuant to Iowa Code section 232.116(1)(d) (child CINA for neglect, circumstances continues despite receipt of services) (2007). The petition also alleged grounds to terminate her parental rights with regard to Jonathan under section 232.116(1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home) and with regard to Jisela under section 232.116(1)(f) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home). Finally, the petition alleged grounds to terminate Humberto's parental rights in regards to Jisela pursuant to sections 232.116(1)(b) (abandonment), (d), and (f).

The court held a hearing on the termination petition on June 19, 2007. Heidi attended the termination hearing but did not testify or present evidence. Her attorney merely indicated that Heidi was opposed to the termination. Humberto participated in the hearing by telephone. He testified that he wanted Jisela to come live with him in Mexico. He conceded that he had never met his

daughter. When asked when he had last spoken to Jisela, he responded, “It’s hard to remember, but I think about three months [ago].” When asked why he has not spoken with her more recently, he responded, “Because I’m lacking a lot in my English speaking, and I was scared that when I was going to talk with her, that we weren’t going to understand each other.” He went on to testify that he was employed as a mason. He also indicated that he had a safe home for Jisela. His attorney also offered into evidence a socioeconomic home-study completed by the Mexican equivalent of the Iowa Department of Human Services.

The district court entered an order terminating both parents’ parental rights pursuant to all the statutory grounds alleged in the petition.

Both parents appeal. Heidi claims there was not a material and substantial change in circumstances to justify the termination. Humberto claims there was insufficient evidence to prove he had the intent to abandon Jisela or that Jisela could not be placed in his care.

## **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**

### **A. Heidi**

***Material Change in Circumstances.*** Heidi contends termination is inappropriate where there has not been a material change in circumstances

since the time permanency was ordered. In support of this claim, she cites to our decision in *In re C.D.*, 509 N.W.2d 509, 511 (Iowa Ct. App. 1993). In *C.D.*, a mother appealed from the district court's order denying her request to modify an existing CINA permanency order. 509 N.W.2d at 511. We affirmed the district court's decision, noting the mother had failed to show circumstances had so materially and substantially changed that the best interests of the children required a change in visitation and service provisions. *Id.* Relying on the rule set forth in this case, Heidi claims the court erred in terminating her parental rights because the court did not specify any material or substantial change in circumstances to justify a modification in the existing permanency order.

We find *C.D.* inapplicable to the case at hand because *C.D.* was a CINA modification proceeding, while the present case is a termination proceeding. The statutory grounds for termination are set forth in Iowa Code section 232.116. None of the grounds alleged in this case require the court to find a material or substantive change in circumstances. Accordingly, we find the district court did not err when it did not make such a finding in this case.

***Statutory Basis for Termination.*** Heidi does not contend there was insufficient evidence to support the court's statutory grounds for termination. Therefore, she waives any claims of error concerning the statutory grounds for termination by failing to raise them on appeal, see Iowa R. App. P. 6.14(1)(c), and we affirm the termination of her parental rights on statutory grounds.

***Best Interests.*** Even where there is a statutory basis to terminate parental rights, the termination must still be in the best interests of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

As has been stated many times, “patience with parents can soon translate into intolerable hardship for their children.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). These children have been out of their mother’s care for seventeen of the last twenty-two months. Both children are healthy and adoptable. They have been in a pre-adoptive home since November 2006. They are doing well in their foster home, and their foster parents are willing to adopt them. There is no reason to deny them permanency while they wait for Heidi to show signs of maturity. See *id.* (“The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.”); see also *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.”). These children need permanency now. We conclude termination of Heidi’s parental rights is in the children’s best interests and affirm the juvenile court’s order terminating her parental rights.

#### **B. Humberto**

Humberto’s parental rights were terminated pursuant to Iowa Code sections 232.116(1)(b), (d), and (f). On appeal, Humberto claims the evidence does not prove he intended to abandon Jisela or that Jisela would continue to suffer adjudicatory harm if she were placed with him in Mexico.

When the juvenile court terminates parental rights on multiple statutory grounds, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm. See *S.R.*, 600 N.W.2d at 64. Upon our de novo review of the record, we find there is clear and convincing evidence to support

termination under section 232.116(1)(f). Accordingly, we need not address Humberto's claims concerning the other grounds for termination.

Section 232.116(1)(f) provides that parental rights can be terminated if there is clear and convincing evidence that the child is four years of age or older; the child has been adjudicated CINA; the child has been removed from the physical custody of her 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 child cannot be returned to the custody of the parents as provided in section 232.102. The evidence supporting the first three elements is not in dispute. Humberto only claims there is insufficient evidence to prove that Jisela could not be returned to his care.

Our inquiry under section 232.116(1)(f) is whether the children can be returned to a parent's care "at the present time." Jisela was five years old when the court terminated Humberto's parental rights. The evidence in this case establishes that Humberto has never met Jisela and has only made very limited attempts to establish a relationship with her. There is no evidence he has ever made any financial contribution towards her support. He has not participated in any services to demonstrate he could be an effective parent. Beyond offering evidence that he has a place for her to live in Mexico, he has done nothing to prove a sincere interest in this child or to demonstrate he could parent this child. Upon our de novo review of the record, we find there is a statutory basis for termination under section 232.116(1)(f) because there is clear and convincing proof Jisela cannot be placed in Humberto's care at this time. 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.”).

We also find it is in Jisela’s best interests to terminate Humberto’s parental rights. Humberto has had more than five years to establish a relationship with his daughter. We find no reason to deny her permanency in hopes that Humberto may someday decide to assume a parental role.

We affirm the juvenile court’s order terminating both parents’ parental rights.

**AFFIRMED.**