

IN THE COURT OF APPEALS OF IOWA

No. 7-890 / 07-1721
Filed December 12, 2007

**IN THE INTEREST OF A.D., A.D., and A.D.,
Minor Children,**

**R.O.D., JR., Father,
Appellant.**

Appeal from the Iowa District Court for Story County, Victor G. Lathrop,
District Associate Judge.

A father appeals the termination of his parental rights to his children.

AFFIRMED.

Shannon M. Leighty, Assistant Public Defender, Nevada, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Stephen Holmes, County Attorney, and Cynthia McIntosh,
Assistant County Attorney, for appellee.

Mark Olberding of Olberding Law Office, Nevada, for mother.

Gerald Moothart, Ames, guardian ad litem for minor children.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

A father appeals the termination of his parental rights to his children. He contends the State failed to prove the grounds for termination by clear and convincing evidence, termination is not necessary under Iowa Code section 232.116(3) (2007), and termination is not in the children's best interest. We review his claims de novo. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The father's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(f) and (h). These sections apply to children of differing ages and have different time requirements regarding how long the children must be out of the home before termination can occur. Iowa Code §§ 232.116(1)(f), (h). However, the disputed element of both sections is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

We conclude the State has proved by clear and convincing evidence that the children cannot be safely returned to their father's care. The father has a criminal history and has been incarcerated at various times for varying lengths of time. His incarcerations have compounded the abandonment issues from which the children already suffer. He was again jailed in October 2006 and was in jail on the date of the termination hearing in July 2007. Additionally, there are concerns about the adequacy of the father's housing, his inappropriate parenting style, and his unwillingness to work with service providers. Although the father testified at the termination hearing that he expected to be paroled in August 2007 and planned to change, the court found his testimony to be "insincere and more what he believed the Court wanted to hear than what he really felt."

Iowa Code section 232.116(3)(a) provides that the court need not terminate parental rights where the child is in the legal custody of a relative. Here, the children have been placed in their paternal grandmother's custody. However, section 232.116(3)(a) is permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The juvenile court has the discretion to apply this section and not terminate parental rights based on the circumstances before it and the best interests of the children. *Id.* On this issue, the court stated:

In all likelihood, these children will probably know and have contact with [the father] even after termination occurs since the . . . grandmother will be their placement option. These issues are common in any relative placement. However, in this case this is the issue that has caused this Court so much concern in regard to the termination proceedings. This Court has seriously considered not terminating Robert's parental rights on the basis that if these children are going to continue to have contact with Robert it should be up to the Court to monitor that contact and determine when and if the children would be returned to him. However, the Court upon further consideration determined that termination of parental rights continues to be in the children's best interests. First, it gives the children a permanent sense of placement and grounds for termination and [the grandmother] continues to provide them with a safe environment. Secondly, when the statutory grounds for termination of parental rights exist, the needs of a child are generally promoted by termination. In part, this is based upon a belief that there is no reason to expect that [the father] will be able to change his lifestyle and personality and always be available for his children.

(Citation omitted). We concur in the court's assessment. The father has not proved he can appropriately minister to the children's needs. The children should not be forced to endlessly wait for their father to assume the role of a responsible parent. See *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000).

The father also argues termination is not appropriate under section 232.116(3)(c). Under this section, the court need not terminate where "[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.” There is no dispute the children are bonded to the father. However, the evidence does not show termination would be detrimental to the children. Rather, the father’s frequent incarcerations exacerbated the children’s behavioral problems.

For reasons stated, we find termination to be in the children’s best interest.

AFFIRMED.