

IN THE COURT OF APPEALS OF IOWA

No. 7-933 / 07-1900
Filed January 16, 2008

**IN THE INTEREST OF B.W. and E.W.,
Minor Children,**

**P.D.W., Father,
Appellant,**

**K.A.H., Mother,
Appellant.**

Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

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

Jeffrey Carter, Des Moines, for appellant-father.

Charles J. Kenville, Des Moines, for appellant-mother.

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

Jessica Miskimins, Youth Law Center, Des Moines, guardian ad litem for minor child.

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

EISENHAUER, J.

A mother and father appeal the termination of their parental rights to their children. They do not dispute the State has proved the grounds for termination by clear and convincing evidence, but rather contend termination is not in the children's best interest. Specifically, they argue the children should have been placed in the custody of other family members.

Section 232.116(3)(a) provides that the juvenile court may decide not to terminate a parent's rights if a relative has legal custody of the children. This section is permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). "It is within the sound discretion of the juvenile court, based upon the unique circumstances before it and the best interests of the child, whether to apply this section." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

The juvenile court did not abuse its discretion by deciding to terminate the parents' rights rather than place the children in a guardianship with the paternal grandmother. The children, ages four and three at the time of the termination hearing, were in the custody of their paternal grandmother at the time of trial. The termination order indicates the grandmother intends to adopt the children. The parents admit they cannot care for the children at this time and are essentially asking for more time. The children need permanency, and it is not in their best interests to wait longer for their parents to address their problems. See *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997).

The district court considered the guardianship issue in a lengthy paragraph before determining termination was in the children's best interest. The court assessed the option of guardianship and rejected it as providing little

stability for the children, especially because of the “psychological impact on the children of having regular hearings in which their future is at issue.” The children’s need for a permanent home is a paramount consideration in deciding their best interests. *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially). We find no abuse of discretion.

AFFIRMED.