

**IN THE COURT OF APPEALS OF IOWA**

No. 8-109 / 07-2168  
Filed February 27, 2008

**IN THE INTEREST OF M.J.,  
Minor Child,**

**K.W., Mother,**  
Appellant,

**M.J., Father,**  
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.**

Andrea M. Flanagan of Sporer & Flanagan, P.C., Des Moines, for  
appellant mother.

Stephie N. Tran, Des Moines, for appellant father.

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.

Nicole Garbis Nolan of the Youth Law Center, Des Moines, for minor child.

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

**HUITINK, P.J.**

Marc and Kolisa appeal from the order terminating their parental rights to their three-year-old daughter, M.J. We affirm.

**I. Background Facts and Prior Proceedings**

M.J. was first removed from Kolisa's care in December 2004 when Kolisa was arrested for assaulting a police officer while she held two-month-old M.J. in her arms. M.J. was eventually returned to Kolisa's care, but was ultimately adjudicated a child in need of assistance (CINA) on May 2, 2006, pursuant to Iowa Code sections 232.2(6)(b) and (c)(2) (2005).

On July 20, 2006, M.J. was removed from Kolisa's care and placed with her maternal great-aunt because Kolisa was homeless and had stopped communicating with the in-home worker. On February 27, 2007, the court ordered that M.J. be placed in foster care because Kolisa had not returned her to the great-aunt after a visit. M.J. has remained in foster care ever since.

In May 2007 Kolisa was arrested and charged with three counts of first-degree harassment after she threatened to kill one of her friends. Kolisa pled guilty to one count of harassment and was sentenced to probation. At the next scheduled permanency hearing, Kolisa claimed she was in the process of obtaining housing and employment. Therefore, the juvenile court granted her a six month extension to allow her additional time to resume care of her child.

Kolisa's claims of stable employment and stable housing never materialized. Instead, on August 22, 2007, she was arrested for a new charge of first-degree harassment. She remained incarcerated until October 3, 2007, when she pled guilty to third-degree harassment.

At some point during the summer of 2007 Marc began to participate in the CINA proceedings.<sup>1</sup> Because he was imprisoned on drug-related charges, his participation was very limited.

On October 5, 2007, the State filed the present petition to terminate both parents' parental rights. At the termination hearing, the court learned Kolisa still did not have stable housing or employment and had been exercising her visitation rights on an inconsistent basis. The court also learned Marc had a substantial criminal record<sup>2</sup> and had been incarcerated since July 2006. He was eligible for work-release, but was still on a waiting list to begin the program.

On December 17, 2007, the juvenile court entered an order terminating both parents' parental rights pursuant to Iowa Code sections 232.116(1)(b), (d), (e), and (h) (2007). As noted by the juvenile court,

[i]n almost three years, both of this child's parents have been arrested numerous times, moved more times than can be counted, failed to hold a job for longer than two months, and have yet to demonstrate that they can put their child's interests first.

Both parents separately appeal. They challenge each statutory basis for termination and claim termination is not in M.J.'s best interests.

## **II. Standard of Review**

We review termination of parental rights *de novo*. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Grounds for termination must be proved by clear and convincing evidence, and our primary concern is the child's best interests. *Id.*

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<sup>1</sup> We, like the juvenile court, reject any claim that Marc did not know about the CINA proceedings until the summer of 2007. His own testimony at the termination hearing clearly refutes this claim.

<sup>2</sup> Marc was sentenced to prison in 1991, 1998, 2002, and 2006 for drug or firearm-related charges.

### III. Merits

On appeal, both parents claim the evidence does not support termination under any of the sections listed by the juvenile court. Because we find statutory grounds for termination under section 232.116(1)(h), we need not address the arguments pertaining to the other statutory grounds listed by the court. *See In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Under section 232.116(1)(h), a parent's rights may be terminated if the court finds by clear and convincing evidence (1) the child is three or younger, (2) the child has been adjudicated in need of assistance, (3) the child has been removed from the home for six of the last twelve months, and (4) the child cannot be returned home at the present time. The first three elements are not in dispute; the only question is whether M.J. could have been returned to her parents' care at the time of the termination hearing.

Upon our de novo review of the record, we find the State provided clear and convincing proof that M.J. could not have been returned to either parent because neither parent could provide her with a safe home. At the time of the hearing, Marc was incarcerated. While he was eligible for work-release, M.J. still could not have lived with him once he entered the work-release program. Similarly, Kolisa was homeless,<sup>3</sup> did not have a job, and relied on the charity of others for food and clothing. We find no reason to believe that M.J. could have

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<sup>3</sup> On appeal, Kolisa claims she had resolved her housing situation because she had moved in with her stepfather. We disagree. The evidence reveals she did not move in with her stepfather until the night before the termination hearing. This belated attempt to find a temporary home does not constitute stable housing.

been returned to either parent's care at the time of the termination proceeding. Accordingly, we find the State has proved the statutory grounds for termination.

Even where there is a statutory basis to terminate parental rights, the termination must still be in the child's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). Both parents claim their strong bond with M.J. means that termination is not in her best interests. A strong bond between parent and child is a special circumstance that militates against termination. Iowa Code § 232.116(3)(c). However, this is not an overriding consideration, but merely a factor to consider. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998).

Rather than place M.J.'s needs above their own, both parents have repeatedly exercised poor judgment and engaged in a pattern of criminal behavior. M.J. has waited nearly two years for her parents to make her care a constant concern. She should not be forced to wait any longer. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("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 at 801 (Cady, J., concurring specially) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests."). Regardless of her strong bond with her parents, we find that termination is in M.J.'s best interests and therefore affirm the court's decision to terminate both parents' parental rights.

**AFFIRMED.**