

**IN THE COURT OF APPEALS OF IOWA**

No. 8-383 / 08-0033  
Filed June 11, 2008

**IN THE INTEREST OF C.L., C.L., and K.L.,  
Minor Children,**

**K.D.L., Mother,  
Appellant,**

**K.G.L., Father,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

A mother and a father each appeal from a juvenile court order terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

Thomas J. Berg of Berg, Rouse, Spaulding & Schmidt, P.C., Des Moines, for appellant mother.

Jane Orlanes, Des Moines, and Matthew W. Cunningham, Des Moines, for appellant father.

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

Jerry Foxhoven, Drake Legal Clinic, Des Moines, guardian ad litem and attorney for children.

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

**MILLER, P.J.**

Katherine is the mother of six-year-old Kelsey and four-year-old twins, Cameron and Carson (“the children”). Kelsey’s father is unknown. Kelly is the twins’ father. Katherine and Kelly have never been married, and have resided together only “off and on.” Katherine and Kelly appeal from a December 2007 juvenile court order terminating Katherine’s parental rights to the children and Kelly’s parental rights to the twins.<sup>1</sup> We affirm on both appeals.

The children were removed from Katherine’s physical custody in early August 2006 because she was not supervising them and was suspected to be using illegal substances. Katherine tested positive for methamphetamine and opiates. Katherine, who has a lengthy history of polysubstance abuse and mental illness, was being treated with Interferon for Hepatitis C. The treatment caused her to have physical illness, and that illness may have contributed to her failure to supervise the children. At the time of the children’s removal, Kelly, who had been imprisoned on earlier occasions, was again imprisoned. The children were initially placed with Katherine’s mother.

In early October 2006 the children were adjudicated children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b) (2005), (c)(2), and (n). At a January 2007 modification of placement hearing, Katherine sought to have the children returned to her. By then it long-since had become very apparent that Katherine suffered from ongoing mental health problems, but she continued her refusal to sign releases that would allow access to relevant

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<sup>1</sup> The order also terminated the parental rights of the unknown father of Kelsey, and no one has appealed from this part of the order.

records. Following the hearing the juvenile court placed legal custody of the children with the Iowa Department of Human Services (DHS) for placement in foster care. In early February 2007 the children were placed in family foster care. They have thereafter remained in DHS custody, placed in that same foster family home.

As the result of a late July 2007 permanency hearing the juvenile court ordered the State to file a petition for termination of Katherine's and Kelly's parental rights, which the State did in late August 2007. Following a November 2007 hearing, the juvenile court ordered Katherine's parental rights to the children terminated pursuant to Iowa Code section 232.116(1)(d) (2007), (f), and (k), and Kelly's parental rights to the twins terminated pursuant to sections 232.116(1)(d), (e), and (f). Katherine and Kelly both appeal.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

*In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted.)

Katherine first claims there is insufficient evidence to support termination of her parental rights pursuant to any one or more of the three statutory provisions relied on by the juvenile court. "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." *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We choose to focus on section 232.116(1)(f).

Katherine claims the State failed to prove that the children could not be returned to her custody at the time of the termination hearing. This claim implicates only the fourth element of section 232.116(1)(f). This element is proved when the evidence shows the children cannot be returned to the parent without remaining CINA. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supported the children's removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

Katherine has a long history of abusing alcohol and illegal substances. Although she claims to have been "clean" for several years, she did test positive for methamphetamine and opiates as recently as August 2006.

Of greater concern is Katherine's lengthy history of serious mental problems. She has hospitalized for those problems on several occasions, and was committed for outpatient treatment from about 1999 through 2004. Her diagnosed mental illnesses include schizoaffective disorder; anxiety, not otherwise specified; and attention deficient/hyperactivity disorder (by history). Katherine's mental illnesses have led to suicide attempts in the past.

Numerous services were made available to Katherine throughout the underlying CINA cases involving the children.<sup>2</sup> These have included transportation, relative placement, family foster care, supervised visitation, parenting education, parenting skill development, psychiatric evaluation and treatment, medication management, and individual counseling/therapy. Until the

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<sup>2</sup> Services, including therapy and counseling, have also been made available to the children, who were beset by their own anxieties and emotional and developmental problems.

juvenile court ordered the State to seek termination of parental rights, Katherine was frequently and intermittently inconsistent in her utilization of services and was uncooperative with the DHS, service providers, and the juvenile court. She refused for months to allow access to her mental health records. Katherine on two or three occasions would make some progress for brief periods of time, but would then regress. When her visitation with the children progressed to semi-supervised and included some overnight visitations, she would become overwhelmed, unable to deal with the children's behaviors, and unable to demonstrate consistent structure for the children.

Katherine has been in past relationships with males who physically abused her, on at least one occasion in the presence of the children it appears. Despite this history and pattern, when she acknowledged becoming involved in a relationship with another male she refused requests that she identify her new friend, asserting her relationship with him had nothing to do with the cases involving the children.

Although Katherine has a history of suicide attempts, she has refused to discuss a safety plan to be implemented in the event she should have suicidal ideations.

It must be acknowledged, as the State does, that beginning at about the time the juvenile court ordered institution of proceedings to terminate parental rights Katherine has made substantial progress in certain areas. She has cooperated with mental health evaluation and counseling and a medication regime. Her ability to deal with the children during visitation has improved.

As testified to by the DHS case manager, it appears that Katherine may perhaps have begun to develop some insight into the nature and extent of her problems. However, that witness nevertheless strongly recommended termination of Katherine's parental rights, based on Katherine's fluctuating progress and regression throughout the CINA cases and the children's need for a structured environment and permanency. The case coordinator/in-home service provider opined that the children could not be returned to Katherine at the present time because Katherine needed to gain more insight into her own problems and the children's problems and needs, and the children would need more intensive therapeutic services.<sup>3</sup> The juvenile court found that Katherine's recent improvements were "largely motivated by concern that her parental rights will be terminated." The juvenile court was in a position to hear and observe Katherine and the other witnesses, and was thoroughly familiar with the history of the CINA cases.

We conclude, as the juvenile court did, that although Katherine had made recent progress, the children could not be returned to her at the time of the hearing without being subject to the threat of neglect or other harm that would cause them to remain CINA.

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<sup>3</sup> We have considered the opinion of Katherine's psychiatrist, that "in her present state of mind and medication plan," Katherine could "safety [sic] and effectively parent" the children, but note that the psychiatrist had never met any of the children or talked to their therapists. We have also considered the testimony of Katherine's therapist, that he could not think of any "clear or present concerns that would . . . prohibit [Katherine's] children from being returned," but note that he also had never seen the children or talked to their therapists. We conclude the DHS case manager and in-home service provider, who had been involved with Katherine and the children longer and had broader familiarity with them and the cases, were in a better position to judge whether the children would be safe if presently returned to Katherine.

Kelly claims the State did not prove that the twins could not be returned to him at the time of the termination hearing.<sup>4</sup> This again implicates only the fourth element of section 232.116(1)(f).

Kelly has a history of substance abuse; a history of criminal convictions, including a conviction for abuse of Katherine; and a history of imprisonments. He was incarcerated at the outset of the CINA cases. When released, he moved to Missouri and had little or no contact with the twins. Kelly later moved to the area where Katherine and the twins, who were in foster care, resided, but only occasionally had visitation with the twins. He failed or refused to participate in ordered services. Although Kelly claimed to be employed at the time of the termination hearing, he identified no employer and claimed he worked for cash. He was homeless. Kelly's position throughout the CINA proceedings was that any return of the children should be to Katherine. At the termination hearing he frankly acknowledged he was not saying that the twins could then be returned to him.

We conclude, as the juvenile court did, that the twins could not be returned to Kelly without being subject to the threat of neglect or harm that would cause them to remain CINA.

Katherine and Kelly each claim the termination of their parental rights is not in the best interest of their respective children because of the closeness of their parent-child bonds. These claims implicate section 232.116(3)(c), which

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<sup>4</sup> Kelly does not appear to challenge the statutory grounds for termination of his parental rights pursuant to sections 232.116(1)(d) and (e), and we could affirm termination pursuant to those provisions, if otherwise appropriate. We nevertheless choose, as a matter of grace, to address briefly his claim concerning section 232.116(1)(f).

provides that the court need not terminate the parent-child relationship if it finds by clear and convincing evidence that the termination would be detrimental to the children because of the closeness of the parent-child relationship.

“Even if statutory requirements for termination are met, the decision to terminate must still be in the best interest of the children.” *In re M.S.*, 519 N.W.2d 398, 400 (Iowa Ct. App. 1994). A strong parent-child relationship is a special circumstance that militates against termination when statutory grounds have been satisfied. Iowa Code § 232.116(3)(c); *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). Yet it is not an overriding consideration, but merely a factor to consider. *N.F.*, 579 N.W.2d at 341. Section 232.116(3) is permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). It is within the sound discretion of the juvenile court, based upon the unique circumstances before it and the best interests of the children, whether to apply this section. *Id.*

The juvenile court recognized the existence of the children’s bond to Katherine, their love for her, and Kelsey’s desire to be reunited with her. The evidence in fact shows a relatively strong bond between the children and Katherine. Further, despite Kelly’s very limited contact with the children, the evidence shows that the twins recognize him as their father and there is a bond between the twins and him. The court nevertheless found that termination of the parents’ parental rights was in the best interest of all the children. For the following reasons, we agree.

The children had been removed from Katherine for almost fifteen months at the time of the termination hearing. Even before that removal, they had been



largely in the care of others for a substantial period of time while Katherine underwent treatment for Hepatitis C. Kelsey is “parentified,” feeling responsible for the care and well-being of Katherine and the twins, and suffers feelings of guilt for the children’s separation from Katherine. Although the twins know Kelly, he has had minimal contact with them over the years and is in no position to parent them. The children all have emotional problems, for which they are receiving therapy and making progress. The children need structure and permanency, and need it now, not at some uncertain time in the future. They cannot be reunified with either parent within the reasonably foreseeable future. To stay in long-term foster care is not in their best interest. See *In re R.L.*, 541 N.W.2d 900, 903 (Iowa Ct. App. 1995) (“Long-term foster care is not preferred to termination of parental rights.”).

Upon our de novo review, we find that termination of parental rights is in the children’s best interest and conclude the juvenile court did not abuse its discretion by giving greater weight to the children’s needs than to their parents’ desires.

**AFFIRMED ON BOTH APPEALS.**