

**IN THE COURT OF APPEALS OF IOWA**

No. 8-502 / 08-0784

Filed June 25, 2008

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

**Y.T.H., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Karla J. Fultz,  
Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Victoria L. Meade, West Des Moines, for appellant mother.

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

Jessica Miskimins of the Youth Law Center, for minor child.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

**HUITINK, J.**

Yolanda appeals from the order terminating her parental rights to her four-year-old son, M.W. We review the termination of parental rights de novo. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The State must prove the circumstances for termination by clear and convincing evidence. *Id.* Our primary concern is the best interests of the child. *Id.*

**I. Background Facts and Prior Proceedings**

In 2002 the court terminated Yolanda's parental rights in regards to four children for lack of supervision, failure to provide medical care, and continuing substance abuse issues. M.W. was born in April 2004. In November 2006 a police officer discovered two-year-old M.W. wandering around a high-traffic area without any adult supervision. The Iowa Department of Human Services investigated the situation and filed a child in need of assistance (CINA) petition on November 30, 2006.

Approximately one month later, Yolanda left M.W. with his biological father and disappeared. On January 19, 2007, the juvenile court removed M.W. from his father's care and placed him with a foster family.

During the next year, Yolanda did not visit M.W., did not attempt to communicate with him, did not send him a card on his birthday, and did not make any inquiry into his well-being. She also did not participate in services and did not attend the CINA court proceedings. The State filed a petition to terminate Yolanda's parental rights on February 27, 2008.

Yolanda attended the March 28, 2008 termination hearing and told the court that she had "turned her life around" and was ready to resume care of M.W.

When asked where she had been for the previous year, she said she had been “running the streets,” hanging out with her friends, and “[g]oing to bars and stuff.”

On April 22, 2008, the juvenile court entered an order terminating Yolanda’s parental rights with regard to M.W. pursuant to Iowa Code sections 232.116(1)(b), (d), (e), (h), and (i) (2007).<sup>1</sup> On appeal, Yolanda does not challenge the statutory grounds for termination. She only claims that termination is not in her son’s best interests because she raised him for the first three years of his life and he knows who she is.

## **II. Merits**

Yolanda waives any claim of error concerning the statutory grounds for termination by failing to raise such claims in his appeal. See Iowa R. App. P. 6.14(1)(c). Therefore, we affirm the termination of her parental rights on statutory grounds. However, even if the statutory grounds for terminations are met, the decision to terminate must still be in the child’s best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

Yolanda claims that, pursuant to Iowa Code section 232.116(3)(c), termination would be detrimental to M.W.’s best interests because he knows that she is his biological mother. We disagree.

Under section 232.116(3)(c), the juvenile court need not terminate the parental relationship if, based on the closeness of the parent-child bond, termination would be harmful to the child. Section 232.116(3) has been interpreted to be permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781

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<sup>1</sup> The court also terminated the parental rights of M.W.’s father, but he is not a party to this appeal.

(Iowa Ct. App. 1997). It is within the sound discretion of the juvenile court, based on the unique circumstances before it and the best interests of the child, whether to apply this section. *Id.*

We find the juvenile court did not abuse its discretion when it opted not to apply this section. In the midst of the CINA proceedings, Yolanda left M.W. with his father and disappeared. Over the next fourteen months she made no attempt to visit or contact M.W. Whatever bond Yolanda once had with M.W. was broken when she inexplicably walked out of his life.<sup>2</sup>

“Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable.” *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). Over the past thirteen months, M.W. has been raised by one set of foster parents. His therapist notes that these foster parents give him affection and provide him with a safe and secure home. These foster parents are now willing to adopt him and make him a permanent member of their family. We find no reason to deny M.W. the permanency he so desperately needs merely because Yolanda recently expressed a newfound interest in her son. *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 In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (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.”). Accordingly, we conclude termination of

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<sup>2</sup> When asked what efforts she had made to visit her son during the past year she responded “I really can’t answer that one, so I really don’t know.”

Yolanda's parental rights is in M.W.'s best interests and affirm the juvenile court's order in its entirety.

**AFFIRMED.**