

**IN THE COURT OF APPEALS OF IOWA**

No. 9-405 / 09-0622  
Filed June 17, 2009

**IN THE INTEREST OF I.I.,  
Minor Child,**

**B.M.Z., Mother,  
Appellant.**

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Appeal from the Iowa District Court for Hamilton County, James A. McGlynn, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.

**AFFIRMED.**

Justin Deppe, Jewell, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, and Patrick Chambers, County Attorney, for appellee State.

Douglas Cook, Jewell, for minor child.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

**MANSFIELD, J.**

Brenda appeals from the juvenile court's order terminating her parental rights to I.I. (born March 2006) pursuant to Iowa Code sections 232.116(1)(e) and (h) (2007).<sup>1</sup> She asserts termination of her parental rights is not in I.I.'s best interests and challenges the juvenile court's determination that section 232.108 does not prevent the court from terminating parental rights. We affirm.

**I. Background.**

On April 8, 2007, Brenda, who was pregnant, was witnessed walking down the middle of Old Highway 20 in Webster City after dark, pushing I.I. in a stroller. Due to the imminent risk of danger to I.I., officers were sent to investigate. Brenda was taken into custody and subsequently arrested on a United States Marshal's warrant for federal drug charges. On April 10, 2007, I.I. was adjudicated to be a child in need of assistance (CINA) pursuant to section 232.2(6)(c)(2). However, the CINA dispositional hearing was postponed repeatedly at Brenda's request in order to await the outcome of her federal criminal charges.

In August 2007, Brenda gave birth to B.I., her fifth child. B.I. was adjudicated a CINA in the same month. His dispositional hearing was also postponed to await the outcome of Brenda's felony charges. After Brenda was sentenced to twenty months in federal prison, the CINA dispositional order for I.I. was finally entered on March 3, 2008. A permanency hearing for I.I. was held on

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<sup>1</sup> The district court also terminated the parental rights of I.I.'s unknown father, which are not at issue in this appeal.

April 28, 2008, and the court directed the filing of a petition to terminate Brenda's parental rights. That petition was filed by the State on June 3, 2008.

Brenda also underwent a psychological assessment regarding her mental health and ability to adequately parent her children. The psychological assessment report indicates diagnoses of Dysthymia, passive-aggressive personality traits, three psychiatric hospitalizations, and a significant number of histrionic and antisocial attitudes and behaviors. In addition, Brenda reported instances of physical violence towards her three older children. (Apparently, Brenda abandoned those older children and has no current relationship with them.)

Since the summer of 2007, I.I. has been in a foster home. This placement has been beneficial to I.I. and for over nineteen months has provided a stable, protective, and nurturing environment. I.I. has developed a healthy bond with her foster parents as well as with another child living in the home. The foster parents are willing to adopt I.I.

At the time of the termination hearing, Brenda remained in federal prison in Illinois, but anticipated being released in May 2009. At that time she would have to spend approximately six months in a halfway house. Only after such time would Brenda be able to consider caring for I.I.

B.I., Brenda's youngest son, is currently placed with a different foster family. At the termination hearing, Brenda presented evidence that the foster family currently caring for B.I. would be willing to help Brenda transition to a situation where she ultimately obtained custody of both B.I. and I.I.

The juvenile court terminated Brenda's parental rights pursuant to Iowa Code sections 232.116(1)(e) and 232.116(1)(h). In the lower court and on appeal, Brenda does not really dispute that the statutory requirements for termination set forth in those provisions have been met. Instead, she argues that termination is not in the best interests of I.I. and that I.I. should instead participate in her long-term plan to recover custody of both I.I. and B.I., via the assistance of B.I.'s foster family.

## **II. Standard of Review.**

We review termination of parental rights cases de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the district court's factual findings, but are not bound by them. Iowa R. App. P. 6.904(3)(g). Our primary concern is the best interests of the child. Iowa R. App. P. 6.904(3)(o); *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

## **III. Analysis.**

"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). Here, section 232.116(1)(h) presents one of the grounds pursuant to which Brenda's parental rights to I.I. were terminated. We agree the grounds for termination in sections 232.116(1)(h) have been met by clear and convincing evidence.

There is no dispute that I.I. was three years or younger, had been adjudicated a CINA pursuant to section 232.96, and had been removed from her

mother's physical custody for at least six of the last twelve months. See Iowa Code § 232.116(1)(h)(1), (2), and (3).

In addition, there is clear and convincing evidence that I.I. cannot be returned to Brenda's custody at this time. At the time of the hearing, October 8, 2008, Brenda was serving a twenty-four-month sentence in federal prison in Illinois on felony drug charges. After her anticipated release in May 2009, Brenda would have to spend up to six months in a halfway house. Only after this period of more than a year could Brenda even begin to resume care of I.I.

Apart from Brenda's current incarceration, Brenda's psychological assessment and her history with her previous children serve as further evidence that I.I. cannot be returned to her custody. The psychological assessment report indicates diagnoses of Dysthymia and passive-aggressive personality traits, three psychiatric hospitalizations, and a significant number of antisocial attitudes and behaviors. In addition, Brenda reported in that assessment that she was "inconsistent and punitive" in her parenting of her children and that she had struck her oldest child with an electrical cord on several occasions when he was a baby and that she would leave marks when she used her bare hand.

As noted earlier, Brenda does not really dispute that the prerequisites of section 232.116(h) for termination have been met. Instead, she argues that termination is not in the best interests of I.I. Upon careful review of the record, we disagree. Certainly, we must consider the best interests of the child. Iowa R. App. P. 6.904(3)(o); A.S., 743 N.W.2d at 867. For a child of I.I.'s age, permanency is critical. I.I. has already been out of her mother's care since April 2007, and Brenda is asking for I.I. to remain in limbo for many additional months.

See *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (stating a child's safety and need for a permanent home are the defining elements in determining a child's best interests).

Additionally, Brenda argues the juvenile court's order terminating parental rights is contrary to section 232.108, which requires that reasonable efforts shall be made to "place the child and siblings together in the same placement." Iowa Code § 232.108(1). Here again, we disagree. To begin with, it is important to review the chronology of events. I.I. was placed in foster care in April 2007, when Brenda went to jail on her criminal charges. In August 2007, Brenda gave birth to B.I. and became friends with another family. Brenda desired to have B.I. placed in foster care with that family when she went to prison.

Visitation has been provided between I.I. and B.I. The two sets of foster parents have been in agreement that they would maintain the sibling relationship and keep consistent contact between them. Having said that, because I.I. was placed into foster care before B.I. was born, the juvenile court correctly concluded that neither child would be negatively affected by termination of Brenda's parental rights. Furthermore, we find termination will facilitate I.I.'s integration into her current foster home, which is more than willing to adopt her. This scenario best provides the safety and permanency that I.I. requires.

#### **IV. Conclusion.**

We conclude termination of Brenda's parental rights pursuant to section 232.116 (1)(h) was proved by clear and convincing evidence. We further find termination is in I.I.'s best interests. Accordingly, we affirm.

**AFFIRMED.**