

**IN THE COURT OF APPEALS OF IOWA**

No. 0-725 / 10-1317  
Filed November 10, 2010

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

**L.W., Father,  
Appellant.**

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Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar, Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

Andrew Abbott of Abbott Law Office, P.C., Waterloo, for appellant father.

Tammy Banning, Waterloo, for mother.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven Halbach, Assistant County Attorney, for appellee State.

Linda Hall, Waterloo, for intervenors.

Michael Bandy, Waterloo, for minor child.

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

**DANILSON, J.**

A father appeals the termination of his parental rights to his daughter, who will soon be three years of age. He does not dispute the State proved the grounds for termination by clear and convincing evidence. Rather, he contends the juvenile court erred in failing to find it was in the child's best interests to establish a guardianship with the paternal grandparents. Considering the father's single contact with the child during his incarceration, and his history of domestic violence, criminal activity, and substance abuse, we are not convinced the father would be able to parent the child within a reasonable period of time. We agree with the juvenile court that the child's interests are best served by terminating the father's parental rights and allowing the child to be eligible for adoption, rather than delaying permanency for the child by establishing a guardianship with the paternal grandparents. We affirm termination of the father's parental rights.

**Discussion.**

The child, born in December 2007, first came to the attention of the Iowa Department of Human Services because of domestic violence occurring in front of the child and violations of a no-contact order that was issued between the parents. A no-contact order was entered in November 2007, after the father was charged with assaulting the mother when she was nine months pregnant with the child. Subsequent assaults occurred in August and September 2008, in violation of the no-contact order. There were also concerns about the parents' use of illegal substances and alcohol. Founded child protective assessments were recorded in May, August, and September 2008.

In September 2008, when the child was eight months old, the father became incarcerated for burglary in the second degree, domestic abuse assault, and possession of a controlled substance.<sup>1</sup> He has remained incarcerated throughout these proceedings.<sup>2</sup> The father has visited with the child only one time since his incarceration. Although he stated that he plans to write her letters, he has not yet followed through with those plans. The record also fails to reflect any financial contributions the father has made to the child during his incarceration. His release date is in 2019, and his first eligibility for parole is in February 2011.

In April 2009, the mother requested removal of the child because she did not have housing and was unable to care for the child. The child was placed with the child's paternal grandparents in September 2009. The child was eventually removed from this placement in January 2011 and placed in family foster care, as the grandmother allowed the mother to have unsupervised contact with the child, in violation of the court ordered safety plan. The grandmother later admitted that she left the child with the mother for approximately twenty minutes so she could attend to funeral arrangements for a family member, and acknowledged she made a poor decision.

The State filed its petition to terminate parental rights in February 2010. The mother consented to the termination of her parental rights. Following a hearing in June 2010, during which the father appeared through his attorney and by telephone, the juvenile court entered its order terminating the father's parental

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<sup>1</sup> These charges arose for incidents that occurred after the child was born.

<sup>2</sup> The father has a history of criminal activity and alcohol and drug use that started his junior year in high school, and the father did not complete high school.

rights pursuant to Iowa Code section 232.116(1)(e), (h), and (j) (2009). The father appeals. We review his claims de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007).

Because the father does not dispute the grounds for termination have been proved, we may affirm on those grounds. See Iowa R. App. P. 6.903(2)(g)(3) (“Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.”); *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (“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.”). However, even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of Iowa Code section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). In determining best interests, this court’s primary considerations are “the child’s safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child.” *Id.*

We conclude termination is in the child’s best interests. At the time of termination, the father was incarcerated, and the record indicates he has made minimal effort to maintain direct contact with the child. He has not communicated with the child through letters or cards and has only had one visit with her in the past two years. See *In re M.M.S.*, 502 N.W.2d 4, 7 (Iowa 1993) (“When opportunities for association with a child are few, they become more precious, and the spurning of them more egregious.”). There is no evidence that the father has supported the child financially or emotionally during his incarceration. See *In*

*re Goettsch*, 311 N.W.2d 104, 106 (1981) (noting that parental responsibility is an affirmative duty that “encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child.”). We further note that the father’s incarceration resulted from a lifestyle chosen in preference to, and at the expense of, a relationship with the child. *M.M.S.*, 502 N.W.2d at 8. As the juvenile court aptly concluded:

[The father] is clearly not available to parent the child at the present time. Although he may be eligible for parole in February, 2011, there is no guarantee of release at that time. Further, there is reason to be concerned that he would be able to parent the child given the history of domestic violence, alcohol and drug use, history of criminal acts, history of child abuse findings and instability. The father cannot provide a safe home, critical care or adequate supervision for the child at the present time or in the foreseeable future.

The father contends the child’s interests would be best served by creating a guardianship with the paternal grandparents, because that would allow him the opportunity to reestablish a relationship with the child upon his release from incarceration. The juvenile court determined that a guardianship was not the best option in this case, because it would only delay permanency for the child. In reaching that conclusion, the court aptly noted that the paternal grandparents should be strongly considered as an adoptive placement for the child:

The best interests of the child would be served by termination of parental rights. The child’s safety can best be ensured by termination and placement in an adoptive home as the best placement for furthering the long term nurturing and growth of the child in a stable, safe and healthy environment. Placement in an adoptive home will best meet the child’s physical, mental and emotional needs for these same reasons. A concurrent home has been found and the child has been placed in that home since January, 2010. In addition, the paternal grandparents wish to be

considered an adoptive placement. This Court strongly urges the Department of Human Services, as does the guardian ad litem in this matter, to consider the paternal grandparents as the adoptive placement in this matter. Implicit in this Court's determination to terminate parental rights in this matter is a finding that guardianship is not appropriate as it is not the most permanent option available to the child. However, that determination should not be considered by the Department as sentiment by the Court that adoptive placement should not be made with the paternal grandparents. This Court found the grandparents to be credible, reliable and earnest persons committed to their granddaughter and her wellbeing and to preserving her family bond. The grandmother committed an error of judgment and has acknowledged such. However, the Court finds the grandparents capable of protecting and meeting the long term needs and interests of their granddaughter. As a result, so long as the grandparents meet any other necessary requirement for adoption, this Court encourages the Department to consider that placement.

We agree that establishing a guardianship is not in the child's best interests. The child is at an adoptable age, and her mother's parental rights have been terminated. Termination of the father's parental rights enables the child to be permanently placed, and gives primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional needs of the child under section 232.116(2). See *P.L.*, 778 N.W.2d at 41. "It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *Id.* We will not place the father's needs above those of the child by continuing the parent-child relationship in this case. The guardianship would continue a parent-child

relationship where there is little to no bond, and only a possibility that the father will become a responsible parent sometime in the unknown future.<sup>3</sup>

We affirm termination of the father's parental rights.

**AFFIRMED.**

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<sup>3</sup> The exception set forth under section 232.116(3)(c) (noting that the court need not terminate the parent-child relationship if there is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship) does not preclude termination of the father's parental rights under the facts of this case.