

IN THE COURT OF APPEALS OF IOWA

No. 23-1954
Filed March 6, 2024

**IN THE INTEREST OF T.H. and T.H.,
Minor Children,**

T.H., Father,
Appellant.

Appeal from the Iowa District Court for Warren County, Mark F. Schlenker,
District Associate Judge.

A father appeals the termination of his parental rights. **AFFIRMED.**

Jesse A. Macro Jr. of Macro Law, LLP, Des Moines, for appellant father.

Brenna Bird, Attorney General, and Mackenzie Moran, Assistant Attorney
General, for appellee State.

Magdalena B. Reese, of Juvenile Public Defender Office, Des Moines,
attorney and guardian ad litem for minor children.

Considered by Tabor, P.J., and Badding and Buller, JJ.

BADDING, Judge.

Since his children were removed in March 2022, the father has tried three treatment programs to overcome his long history of substance-use issues. Hoping the third time will work, the father appeals the termination of his parental rights.¹ Because he is still in treatment, the father focuses his appeal on his request for more time to work toward reunification. He also claims termination was not in the children’s best interests and the juvenile court should have applied permissive exceptions to preclude termination. Upon our de novo review, we find that despite the father’s recent progress, these children can no longer wait for the stability and permanency their best interests demand.

I. Background Facts and Proceedings

Less than one year after a prior juvenile court case closed,² law enforcement “found a big bag of methamphetamine” in the apartment the mother shared with her boyfriend. Both children tested positive for methamphetamine and THC, and one tested positive for amphetamines. Meanwhile, the father was residing in a substance-use and mental-health treatment center in Iowa. Before entering that center, the father was homeless—except for a thirty-day stint in jail in October 2021—and drinking heavily. The children were removed from parental

¹ The father’s rights were terminated under Iowa Code section 232.116(1)(b) and (e) (2023) as to both children, paragraph (f) as to the older child born in 2017, and paragraph (h) as to the younger child born in 2021. The mother’s parental rights were also terminated, and she does not appeal.

² The older child was first removed from his parents’ custody in September 2019 in a separate child-in-need-of-assistance proceeding centered on the parents’ drug use. The record is unclear as to whether the younger child was formally removed since he was born not long before case closure. The case closed in August 2021 with a return of the children to the mother’s custody and the entry of a bridge order. See Iowa Code § 232.103A.

custody in March 2022 and placed with the paternal grandparents, where they have since remained. They were adjudicated in need of assistance in April.

By the dispositional hearing in May, the father's counselor reported that he was doing well in treatment. Unfortunately, his success was short-lived. In June, the father was discharged from treatment for alcohol use. Without telling the department, the father moved to Florida. He entered essentially the same treatment program there. The father left that program in September because he "had a bad day." After that, he lived on the streets for months. He was arrested multiple times for trespass, public intoxication, and theft. The department could not locate the father until February 2023, when they learned he was incarcerated somewhere in Florida. With the mother's progress stalled as well, the department recommended terminating each parent's rights.

Once he learned about that recommendation, the father reappeared in the court proceedings. He mailed two letters to the court in March. In the first letter, sent on March 6, the father stated he was "sad" and caught "off guard" when he was "notified of the court's intentions to move forward with termination." The father, who said that he "may be getting released" from jail soon, wrote: "I didn't plan to just 'give up' my rights in this case just so easy." In the second letter sent three days later, the father stated that he was back in treatment in Florida and wanted to become involved in the proceedings.

A permanency hearing was held in late March. At the hearing, the father testified he struggled with substance use his "whole life" and used "[a]ll drugs," including fentanyl, while he was in Florida. The father informed the court that he would be on probation there for another six months. When asked why he didn't

return to Iowa after leaving the first treatment program in Florida, the father replied: “Nowhere to go.” Even though the father had been back in treatment for about three weeks by then, he denied needing treatment to maintain sobriety. But he recognized, “I have to get through this program in order to have a leg to stand on as far as being anywhere around my boys.”

After the hearing, the father asked for an additional six months, arguing that he would be able to care for the children at the end of that period with his continued participation in treatment. In its May permanency order, the court found it was “not likely an additional six months . . . would present any reasonable likelihood that [the father] would be in a position to reacquire custody of these children in th[e] next six months.” The court directed the State to start termination proceedings, and the State filed its petitions in early June.

The termination hearing was held in September. The father, who was two-hundred days sober by then, testified he would complete his treatment program and probation in March 2024. When asked what his plan was after that, the father answered: “My plan is to get back to my children as soon as possible.” But he was short on details: “I have to get things squared away with probation and stuff like that, but I plan to return home and start working and find a home church and places that I can . . . be held accountable to.” The father had not seen the children in person since he left for Florida in June 2022, although he recently started having video contact with them. Yet he testified, “They deserve to have their dad.”

The department caseworker commended the father on his progress, but she testified that delaying permanency was not in the children’s best interests because of his “long history of struggling with substance use”:

So even if . . . he was here in Iowa, I would want to see more time in working towards services and engagement in services. I think the challenge we do have is: He's not here and won't be here for a while, and I don't believe it is in the children's best interest to delay permanency.

The juvenile court agreed in its ruling terminating the father's parental rights, finding:

He has abrogated parenting responsibilities to his parents, the grandparents of the children. He removed himself to Florida during the pendency of these cases and is still not ready to come back to Iowa. He is not employed, has no residence, and is not capable of caring for these children. It does not appear this is likely to change in any significant way in the next six months.

The court concluded termination was in the children's best interests and declined to apply any of the permissive exceptions urged by the father. The father appeals.

II. Analysis

Although we normally apply a three-step analysis in conducting our de novo review of terminations of parental rights, we confine our review to the steps raised by the father on appeal. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). If those steps support termination, we consider any ancillary issues raised by the father, such as whether additional time should be granted. See Iowa Code § 232.117(5); see also *id.* § 232.104(2)(b).

A. Best Interests

Though the father did not devote a separate issue heading to this claim, he argues “[t]ermination is not in the short term or long-term best interest of the children.” On this point, the father contends that “[c]hildren should be raised by their parents”; “he has shown his desire to parent them”; and termination “could cause confusion, anxiety, and other issues for the children.”

While all that may be true, the father is making these arguments after a sixteen-year battle against his drug and alcohol addictions. In determining the children's best interests, we give primary consideration to their safety, the best placement for their long-term nurturing and growth, and their physical, mental, and emotional condition and needs. See *id.* § 232.116(2). We must consider what the future holds for the children if they are returned to their parents. See *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). "When making this decision, we look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future." *Id.* (citation omitted). Without taking anything away from the father's recent accomplishments, his past performance is poor. He has been in and out of treatment for as long as he has been using substances. The father has never completed one of those programs, and he has never sustained sobriety outside of treatment.

Though we hope this time will be different, it's simply not in the children's best interests to keep them waiting for permanency while the father gets his life together. See *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997); see also *In re A.B.*, 815 N.W.2d 764, 777 (Iowa 2012) ("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 . . . be able to provide a stable home for the child." (citation omitted)). The defining elements of any child's best interests are their safety and need for a permanent home. *In re H.S.*, 805 N.W.2d 737, 748 (Iowa 2011). Those elements are being met by their paternal grandparents, who have cared for them for most of their young lives and intend to continue doing so. See Iowa Code § 232.116(2)(b) (considering the

children's integration into their placement and whether that placement can permanently integrate the children). Like the juvenile court, we find that termination is in the children's best interests so they can have permanency and stability now.

B. Permissive Exceptions

The father next claims the juvenile court erred in not applying the permissive exceptions to termination in section 232.116(3)(a) and (e). The application of a statutory exception to termination, if one exists, is "permissive, not mandatory." *In re M.W.*, 876 N.W.2d 212, 225 (Iowa 2016) (citation omitted). "We may use our discretion, 'based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship.'" *Id.* (citation omitted).

Assuming without deciding that either exception applies, we agree with the juvenile court that neither should be used to avoid termination here. Even though the children were placed with their paternal grandparents, see Iowa Code § 232.116(3)(a),³ "[a]n appropriate determination to terminate a parent-child relationship is not to be countermanded by the ability and willingness of a family relative to take the child." *C.K.*, 558 N.W.2d at 174. As for section 232.116(3)(e), which can be applied when the "absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility," the father was absent for much of this case before his most recent stint in treatment. And he

³ In discussing this exception, the juvenile court noted that, while earlier orders placed the children in the legal custody of relatives, the more recent orders placed them in the department's custody.

has tried that program twice before without success. So even if his current inpatient program falls within this exception, it is not in the children's best interests to make them ride out the father's latest absence for treatment. See *id.* at 175.

C. Additional Time

Finally, we turn to the father's main argument—that he should have been given six more months to work toward reunification. Additional time is appropriate only if we can conclude “the need for removal . . . will no longer exist at the end of the additional six-month period.” Iowa Code § 232.104(2)(b). Pointing to his recent progress at the treatment program in Florida, the father argues there is a reasonable likelihood that the children could be placed in his custody once he completes treatment.

But at the time of the termination hearing, the father still had another six months of treatment left, which he recognized that he needed to finish: “I feel like I'm healed and saved, but I don't want to jump out too soon. . . . It hurts to know I need to be here and I need to be there at the same time.” While the father planned “to get back to those boys as soon as possible,” it's unrealistic to conclude that he could resume care immediately after completing treatment, especially considering that he did not have a house or job lined up in Iowa. Given the father's history, he “would need to demonstrate sobriety and stability in the community for an extended period of time before the children could be placed in [his] custody.” *In re T.M.*, No. 23-1485, 2023 WL 7391834, at *2 (Iowa Ct. App. Nov. 8, 2023). That would take us well beyond the additional six months the father requested. See *id.* We

accordingly conclude that an extension of time is unwarranted and contrary to the children's best interests.

AFFIRMED.