

IN THE COURT OF APPEALS OF IOWA

No. 24-0057
Filed March 27, 2024

**IN THE INTEREST OF I.J.,
Minor Children,**

B.J., Father,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Kristal L. Phillips,
Judge.

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

Timothy A. Scherle, Sioux City, for appellant father.

Brenna Bird, Attorney General, and Natalie Hedberg, Assistant Attorney
General, for appellee state.

Maxine M. Buckmeier, Sioux City, attorney and guardian ad litem for minor
child.

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

BADDING, Judge.

“This little girl has lost so much and it’s just another loss for her,” said the child’s guardian ad litem in recommending termination of the father’s parental rights. One of those losses was the drowning death of the child’s twin sister in August 2022 while both children were in the father’s care. After fourteen months of services, the juvenile court terminated the father’s rights to the child, born in 2019, under Iowa Code section 232.116(1)(f), (i), and (l) (2023). The father appeals, challenging the sufficiency of the evidence supporting each of those grounds.

“Termination proceedings are reviewed de novo.” *In re L.B.*, 970 N.W.2d 311, 313 (Iowa 2022). Although we normally apply a three-step analysis in conducting this review, we confine our review to the step raised by the father on appeal—whether there are statutory grounds for termination. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). “When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the juvenile court’s order on any ground we find supported by the record.” *In re A.B.*, 815 N.W.2d 764, 774 (Iowa 2012). We choose to focus on section 232.116(1)(f).

The father’s challenge to that ground is limited to its final element—that the child could not be returned to his custody at the time of the termination hearing.¹ See Iowa Code § 232.116(1)(f)(4) (requiring “clear and convincing evidence that at the present time the child cannot be returned to the custody of the child’s

¹ See *In re B.W.*, No. 23-0518, 2023 WL 4759462, at *3 n.5 (Iowa Ct. App. July 26, 2023) (discussing the two interpretations in our case law for finding that children “cannot be returned” to parental custody as provided in section 232.102). Our conclusion is the same under either interpretation.

parents”); *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010) (interpreting the statutory language “at the present time” to mean “at the time of the termination hearing”). He argues the record “shows the good relationship between father and daughter, and there were no reports of safety issues regarding the contact between them during visits.” True. But the record also shows the father used methamphetamine throughout the proceedings.

Soon after their birth in 2019, the twins were adjudicated as children in need of assistance because of domestic violence and methamphetamine use in their parents’ home. The father regained custody of the children after their removal, but the mother’s parental rights were terminated. That case successfully closed in March 2022. By July, the Iowa Department of Health and Human Services received a report that the father was using methamphetamine again. The child’s twin drowned the next month in an above-ground pool at the home of the father’s girlfriend. The father said that he fell asleep after eating dinner outside with the children, but the juvenile court determined he “crashed” while coming down from a methamphetamine high. Because the father and his girlfriend had a history of substance use, the department requested that they submit to drug tests. The father agreed but never followed through. The girlfriend refused. So the child was removed from the father’s care, and the State filed a child-in-need-of-assistance petition.

In September, the father submitted to hair-stat drug testing, which was positive for methamphetamine and amphetamines. The child also tested positive for methamphetamine. She was adjudicated in need of assistance in October. By the dispositional hearing in November, the father had not participated in any

services aimed at reunification beyond visits with the child. Throughout the rest of the proceedings, the father obtained several substance-use evaluations, but he never meaningfully participated in recommended treatment.

In February 2023, the father was given six more months to work toward reunification despite his “extremely slow” progress. From there, the father had negative urinalyses. But his hair-stat tests in April, July, and October were positive for methamphetamine and amphetamines, even though the father insisted his last use was in March. A hearing on the State’s termination petition was held in November. After just three questions from the county attorney, the father stormed out of the courtroom. In its ruling, the court found that despite the love between the father and the child, she could not be returned to his custody because of his continued drug use: “The evidence currently before this court indicates she would not be residing with a clean and sober parent, thus placing her at risk of harm.”

Following our de novo review, we summarily agree with the juvenile court that the State presented clear and convincing evidence that the child could not be returned to the father’s custody at the time of the termination hearing. See, e.g., *In re C.H.*, No. 23-1079, 2023 WL 7015345, at *2 (Iowa Ct. App. Oct. 25, 2023) (“The mother’s positive test for methamphetamine two months before the termination hearing precluded the children’s return to her custody.”); *In re S.C.*, No. 22-1171, 2022 WL 16985834, at *1 (Iowa Ct. App. Nov. 27, 2022) (“Maria’s recent use of methamphetamine and her lack of candor about the lapse rule[d] out a safe return of the children to her custody.”). We therefore affirm the termination of the father’s parental rights.

AFFIRMED.