

IN THE COURT OF APPEALS OF IOWA

No. 19-1530
Filed January 23, 2020

**IN THE INTEREST OF L.C. and L.C.,
Minor Children,**

J.L., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Rachael E. Seymour,
District Associate Judge.

A father appeals the termination of his parental rights to two of his children.

AFFIRMED.

Chira L. Corwin of Corwin Law Firm, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, and Meredith L. Lamberti, Assistant
Attorney General, for appellee State.

Nicole Garbis-Nolan of Youth Law Center, Des Moines, guardian ad litem
for minor children.

Nicholas B. Dial of Dial Law Office, P.C., West Des Moines, for minor child.

Blake D. Lubinus of Lubinus Law Firm, Des Moines, for minor child.

Considered by Greer, P.J., Schumacher, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206
(2020).

MAHAN, Senior Judge.

A father appeals the termination of his parental rights to two of his children, born in 2007 and 2013.¹ He challenges the sufficiency of the evidence supporting the statutory grounds for termination, contends termination is not in the children's best interests, and claims the juvenile court was "unable to render a fair judgment due to the court's bias and prejudice." We affirm.

I. Background Facts and Proceedings

This family came to the attention of the department of human services in May 2017,² following the mother's positive tests for methamphetamine and marijuana. The father admitted to using marijuana. The children were removed from the parents' care and adjudicated children in need of assistance (CINA) following an uncontested CINA hearing. Following a dispositional hearing in July, the court returned the children to the father's care "so long as he maintains sobriety and continues to set and maintain appropriate boundaries with the mother."³

In an October review order, the court found the father "continues to do well and is meeting the children's needs," despite concerns about the mother's continued methamphetamine use and unresolved mental-health issues. In an April 2018 permanency review order, the court noted concerns regarding the mother remained unresolved but that the father appeared to be continuing "to set

¹ The mother's parental rights were also terminated. Her appeal was dismissed as untimely.

² The family had prior department involvement from 2012 to 2014, due to concerns of domestic violence and substance abuse.

³ The parents had been in a relationship for "fifteen, sixteen" years.

appropriate boundaries.” The permanency goal was changed to sole legal custody of the children with the father.

Shortly after that order, the court entered an order removing the children from the father’s care following reports that the mother had been staying in the family home and the father had tested positive for illegal substances. In addition, the father pled guilty to assault causing bodily injury stemming from an incident in which he struck an older sibling in the home with a belt. The court confirmed the removal in a November 2018 permanency review order, in which the court observed the mother was living with the father. The court found the father’s inability to protect the children from the mother was “a contributing cause for the most recent removal from his custody.”

The State filed a petition to terminate parental rights as to the two younger children in May 2019.⁴ The termination hearing was held over two days in June. The father was present. He testified he had moved out of the mother’s home and into his own apartment in April. He acknowledged the mother was not “safe” to be around the children because of “[h]er drug use,” but he stated, “I think I can keep my children safe around her if it came to that situation where she was around ‘em.” The father requested the children be returned to his care.

The record before the juvenile court indicated that both children exhibited some behavioral difficulties but were becoming established in their respective foster home placements. The father had two supervised visits with the children

⁴ Although the court found “placement outside the home continues to be necessary” for two older children in the family, the State did not initiate termination-of-parental-rights proceedings as to those children.

each week; twelve-year-old L.C. usually chose to attend only one of these visits each week. His attorney requested termination of parental rights, stating the child had been “consistent” throughout the case that “he doesn’t want to go home.” The attorney for five-year-old L.C. requested the court “not complete termination” so the child “would still be able to maintain some contact with her father.” Caseworkers testified the father had “issues with dishonesty” and had repeatedly chosen the mother over the children. The department caseworker and guardian ad litem recommended termination of the father’s parental rights, opining the children deserved to have consistency and permanency.

Following the termination hearing, the court entered its order terminating the father’s parental rights pursuant to Iowa Code section 232.116(1)(f) (2019). The father appeals.

II. Standard of Review

Appellate review of termination-of-parental-rights proceedings is de novo. *In re L.T.*, 924 N.W.2d 521, 526 (Iowa 2019). Our primary consideration is the best interests of the children, *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006), the defining elements of which are the children’s safety and need for a permanent home. *In re H.S.*, 805 N.W.2d 737, 748 (Iowa 2011).

III. Discussion

The father challenges the sufficiency of the evidence supporting the ground for termination cited by the juvenile court. The father does not contest the children are over four years of age, have been adjudicated CINA, and have been removed from the parents’ physical custody for more than twelve months. See Iowa Code § 232.116(1)(f)(1)–(3). But he claims the State failed to prove by clear and

convincing evidence that the children could not have been returned to his custody at the time of the termination hearing. See *id.* § 232.116(1)(f)(4). Specifically, the father contends, “For the past year [he] has not been in a position to demonstrate his ability to set boundaries and/or protect the children from their mother as he had not had custody of the children.”

The father moved out of the mother’s home approximately “two months” prior to the termination hearing. The father acknowledged he had not reported he was still living with mother up until that time because “it wasn’t asked.” The father initially testified he had not had contact with the mother since he moved out, but upon further questioning, the father conceded the mother was “always texting about something different . . . , and most of the time I ignore, sometimes I answer.” To explain his conflicting testimony, he added, “[W]hatever I do, you’re going to use it against me.”

When asked how his hair stat test was positive for methamphetamine in June 2018, the father responded, “I don’t know,” because he “didn’t think” the mother was using at that time. The father explained, “[I]t’s possible that [the mother] may have used in that basement and I may have touched something that she used around.” He conceded “if [he] can’t tell when [the mother]’s using, [he] can’t safely protect [the] children from her.” The father acknowledged he needed to separate the children from the mother, but he stated he “was trying to keep a family together” and he “really didn’t have any other choices.”

The department caseworker opined the children could not be safely returned to the father’s care because “he’s chosen to maintain a relationship with [the mother] and not be able to provide the protective factors that we would be able

to have, to have the children returned to his custody.”⁵ We conclude there is clear and convincing evidence in the record to show the children could not be placed in the father’s care at the time of trial. The juvenile court properly terminated the father’s parental rights under section 232.116(1)(f).⁶

The father also contends termination is not in the children’s best interests. He points to testimony from caseworkers and therapists about the close relationship he shares with the children and the lack of safety concerns cited with regard to his parenting. Indeed, it appears the children, especially the younger L.C., have a “positive attachment” to the father, and when the mother is not present, there are no safety concerns with the father. However, the providers involved with the family testified in unanimity that the father’s decisions regarding contact with the mother demonstrated a parenting deficiency. On this issue, the juvenile court found:

Unfortunately, the safety concerns that led to removal continue to exist today. . . . While the court has no doubt both parents love these children, they have elected to place their relationship . . . before the children’s needs to have a safe and stable home, free from substance abuse, abusive relationships, and physical abuse. The

⁵ According to the caseworker, “[H]e would have to have somebody with him all the time to ensure that he is being honest with his contact [with the mother] and being able to provide protective measures for the kids.”

⁶ The father contends the juvenile court was “unable to render a fair judgment due to the court’s bias and prejudice.” Upon our review of the record, we conclude the father failed to preserve error on this claim. The father did not raise this issue before the juvenile court or request the judge recuse herself. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (“[I]ssues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”). In any event, actual prejudice must be shown before recusal is required. *In re C.W.*, 522 N.W.2d 113, 117 (Iowa Ct. App. 1994). The father’s conflicting testimony was brought to the court’s attention numerous times at the termination hearing. And the father conceded one of his “biggest problems has been [his] dishonesty” and “it’s safe to say that as we sit here today [he hadn’t] addressed that issue.” The facts do not support a claim of actual prejudice.

court notes [the older L.C.] recognizes this and has clearly stated he wants to remain in his current home. Although not a determining factor, the fact a child of his age does not want to return home is certainly notable to the court. The parents have been provided services for four of the last seven years to address their parental shortcomings. Their lack of meaningful progress shows an inability or unwillingness to make necessary changes to have their children placed in their care. These children's future can be gleaned from evidence of the parent's past performance and motivations.

We concur with the court's reasoning. We conclude termination is in the children's best interests and no permissive statutory exception should be applied to preclude termination. We affirm the decision of the juvenile court to terminate the father's parental rights.

AFFIRMED.