

**IN THE COURT OF APPEALS OF IOWA**

No. 19-2002  
Filed April 29, 2020

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

**M.W., Father,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Susan Cox, District Associate Judge.

A father appeals the termination of his parental rights to a child.

**AFFIRMED.**

Karen A. Taylor, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, and Ellen Ramsey-Kacena, Assistant Attorney General, for appellee State.

Brent Pattison of Drake Legal Clinic, Des Moines, attorney and guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Tabor and Schumacher, JJ.

**VAITHESWARAN, Presiding Judge.**

A father appeals the termination of his parental rights to a child, born in 2015.<sup>1</sup> He contends (1) the State failed to prove the grounds for termination cited by the district court; (2) termination was not in the child's best interests; and (3) the district court should have invoked certain exceptions to termination.

The court of appeals recounted the relevant background facts in *In re D.R.*, No. 18-0233, 2018 WL 2725397, at \*1 (Iowa Ct. App. June 6, 2018), an appeal of an adjudicatory order involving the same child and his older half-sister. The department of human services investigated allegations that the child's father sexually abused the half-sister. See *D.R.*, 2018 WL 2725397, at \*1. Although the child who is the subject of this proceeding was not abused, we cited recent precedent reaffirming the "common sense notion that, ordinarily, all siblings are at risk when one child has been sexually abused." *Id.* at \*2 (quoting *In re L.H.*, 904 N.W.2d 145, 150 (Iowa 2017)). We agreed with the district court that the child "has been, or is imminently likely to be, sexually abused by the child's parent, guardian, custodian, or other member of the household in which the child resides." *Id.* (quoting Iowa Code § 232.2(6)(d) (2017)).

The district court granted the State's petition to terminate the father's parental rights under several statutory provisions. We elect to focus on Iowa Code section 232.116(1)(i). See *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010) ("We may affirm the juvenile court's termination order on any ground that we find supported by clear and convincing evidence."). That provision requires proof of the following:

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<sup>1</sup> The mother exercised continuous custody and physical care over the child. Her parental rights are not an issue on appeal.

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

Iowa Code § 232.116(1)(i) (2019).

As noted, the district court determined the child met the definition of a child in need of assistance based on a finding of an imminent likelihood of sexual abuse. See *id.* § 232.2(6)(d). That determination, affirmed on appeal, resolves the first and second elements of section 232.116(1)(i). As for the third element, the court found the father had “not addressed his issues in 2 years and 3 months”; “remain[ed] an untreated sex offender”; and was “unsafe to parent [the child].” On our *de novo* review, we agree with this assessment.

The department recommended that the father “participate in a psychosexual exam and individual therapy.” Shortly before the termination hearing, the department had yet to obtain “information . . . to indicate [he] . . . completed” the “evaluation or therapy.” At the termination hearing, the father acknowledged he refused to undergo “a full psychosexual evaluation” while criminal charges were pending against him. He testified,

My attorney was concerned that any involvement in the Johnson [County] case could possibly harm my criminal case and any involvement in the juvenile case. I had to choose which I wanted to be involved with, the criminal case or the juvenile case. It would be—it was determined that it would be better for me to focus my energy on the criminal case as opposed to the juvenile case.

It was the father's prerogative to forego services. See *In re C.H.*, 652 N.W.2d 144, 149 (Iowa 2002) ("The privilege against self-incrimination applies . . . within the context of court-ordered therapy requiring an admission of criminal conduct."). But his participation was a predicate to reunification. See *id.* ("The court may not compel [a parent] to admit his guilt in order to be eligible to regain custody of his daughter. The court may, however, require [him] to comply with the case permanency plan which includes treatment. Failure to do so may result in termination of his parental rights."). His refusal to participate necessarily meant that the third element of section 232.116(1)(i) was satisfied. See *id.* at 150 ("A parent's failure to address his or her role in the abuse may hurt the parents' chances of regaining custody and care of their children."). As the district court stated in a dispositional order, "Since [the father] is refusing to comply [with services] for an unknown period of time, it is not possible for the Court or the Department to assess the risks to [the child], evaluate the father-son relationship and [the father's] parenting abilities, and devise an appropriate service plan."

Notably, the father conceded he was "in no position to provide for [the child] physically." He explained that he had recently pled guilty to child endangerment, which carried a prison term of "[u]p to two years." Although his "tentative discharge date" was much sooner, he had yet to undergo treatment at the time of the termination hearing and there was no way to gauge the efficacy of his imminent "short-term" prison treatment. He was also placed on the sex offender registry for ten years. We conclude the State proved termination of the father's parental rights was warranted under Iowa Code section 232.116(1)(i). See *In re K.M.*, 653 N.W.2d 602, 605 (Iowa 2002) ("We have no confidence that the parents have

progressed to the point that they are capable of protecting [the child] from further sexual assaults.”).

We turn to the father’s assertion that termination was not in the child’s best interests. See *In re A.S.*, 906 N.W.2d 467, 476 (Iowa 2018). On this factor, the department reported:

[The father] has been absent from [the child’s] life for 27 months, half of [the child’s] young life, and has not attempted to contact or engage with professionals or participate in recommended and court ordered services. The Department feels it is in [the child’s] best interest to terminate [the father’s] parental rights and establish sole and legal and physical custody with his mother.

We concur in the assessment. Also relevant is the risk the father posed to the child’s safety in the absence of treatment. For these reasons, we conclude termination was in the child’s best interests.

In the context of his best-interest argument, the father contends the district court should have invoked exceptions to termination based on the child’s placement with a relative and the bond the child shared with the father. See Iowa Code § 232.116(3)(a), (c). We agree with the district court that there was no reason to apply these “permissive” factors. See *A.S.*, 906 N.W.2d at 475.

We affirm the termination of the father’s parental rights to his child.

**AFFIRMED.**