

**IN THE COURT OF APPEALS OF IOWA**

No. 0-195 / 10-0205  
Filed April 8, 2010

**IN THE INTEREST OF N.B. and N.B.,  
Minor Children,**

**K.P., Father,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Carol S. Egly, District Associate Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

Jesse Macro, West Des Moines, for appellant father.

Nancy Pietz, Des Moines, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee State.

Kimberly Ayotte of the Youth Law Center, Des Moines, for minor children.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

**MANSFIELD, J.**

Kyle appeals from the juvenile court's order terminating his parental rights to his twin daughters, N.B. and N.B. (born March 2009).<sup>1</sup> Kyle contends the State failed to prove the statutory grounds for termination by clear and convincing evidence. Upon our de novo review, we affirm.

**I. Background Facts and Proceedings.**

The Iowa Department of Human Services (DHS) first became involved with the children in May 2009 after receiving reports that the mother was leaving the children with their maternal grandmother for extended periods of time. While a children in need of assistance (CINA) assessment was being performed, the mother was arrested for physically assaulting the grandmother in front of the children. As a result, the children were removed from the mother's care and placed into family foster care.

On July 7, 2009, the children were adjudicated CINA pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2009). The court also ordered paternity tests to be performed. At this time, the mother considered placing the children for adoption, but ultimately decided to participate in services with the goal of reunification.<sup>2</sup>

On August 18, 2009, paternity tests established Kyle as the children's father. The following week, Kyle accompanied the mother on a supervised visitation. At the visitation, Kyle informed DHS that he did not believe he was in a

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<sup>1</sup> The mother's parental rights were also terminated by consent pursuant to Iowa Code section 232.116(1)(a), and are not at issue in the present appeal.

<sup>2</sup> The mother, who was eighteen at the time, had previously contacted Catholic Charities during her pregnancy for help and counseling concerning possible adoption.

position to parent the children. Kyle stated he would like to see the children, but did not wish to have separate visits of his own. Rather, he preferred to join the mother on some of her visits. After this visit, Kyle saw the children only four more times, when he accompanied the mother on her visits.

Over the next three months, the mother made efforts to improve her parenting skills and work towards reunification. During this same time, DHS reported that Kyle had “limited involvement” and “made it very clear that he [did] not wish to play a parental role to both girls.” Kyle also told DHS that he would not like the children placed with his family.

In early December, the mother decided that she could not raise the children and that she wanted them to have a good life. Therefore, she informed DHS that she no longer wished to reunify with her children, and that she would support her children’s adoption by the foster care family.

Following the mother’s decision to consent to termination of her parental rights, the State filed a petition to terminate all parental rights to N.B. and N.B. On January 7, 2010, a hearing was held on the petition.

Kyle is presently twenty years old, and the mother is nineteen years old. At the hearing, Kyle testified that he became aware of the mother’s pregnancy when she was two to three months pregnant, but did not attend any prenatal classes or doctor’s visits. Kyle testified that for about a month, after the children were born and before DHS became involved, he “would go over on Fridays and stay up all night [with the children] so [the mother] could get some sleep.” He fed

the babies, using some premade bottles of formula. He also provided eighty dollars for their care.

However, once DHS became involved, Kyle testified that “the only times I saw [the children] was when [the mother] had appointments and she informed me that she had them. I thought it would be easier on the family taking care of them if I didn’t have them come in more than they needed to.” As a result, Kyle had only seen the children “about six times” and not at all in the last “couple of months” before the hearing. Kyle further testified that he had a one-bedroom apartment (but no cribs or car seats), employment, and no issues relating to drug or alcohol abuse. Kyle also testified that he was ready, willing, and able to assume care of the children on a full-time basis.

The mother confirmed at the hearing her willingness to consent to a termination of her parental rights. Evidence was also presented that the children’s current foster family is a preadoptive placement.

On January 22, 2010, the juvenile court entered an order terminating Kyle’s parental rights pursuant to Iowa Code sections 232.116(1)(d) and (h). The juvenile court explained:

This Court is impressed by the possibility that [Kyle] may someday be a wonderful father. That has not been the case here. Though given the opportunity to start parenting his daughters, he made the decision to not even try. The Court believes that if he had tried, he would have come to the same conclusion as [the mother] who worked so hard—that he was unable to so—at this point in his life. Though his commitment to be a single parent is somewhat in doubt, the Court does acknowledge the possibility that if he had made the commitment to learn to care for his daughters back in August, it is possible that he could have learned the skills necessary and the situation could be different. On the record made, the Court finds that [Kyle] could not take custody of his

children at this time without them suffering further neglect. It is not in the children's best interest—at this late date—to wait and see if [Kyle] can successfully assume the full responsibility of parenting.

Kyle appeals.

## **II. Standard of Review.**

We review termination of parental rights *de novo*. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). To support the termination of parental rights, the State must establish the grounds for termination by clear and convincing evidence. *Id.* “Clear and convincing evidence” means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. *Id.*

## **III. Analysis.**

Kyle's only argument on appeal is that the State failed to prove the statutory grounds for termination by clear and convincing evidence. Because we conclude termination of Kyle's parental rights was proper under section 232.116(1)(h), we need not and do not address his claim regarding section 232.116(1)(d). *See 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.”).

Section 232.116(1)(h) authorizes termination of parental rights when:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Kyle does not dispute that the first three elements under this section were established. Rather, he contends "there was no evidence presented that if the children were returned to him, that he could not parent them or they would be in danger or neglected." We disagree.

Although Kyle testified at the termination hearing that he was ready, willing, and able to have the children placed in his care, his actions throughout the pendency of this case reveal the contrary. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) ("The future can be gleaned from evidence of the parents' past performance and motivations."). Kyle did not engage in any services when given the opportunity to do so, and did not express any interest in parenting his children until the State filed its petition to terminate parental rights. See *C.B.*, 611 N.W.2d at 495 ("A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting."). In addition, Kyle conceded the following at the termination hearing:

Q. And since the children have been in foster care, how many times have you had them unsupervised? A. Never.

Q. And how many times did you ask for increased visitation with your children? A. Never.

Q. How many times did you contact the department and ask for assistance in getting the children back? A. Never.

Q. When did you find out that the children's mother was thinking about consenting to termination? A. At the last court date [on December 15, 2008].

Q. Since that court date, how many times have you asked for additional visits with the children? A. Never.

Q. What steps have you made to show that – your interest and intent to have these children in your care? A. None.

Q. [Do you think a real parent is t]he person that's there on a day-to-day basis meeting their needs? Have you been that person for these children? A. No.

Q. Do you think it's fair to make these children wait so that you could prove that you can be that for them? A. I do not.

Given Kyle's lack of prior involvement with these children, and his track record of showing little interest in parenting them, we conclude that the record clearly and convincingly demonstrates that the children cannot be returned to his custody at the present time. Accordingly, termination was proper under section 232.116(1)(h). We agree, in short, with the juvenile court's well-reasoned characterization of this case as one where Kyle "presents very well" and is a sincere young man but "refused to even try to take the responsibility of caring for his daughters, even for short periods of time."

Likewise, although Kyle does not raise the question of best interests on appeal, we conclude that termination is in the children's best interests. In determining a child's best interests, we "give 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 condition and needs of the child." *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (quoting Iowa Code § 232.116(2)). At the time of the termination hearing, the children were nine months old; they had spent only a very limited amount of time with Kyle; and Kyle's testimony showed that he was not currently prepared to raise them. During this same time, the children have been in the same foster care family who has bonded with the children and wish to adopt them. As Kyle put it with

commendable candor, “The foster parents seem like they are really good parents. I’m not sure I can add anything other than being their real father.”

Accordingly, we affirm the decision of the juvenile court.<sup>3</sup>

**AFFIRMED.**

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<sup>3</sup> Kyle does not assert on appeal that any of the exceptions to termination in section 232.116(3) is applicable here. See *P.L.*, 778 N.W.2d at 39.