

IN THE COURT OF APPEALS OF IOWA

No. 0-262 / 10-0328
Filed May 12, 2010

**IN THE INTEREST OF G.R.A.,
Minor Child,**

**L.B.A., Mother,
Appellant,**

**D.V., Father,
Appellant.**

Appeal from the Iowa District Court for Plymouth County, Robert J. Dull,
District Associate Judge.

A mother and father appeal from the juvenile court order terminating their
parental rights. **AFFIRMED ON BOTH APPEALS.**

Jeffrey S. Kuchel of Metcalf, Thompson & Phipps, Remsen, for appellant-
mother.

Dewey P. Sloan Jr. of Dewey P. Sloan Jr., P.C., LeMars, for appellant-
father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Darin J Raymond, County Attorney, and Amy K. Oetken,
Assistant County Attorney, for appellee.

John C. Polifka, Sioux City, attorney and guardian ad litem for minor
children.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

PER CURIAM.

Lisa and Daniel, the mother and father of the child, appeal from the juvenile court order terminating their parental rights. Each contends clear and convincing evidence does not support any of the statutory grounds relied on by the court. We affirm on both appeals.

Background. The child, born in March of 2009, was removed from her parents' care about a week after her birth following a domestic violence incident in which her mother stabbed her father in the hand, while both were intoxicated. Both parents have significant criminal histories and substance abuse problems. Both have participated in substance abuse treatment in the past and relapsed. Both have participated in substance abuse treatment and drug court during this case. Despite court orders prohibiting contact between Daniel and Lisa, they continued to have contact throughout the pendency of this case. Both parents have had only supervised visitation—Lisa for a three-hour period weekly, Daniel for an hour weekly. At the time of the termination hearing, Lisa was living in an apartment with her mother. Daniel was in a men's recovery house with six other men, but hoped to have a home with just one of them within six months.

The State petitioned to terminate both parents' parental rights to Gemini under Iowa Code sections 232.116(1)(d), (e), (h), (k), and (l) (2009).¹ The juvenile court terminated the parental rights of both parents "on all grounds

¹ The State also petitioned to terminate Lisa's parental rights to her two older children, but the court denied the petition as to them because they already are in the custody of their father, who has control of her contact with them.

alleged in the State's petition." Both parents challenge all the statutory grounds for termination.

Scope and Standards of Review. We review the juvenile court's termination of parental rights de novo. *In re C.S.*, 776 N.W.2d 297, 298 (Iowa Ct. App. 2009). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re J.A.D.-F.*, 776 N.W.2d 879, 883 (Iowa Ct. App. 2009). Grounds for termination under section 232.116(1) must be established by clear and convincing evidence. *In re P.L.*, 778 N.W.2d 33, 34, 39 (Iowa 2010). If a statutory ground exists, the court may terminate a parent's parental rights. *Id.* at 37-39. If the juvenile court terminates a parent's rights on multiple statutory grounds, we may affirm if any ground is supported by clear and convincing evidence. *J.A.D.-F.*, 776 N.W.2d at 884. In determining whether to terminate, our primary considerations are the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. *P.L.*, 778 N.W.2d at 37, 39; (citing Iowa Code § 232.116(2)). We also consider whether any of the exceptions contained in section 232.116(3) allow the court not to terminate. *P.L.*, 778 N.W.2d at 37-39; Iowa Code § 232.116(3).

Merits. *Father.* Daniel challenges each of the statutory grounds for termination. We find clear and convincing evidence supports termination under Iowa Code sections 232.116(1)(e) (failure to maintain significant and meaningful contact and make reasonable efforts to resume care of child) and (h) (child three years of age or under cannot be returned to parent's custody at present time).

Daniel had only one hour of supervised visitation weekly. He did not participate in a possible second hour of weekly visitation for lack of transportation because he has no driver's license as a result of his convictions for operating while intoxicated. He lives in a group recovery house with six or seven other men. He testified it would be three to six months before he had a home where the child could live.

Daniel has significant substance abuse issues. He claims he has addressed them, but still is new in his recovery and under the supervision of drug court. His criminal history, disregard of court orders prohibiting contact with Lisa, and lack of any significant contact with the child suggest he is not the best placement to provide for Gemini's immediate and long-term interests. See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000) (gleaning the future from evidence of a parent's past performance and motivations); *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993) (giving weight to case history records). Considering "the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child," we conclude termination is proper. See Iowa Code § 232.116(2).

Daniel does not claim and we do not find any of the exceptions to termination in section 232.116(3) apply. We affirm the juvenile court's termination of Daniel's parental rights.

Mother. Lisa challenges each of the statutory grounds for termination. We find clear and convincing evidence supports termination under sections 232.116(1)(h) (child three years of age or under cannot be returned to parent's

custody at present time) and (l) (parent's chronic substance abuse prevents child's return within a reasonable time). We have long recognized parents with chronic, unresolved substance abuse problems present a danger to their children. *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993). Lisa claims she has been sober since March of 2009, yet the evidence shows she has relapsed since then. She has participated in substance abuse treatment before, but relapsed. Her substance abuse problems prevented her from proceeding from supervised to unsupervised visitation. Given Lisa's past experience with substance abuse treatment and relapse, her inability to put her children ahead of problematic relationships with Daniel and others, her lack of custody of her older children, and her lack of progress in reunification with the child, we agree with the juvenile court that the child could not be returned to her custody at the time of the termination hearing or within a reasonable time.

Giving due weight to case history records and Lisa's past performance, we conclude placement with Lisa is not the best placement to provide for the child's safety or for "furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." Iowa Code § 232.116(2); see *J.K.*, 495 at 110; *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990). Termination is proper. See *P.L.*, 778 N.W.2d at 37, 39.

Lisa does not claim and we do not find any of the exceptions to termination in section 232.116(3) apply. We affirm the juvenile court's termination of Lisa's parental rights.

AFFIRMED ON BOTH APPEALS.