

IN THE COURT OF APPEALS OF IOWA

No. 0-539 / 10-1031
Filed August 25, 2010

**IN THE INTEREST OF L.R.M.,
Minor Child,**

**R.T.M., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

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

AFFIRMED.

Edward Bull of Bull Law Office, P.C., Des Moines, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Stephanie Brown,
Assistant County Attorney, for appellee.

John Jellineck, Des Moines, attorney and guardian ad litem for minor
child.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

A father charged with killing the mother of his now one-year-old son appeals the termination of his parental rights. The father contends termination was not required because the child was placed with a relative, but also argues it was not in the child's best interests to stay with his maternal uncle. We reject the father's contentions. Because the child's safety and long-term growth is best served by severing ties with his father, we affirm the termination of parental rights.

I. Background Facts and Proceedings.

L.M. was born in March 2009. His mother, T.L., filed a petition for relief from domestic abuse in October 2009, alleging her husband, R.M., had assaulted her "off and on" for sixteen months, including pushing her to the floor when she was pregnant with their son. She recounted an incident that occurred in the family's apartment in early October, when R.M. pushed her, pulled her hair, spit in her face, threw her into furniture, grabbed her by the throat, and threatened to kill her. On October 26, 2009, the district court issued a protective order prohibiting R.M. from having contact with T.L. and granting T.L. temporary custody of L.M.

On November 11, 2009, T.L. was abducted at gunpoint from the parking lot outside L.M.'s daycare and later shot to death in her apartment. Authorities charged R.M. with his wife's murder, as well as kidnapping, sexual abuse, and attempted murder. R.M. remained in jail awaiting his criminal trial during the proceedings leading up to termination of his parental rights.

The Iowa Department of Human Services (DHS) sought to remove L.M. from his father's custody at an uncontested hearing on December 11, 2009. The DHS placed the child with his mother's brother. R.M. took no position on the removal and indicated that he did not intend to provide any information to the DHS. The court adjudicated L.M. to be a child in need of assistance (CINA) on January 6, 2010.

On April 26, 2010, the State petitioned for termination of R.M.'s parental rights. The father objected to the termination at a hearing on June 7, 2010. On June 9, 2010, the juvenile court issued its order terminating R.M.'s parental rights to L.M. based on Iowa Code sections 232.116(1)(d), (e), and (h). The father challenges the termination.

II. Scope and Standard of Review.

We review *de novo* the juvenile court's decision to terminate parental rights. *In re Z.H.*, 740 N.W.2d 648, 650 (Iowa Ct. App. 2007). The State must prove grounds for termination under section 232.116(1) by clear and convincing evidence. *Id.* at 650-51. In considering whether to terminate, our primary concerns are a child's safety; his or her physical, mental, and emotional condition and needs; and the placement that best provides for the child's long-term nurturing and growth. Iowa Code § 232.116(2).

Even if termination is appropriate under section 232.116(2), the court need not terminate if any of the circumstances listed in section 232.116(3) exist. *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010).

III. Merits.

The father does not contest the clear and convincing evidence supporting termination of his parental rights under sections 232.116(1) (d), (e), and (h). Rather he argues the juvenile court should have opted not to terminate his parental rights because the DHS placed L.M. with a maternal uncle after his mother was murdered. See Iowa Code § 232.116(3)(a) (stating the juvenile court “need not terminate the relationship between parent and child if the court finds . . . [a] relative has legal custody of the child”). One purpose of this provision is to counterbalance the strict time frames in section 232.116(1). If a child is thriving in the care of relatives while they await a parent’s readiness to care for them, it may not be necessary for the juvenile court to immediately terminate the parental rights. But R.M. does not assert that he will be in a position to care for his son any time soon. We agree with the juvenile court’s assessment: “[R.M.] has nothing positive to offer [L.M.] now or in the foreseeable future.”

We reject the father’s family-custody argument against termination. “An appropriate determination to terminate a parent-child relationship is not to be countermanded by the ability and willingness of a family relative to take the child.” *In re C.K.*, 558 N.W.2d 170, 174 (Iowa 1997). This principle is especially true here, where the father opposes his son’s continued placement with his deceased wife’s family.

The juvenile court made the following observations about R.M.'s testimony:

There was absolutely no indicia of remorse or sadness for [L.M.], who will have to grow up without his mother. [R.M.'s] focus was his effort to control custody of [L.M.], criticizing the current custodian's suitability to raise [L.M.]

L.M.'s placement with his mother's family does not justify preservation of the parent-child relationship with R.M.

In conjunction with his family-custody argument, the father contends termination of his parental rights is not in L.M.'s best interests because the boy would not be able to pursue a relationship with R.M.'s older son Taylor. The juvenile court acknowledged that termination of R.M.'s parental rights may weaken the bond between these half-brothers. But the court stressed the paramount concern was L.M.'s interest in security and permanency: goals unattainable if his father's parental rights were not terminated.

Even if we disregard the father's pending murder charge because he has not yet been convicted, this record reveals R.M.'s "significant history of domestic violence and aggression" toward both T.L., and his prior girlfriend, who is Taylor's mother. Our court has noted that "spousal abuse discloses a serious character flaw in the batterer, and an equally serious flaw in parenting." *See In re Marriage of Daniels*, 568 N.W.2d 51, 55 (Iowa Ct. App. 1997). In this case, R.M. exhibited a callousness toward the safety of his son even before he was born, assaulting T.L. when she was pregnant with L.M. This pattern of abusive behavior supports the termination of R.M.'s parental rights to L.M. We agree with the juvenile court's conclusion: "[L.M.] needs and deserves a predictably safe and calm

childhood where he is protected from the disruptions that [R.M.] would inflict upon him if given the power to do so.”

AFFIRMED.