

IN THE COURT OF APPEALS OF IOWA

No. 0-723 / 10-1178
Filed October 6, 2010

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

**N.E.R., Father,
Appellant.**

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

A father appeals from the order terminating his parental rights.

AFFIRMED.

Alexandra M. Nelissen of Nelissen & Juckette, P.C., Des Moines, for
appellant father.

Michael Bandstra, Des Moines, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Andrea Vitzthum,
Assistant County Attorney, for appellee State.

John Jellineck, Des Moines, for minor child.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

A father appeals the termination of his parental rights to his child. He contends the State failed to prove the grounds for termination by clear and convincing evidence. He also contends termination is not in the child's best interests and that termination is unnecessary because a relative has legal custody of the child. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

N.R. is the father and L.B. is the mother of A.R., born in April 2009. In August, 2009, the child, then three months old, was seen at a hospital for treatment of a broken clavicle. The father reported that the child had fallen off of a couch while the child was in his care. No abuse allegations were made at this time and the child returned home.

Subsequent to the clavicle injury, it was reported that the child's head circumference was increasing in size. The child was again taken to the hospital and various tests were performed, including a CT scan. The scan results showed the child had two subdural hematomas. Doctors opined that the hematomas and clavicle injury likely occurred during the same incident and that the injuries were "highly suspicious" for child abuse. One doctor noted he was concerned with the father's story about the child falling off the couch, as the child was too young to roll over. The police were informed, and a child protective assessment was initiated. A temporary order of no contact was entered against the father with respect to the child. The child remained in the mother's custody.

The father was questioned about the child's injuries by an officer and a child protective worker. The father started crying immediately and told them that

the child had slipped from his grasp while he showered with the baby. He stated the child had in fact fallen off the couch the day before, and he told the child's mother that was how the child sustained the injury because he knew the mother would be upset. The State then filed a petition asserting the child was a child in need of assistance (CINA).

A follow-up MRI scan was performed on the child, and the results showed that there were multiple blood pools, which the doctor opined was indicative of a "chronic case and multiple incidents of child abuse." The doctor opined that the father's story of dropping the child in the shower could not explain all of the child's injuries, given the evidence of different stages of trauma.

The mother confronted the father after she learned of the test results and the doctor's opinion. The mother told the child protective worker and officer that the father told her that he had shaken the child. The mother then ended her relationship with the father.

Officers brought the father in for further questioning. The father informed them that the child's injuries were caused by him. The father was arrested for child endangerment in violation of Iowa Code sections 726.6(1)(b) and 726.6(6) (2009), a class "D" felony. The juvenile court then adjudicated the child a CINA.

On January 20, 2010, the father entered an *Alford* plea to the child endangerment causing bodily injury charge. The plea was accepted by the district court and the father was committed to the custody of the Iowa Department of Corrections for a period not to exceed five years. A criminal no contact order was entered, to expire December 2014, and the father was ordered to comply with the terms of that order.

Following a dispositional hearing, the juvenile court entered an order on February 18, 2010, which noted that the father had been sentenced. The order further noted that the mother had been protective of the child and had demonstrated superb parenting skills. The court ordered that the child remain with the mother and out of the father's home.

On May 5, 2010, the State filed its petition to terminate the father's parental rights. A hearing on the petition was held on August 13, 2010. The father was represented by counsel and the father appeared personally by phone. At the hearing, the State requested that the juvenile court take judicial notice of the father's criminal child endangerment case, and no objection to this evidence was made. The father's attorney made a professional statement at the request of the father, stating:

Your honor, while the State is correct in filing the petition, indicating my client is in a position where he is not able to take care and custody of his child, Iowa Code section [232.116(3)(a)] indicates that a termination of parental rights is not necessary if a relative has legal custody of the child. In this case the mother has maintained custody throughout these proceedings. My client is willing to file—or agree to a sole custodial arrangement with the visitation and contact at the discretion of the mother.

. . . .
While we have no independent evidence, [we] would ask that the court take into consideration that [the father] has always in the past taken responsibility for his actions and attempted to correct himself, even without the force of criminal court or juvenile court, and would ask that this court not terminate his parental rights pursuant to the petition filed by [the State].

With that, [we] have nothing further.

The father did not contest the grounds for termination.

On June 30, 2010, the juvenile court entered its order terminating the father's parental rights pursuant to Iowa Code sections 232.116(1)(h), (i), and

(m), finding those grounds had been proved by clear and convincing evidence. The court also found that, although the permanency plan was for the child to remain with the mother, termination of the father's parental rights was in the child's best interests given the child's age and facts and circumstances of the case.

The father now appeals.

II. Discussion.

On appeal, the father contends the State failed to prove the grounds for termination by clear and convincing evidence. He also contends termination is not in the children's best interests. We review the juvenile court's decision to terminate parental rights de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The State must prove grounds for termination by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). In considering whether to terminate, our primary considerations are the child's safety; the child's physical, mental, and emotional condition and needs; and the placement that best provides for the long-term nurturing and growth of the child. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37. "Even though the court may determine that termination is appropriate under section 232.116(2), the court need not terminate a parent's parental rights if any of the circumstances contained in section 232.116(3) exist." *P.L.*, 778 N.W.2d at 37.

A. Grounds for Termination.

The father first contends the State failed to establish by clear and convincing evidence grounds for termination. We need only find termination

proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(m) where there is clear and convincing evidence that both of the following have occurred:

(1) The child has been adjudicated a [CINA] pursuant to section 232.96 after finding that the child has been physically or sexually abused or neglected as a result of the acts or omissions of a parent.

(2) The parent found to have physically or sexually abused or neglected the child has been convicted of a felony and imprisoned for physically or sexually abusing or neglecting the child

Here, pursuant to Iowa Code section 232.96, the juvenile court found that the child had been physically abused or neglected by the father, as set forth in section 232.2(6)(b), and it adjudicated the child a CINA. Additionally, there is no dispute that the father was convicted of a felony and imprisoned for child endangerment causing bodily injury for the injuries the child sustained at the hands of the father. Having established both prongs of Iowa Code section 232.116(m) by clear and convincing evidence, the State proved that termination of the father's parental rights was appropriate under section 232.116(m). Accordingly, we affirm on this issue.

B. Best Interests.

If a statutory ground for termination is determined to exist, the court may terminate a parent's parental rights. *P.L.*, 788 N.W.2d at 37. In considering whether to terminate, the court must then apply the best-interest framework established in section 232.116(2). *Id.* In determining the best interests of a child, the court's 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.'" *Id.*

The juvenile court found that termination of the father's parental rights was in the child's best interest, explaining:

[A.R.] is a young child who has been gravely injured by [the] father, a person who should have been [the child's] champion and protector. [The child's] life should not be disrupted by continuous challenges to [the mother's] custody and supervision. A resolution short of termination of parental rights would open up continuous litigation throughout this child's young life and would also require professionally supervised contact that would be burdensome to [the child's] financial well-being.

There is no relationship between [the child and the] father; there can be no relationship formed until at least 2014. [The father] not only has no way to provide for the needs of [the child] in the foreseeable future. Given [the father's] past history of violent behaviors, there is no reasonable likelihood that he would resolve these problems in the foreseeable future. Given [the child's] young age and need for safety and stability, there is no reason [the child] should have to wait for [the] father to attempt to make significant changes.

[The child's] safety can best be ensured by termination of [the] father's parental rights. The best placement for furthering [the child's] long-term nurturing and growth is with [the] mother who has demonstrated her ability to prioritize [the child's] safety and well-being. Eliminating the possibility that [the father] could disrupt and once again harm this child, termination of parental rights supports the nurturing of [the child's] physical, mental, and emotional condition. [The child's] current placement is stable because it does not include [the father]. There are no compelling reasons to maintain [the father's] parental rights.

In our de novo review, we reach the same conclusion.

C. Relative Care.

The father also argues termination is unnecessary because a relative was available for custody placement, specifically, the child's mother. We disagree.

Even though a court may find termination appropriate under Iowa Code section 232.116(2), a court need not terminate the relationship between the

parent and child if any of the enumerated circumstances contained in section 232.116(3) exist. *P.L.*, 778 N.W.2d at 37. One of those enumerated circumstances is when “[a] relative has legal custody of the child.” Iowa Code § 232.116(3)(a). However, section 232.116(3) has been interpreted to be permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). A court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). Although the record shows that the child is placed in the mother’s legal custody, under the facts and circumstances in this case, we decline to apply section 232.116(3).

We affirm the juvenile court’s termination of the father’s parental rights.

AFFIRMED.