

**IN THE COURT OF APPEALS OF IOWA**

No. 0-763 / 10-1261  
Filed November 10, 2010

**IN THE INTEREST OF S.L. and N.C.,  
Minor Children,**

**D.L., Father of S.L.,**  
Appellant,

**B.C., Father of N.C.,**  
Appellant.

---

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A father appeals a juvenile court order terminating his parental rights to a son. **AFFIRMED.**

Robb Goedicke of Burdette Law Firm, P.C., Clive, for appellant D.L.

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

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

Richard Schmidt, Des Moines, for mother.

Michelle Saveraid, Des Moines, attorney and guardian ad litem for minor children.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

**TABOR, J.**

A father appeals a juvenile court order terminating his parental rights to his four-year-old son, N.C.<sup>1</sup> The father contends the State failed to prove that the circumstances that led to N.C. being adjudicated a child in need of assistance (CINA) continue to exist and failed to prove that the child has been removed from his parents' custody for twelve months. The father also asserts the court did not need to terminate the relationship because N.C. is bonded with his father and remains in the care of his mother. Finding the record contradicts the father's assertions, we affirm.

**I. Background Facts and Proceedings**

B.C.'s violence against N.C.'s mother led to two convictions for domestic abuse assault; the second assault occurred in May 2008.<sup>2</sup> B.C. was incarcerated until July 2008. It does not appear from the record that N.C. was in his father's physical custody at any point after May 2008.

The Department of Human Services supervised visits between B.C. and his son from July 2008 to January 2010. In November 2008, DHS workers reported that B.C. flew into a "severe state of rage" after a supervised visit with his son. The father was "pacing, clenching his fists," and yelling at the worker, after she broached the subject of B.C. seeing a therapist. Although B.C. engaged in individual therapy after this incident, he was discharged for lack of

---

<sup>1</sup> N.C.'s mother has an older daughter, S.L. S.L.'s father is D.L. In the same order, the juvenile court terminated D.L.'s parental rights. Our supreme court dismissed D.L.'s appeal as untimely.

<sup>2</sup> N.C.'s mother received a deferred judgment for a serious misdemeanor domestic abuse assault against B.C. in 2007.

consistency in attending the sessions. Service providers found B.C. difficult to work with throughout the case, noting he did not respond well to feedback regarding his parenting skills.

In February 2009, the State filed a CINA petition alleging N.C. had been exposed to ongoing domestic violence in his home. A report from the Department of Human Services alleged that the father struck both N.C.'s mother and N.C.'s seven-year-old half sister. The petition noted the father had "anger management problems" and engaged in "hostile and threatening behavior" toward DHS workers. After the petition was filed, N.C.'s mother sought a protective order against N.C.'s father. The juvenile court adjudicated N.C. as a CINA on May 13, 2009.

During 2009, B.C. was kicked out of his grandmother's house and started to be late and unprepared for visits with N.C. Throughout the case, B.C. focused on N.C.'s mother and her new paramour rather than his own relationship with his son. For instance, B.C. became upset during a July 2009 visit with N.C. when he realized his son was developing a bond with the mother's new boyfriend. B.C. spoke disparagingly to N.C. about the new boyfriend.

B.C. disliked the schedule developed by DHS for his supervised visits with N.C. B.C. attended only two of five visits offered early in 2010 and last saw his son on January 26, 2010.

B.C. had not been paying child support and earned only \$240 per week, paid in cash. He stated, "I can barely take care of myself."

On March 5, 2010, N.C.'s guardian ad litem filed a petition seeking to terminate B.C.'s parental rights. The petition alleged that termination was proper under Iowa Code sections 232.116(1)(d) and (f) (2009). The court heard evidence on May 3 and May 4, 2009. On July 16, 2010, the court terminated B.C.'s parental rights on both grounds alleged by the guardian ad litem. B.C. appeals from the termination order.

## **II. Standard of Review/Preservation of Error**

We review termination orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). While we give weight to the factual determinations of the juvenile court, especially those involving witness credibility, we are not bound by them. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

The State contends B.C. did not preserve error on his challenge to termination under section 232.116(1)(f)(3). Our review of the record shows the father contested all the elements necessary to prove termination under both alternative grounds and the district court decided the State met its burden to prove the elements by clear and convincing evidence. We believe the issue is properly before us.

## **III. Analysis**

### **A. The Juvenile Court Correctly Found Grounds for Termination Existed under Both Sections 232.116(1)(d) and (f).**

The father argues the State failed to offer clear and convincing evidence supporting termination under either section 232.116(1)(d) or section 232.116(1)(f). When the juvenile court terminates on more than one statutory

ground, we only need to find grounds to terminate under one of the sections cited. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). In this case, we agree with the juvenile court that this record contains ample proof to satisfy both bases.

**1. Circumstances leading to CINA still exist.**

We turn first to the elements of section 232.116(1)(d).<sup>3</sup> The father challenges the State's proof that the circumstances that led to the adjudication of N.C. as a CINA continued to exist after the offer and receipt of services. Specifically, the father alleges that he has not perpetrated domestic violence against N.C.'s mother since the CINA adjudication. The father takes too constrictive a view of what circumstances led to his son's adjudication as a CINA. The court adjudicated N.C. as a CINA and limited B.C. to supervised visits, in part, because B.C. had anger management problems and exhibited hostility toward DHS employees working with the family to ensure the children's well-being. The father does not dispute that he has been "hard-headed" and "belligerent" with DHS workers throughout the case. He has not shown an ability to accept feedback from the social workers on his parenting skills. Because he was not open to advice, the father did not offer N.C. age appropriate activities or proper nutrition during the supervised visits. B.C. also did not stick with his

---

<sup>3</sup> This section provides that the court may order termination of parental rights if both of the following have occurred: "(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents . . . [; and] (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services." Iowa Code § 232.116(1)(d).

individual therapy to work on his anger issues. B.C. was inconsistent in coming to see his son at times scheduled by the social workers and, in fact, gave up on his visitations all together in January 2010. The problems that precipitated the CINA adjudication persist today. Termination under section 232.116(1)(d) was proper.

**2. Son has been removed from father's care for twelve months.**

We next consider the elements of section 232.116(1)(f).<sup>4</sup> The father asserts that because N.C. has remained in his mother's care since the CINA adjudication, the child has not been "removed from the physical custody of the child's parents" for twelve consecutive months or twelve of the last eighteen months. We do not find this argument persuasive. The child has been removed from his father's physical custody since at least May 2008. That was two years before the termination hearing. The father does not derive a vicarious benefit from the mother's continued custody of the child to avoid termination of his parental rights. *In re N.M.*, 491 N.W.2d 153, 155 (Iowa 1992) (interpreting the term "parents" as either plural or singular as required by Iowa Code section

---

<sup>4</sup> Under the provisions of section 232.116(1)(f), the court may terminate parental rights if all of the following have occurred:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance . . . .
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days[; and]
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

4.1(3) and concluding that children's best interests are not served by an interpretation preventing "termination of the noncustodial parent's rights when the children are placed in the separate home of the other parent.") Section 232.116(1)(f) sets out a certain urgency for the parent facing termination to reach the point where the child can be returned to his or her custody. B.C. did not make sufficient progress in the months he was afforded to entitle him to physical custody of N.C. The juvenile court correctly determined that the removal element was met.

**B. Termination was in N.C.'s Best Interests.**

A court considering termination of parental rights must perform its best-interests-of-the-child analysis by placing priority on three factors: (1) a child's safety, (2) the best placement for furthering the long-term nurturing and growth of the child, and (3) the physical, mental, and emotional condition and needs of the child. Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d at 41 (noting it is "well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child"). N.C.'s long-term growth and his physical, mental, and emotional health have not been furthered by the hit-or-miss visitations with his father. The juvenile court concluded that N.C.'s need for stability was best met "in the care of his mother." We agree.<sup>5</sup>

---

<sup>5</sup> The following testimony is illustrative of B.C.'s attitude toward his son:

**C. The Juvenile Court properly rejected the factors weighing against termination in section 232.116(3).**

The father contends the juvenile court should have exercised its discretion not to terminate his parental rights because a relative has custody of N.C. and because clear and convincing evidence exists that termination would be detrimental to N.C. because of the child's bond with B.C. See Iowa Code § 232.116(3).

N.C.'s placement with his mother—who had a protective order against B.C. because of previous domestic violence—does not work to B.C.'s advantage in these termination proceedings. N.C.'s mother and father had a dysfunctional five-year relationship. The DHS workers questioned the parents' ability to cooperate in providing care for N.C. We do not believe that the relative placement is a strong counterweight to termination under these circumstances.

We also do not believe this father and son have such a close bond that termination would be detrimental to N.C. The father's sporadic visits with his son took a toll on the child. The child's therapist recommended ending the visits. The father stopped coming to see his son completely four months before the termination hearing. The record does not reflect clear and convincing evidence that N.C. would suffer from severance of his tenuous relationship with his father.

---

Q. And what's your understanding of why your son is not currently in your custody? A. I don't know. She slipped through the cracks.

Q. Who slipped through the cracks? A. [B.C.'s mother] did.

Q. What do you mean by that, sir? A. I mean that I got involved with [B.C.'s mother] and I'm part of her history now.

In short, when asked about his relationship with his *son* at a hearing on termination of parental rights, B.C. continued to dwell instead on the son's mother.

Twenty-seven-year-old B.C. testified that he considered himself a “new dad” who did not know “how to raise a kid” but nevertheless asked the juvenile court: “Why can’t I have a chance to learn as you go?” The juvenile court rejected B.C.’s request in favor of N.C.’s need for permanency: “[B.C.] did not gain the level of insight, maturity and consistency necessary for him to be a stable caretaker and parent to [N.C.]” We agree with the juvenile court. Children should not be placed at risk so that parents can “experiment” with their care-giving skills. *In re M.B.*, 553 N.W.2d 343, 346 (Iowa Ct. App. 1996).

The State proved the grounds for termination in sections 232.116(1)(d) and (f); termination is in the children’s best interests as set out in section 232.116(2); and no countervailing factors arise under section 232.116(3) to merit denying the termination petition. We affirm.

**AFFIRMED.**