

IN THE COURT OF APPEALS OF IOWA

No. 1-006 / 10-1950
Filed February 9, 2011

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

**V.R., Father,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Deborah M. Skelton, Walford, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Harold L. Denton, County Attorney, and Rebecca A. Belcher,
Assistant County Attorney, for appellee State.

Robert W. Davison, Cedar Rapids, for minor child.

Considered en banc.

PER CURIAM

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 Iowa Code sections 232.116(3)(a) and (c) (2009) were applicable factors against the termination of his parental rights. He further argues the Iowa Department of Human Services (Department) failed to comply with the notice provisions of the Fostering Connections to Success and Increasing Adoptions Act of 2008 section 103(3), 42 U.S.C. § 671(a)(29) (2009). Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

V.R. is the father and R.C. is the mother of K.R., born February 2009.¹ Prior to K.R.'s birth, the father, then forty-five years old, and the mother, thirty-one years old, had a brief relationship. The mother had otherwise been in a relationship off and on for six years with K.L.R. When the mother learned she was pregnant, she believed K.L.R. was the father of the child.

K.R. was born five weeks early after the mother sustained severe abdominal injuries as a result of being assaulted by K.L.R. The child was temporarily removed from the mother and K.L.R.'s care and placed in foster care. V.R. asserted he was the child's father, and the juvenile court ordered paternity testing be performed. The court thereafter adjudicated K.R. a child in need of assistance (CINA) as to the mother and K.L.R., and it directed the Department to

¹ This appeal concerns only the termination of the father's parental rights. The mother has not appealed.

prepare a social history report. V.R. began having supervised visits with the child.

In May 2009, paternity testing revealed that V.R. was the father of the child, and the father requested the child be placed with him. However, the Department, in its social history report, recommended against placement with the father, finding the father needed to show that he had made changes in his life before he would be considered a placement option for the child, given his recent criminal charges, past drug use, and criminal history. The Department's report also stated that placement with a relative was not an option at that time.

The report detailed the father's criminal history, including several older convictions. In approximately 1983, the father was convicted of rape. In 1995, the father was found guilty of delivery of crack cocaine. In 1999, the father pled guilty to violating his probation. Since those convictions, the father has been arrested numerous times on different charges, although the dispositions of those charges were unknown to the Department or were pending. More recently, the father had been charged with possession of a controlled substance in April 2009 and third-degree criminal mischief in January 2009. The father's criminal mischief charge was the result of his cousin D.R. accusing him of having broken D.R.'s television during an argument. The police report stated the father told the officers that "‘this was not going to be the end of it,’ even if he had to ‘kill D.R.’"

Additionally, the Department's report advised that the father had assaulted K.L.R. in May 2009, and he explained that K.L.R. "had it coming for putting his [child's] life at risk." The mother told the Department's worker the father had "messed [K.L.R.] up." The Department noted concerns for the mother's safety as

a result of assaulting K.L.R., but the father stated to the worker he had worked out a deal with K.L.R.'s gang leader.

An adjudicatory and dispositional hearing was held in June 2009. The father stipulated the child was a CINA as alleged by the State, but requested the child be immediately placed with him. Based on the Department's report, the State recommended the child remain in the custody of the Department for purposes of family foster care. Thereafter, the court entered an order adjudicating the child CINA as to the father. The court noted that although the father had requested the child be placed with him, he had not resisted the State's recommendation of placement with the Department. The court also noted the father was employed, had stable housing, and had been visiting the child regularly. However, the court found continued placement of the child in foster care was in the child's best interests, stating:

[The father] has a history of using and selling illegal drugs. There are some concerns about his continuing an association with known drug or gang leaders. He has a criminal record which includes a rape conviction (age [seventeen]). His last jail sentence was for a drug charge. He has a pending serious misdemeanor charge.

Additionally, the court found the father had a recent drug possession charge and his last sample for urinalysis testing was dilute. The court directed the parents to cooperate with drug testing and ordered the father to complete a substance abuse evaluation. The court further ordered that visitation continue between the father and child, and it directed that no unapproved parties were to be present at the father's visits and the father was to provide names of parties the child may be around and have them preapproved by the Department.

In September 2009, the father participated in outpatient substance abuse treatment. Additionally, the father's visits with the child moved from semi-supervised to unsupervised. However, the Department became concerned after it learned the father had begun seeing M.B. and she had moved in with him. The father had not reported this to the Department, and after performing a background check, the Department learned M.B. had seven prior founded child abuse assessments against her, as well as her parental rights terminated to one of her children. M.B. also had "a long history with substance abuse and [had] not been able to stay clean." Additionally, M.B. smoked in the father's apartment, which was a problem because the child was not to be around second-hand smoke due to respiratory problems. The Department's worker advised the father that M.B. would not be approved to be around the child. The father was unhappy about this. The Department recommended that the child continue in foster care, explaining:

If [the father] intends to continue in a relationship with [M.B.], the Department would like to see [M.B.] become involved in case planning and expect that she address her issues with substance use. If [M.B.] is unwilling to do this or is not able to remain clean, [the father] needs to understand that this could jeopardize his ability to have [the child] in his home. . . . [The father] needs to be more receptive to suggestions/feedback from all the service providers working with him. It is becoming increasingly difficult to work with [the father] on these issues because he becomes so angry, to the point it is difficult to have a reasonable conversation with him. I feel [the father] is so stuck on the fact that he is involved with [the Department] and the [c]ourt system that it is preventing him from moving forward. It is very possible that during the next reporting period that [the child] could be placed with [the father] on a trial home placement. Once the above concerns are addressed, the Department is likely to request . . . discretion for a trial home placement.

Following an in-court review hearing on October 14, 2009, the court continued placement of the child in foster care. The court noted that M.B. had agreed to move out of the father's home effective October 13. The court continued its permanency goal of returning the child to the parents and set the matter for a permanency hearing.

The father's visitation with the child progressed, and the Department scheduled an overnight visit with the child on November 6, 2009. However, the Department learned on November 2 that M.B. had been arrested at the father's apartment two days prior, after a fight broke out between M.B. and another female at the father's apartment. The Department developed a safety plan for the father to employ should M.B. or the mother come to the father's apartment when he had the child, and the father agreed to call the police if they refused to leave. The Department agreed to continue on with the planned overnight visit.

By December 2009, the father was consistently having weekend visits with the child. The Department noted that the visits went very well and there had been no concerns. The father had also begun working with a family advocate and a parent partner. Both reported the father was doing better and was an appropriate father. The father successfully completed substance abuse treatment on November 11, 2009, and the Department noted all of his samples for urinalysis had been substance free. Although the Department stated in its December 22, 2009 report that, "[t]o date, [the father] ha[d] completed all the steps asked of him in the case plan by the Department," it noted some concerns:

[The father] needs to remain positive and cooperative so the case can keep moving forward. The primary issues of concern continue to be [the father's] ability to manage his anger and frustration and

express himself in a way that is not threatening to persons involved with [the child]. He struggles to accept that the [c]ourt and the Department are in a position to hold him accountable to who he spends time with and the impact of his choices on [the child].

[The father] has maintained stable housing and employment. He is able to provide for [the child's] needs. [The father] is very motivated to get [the child] in his care. He is consistent with his visits and has had her on weekends for a few months without incident.

Despite its concerns, the Department recommended a trial home placement begin on January 13, 2010.

A permanency review hearing was held on January 13, 2010. Thereafter, the court entered its order changing its permanency goal to returning the child to the father's home. Although the child had been out of the parents' care for almost one year, the court granted the father six more months to work on reunification. The court's order noted the parties:

agree[d] that it is reasonably likely that the child will be returned to [the] father's custody within that time as the father [had] progressed to a point where the [Department had] been granted discretion to begin a trial home placement with the father.

The child was then placed with the father for a trial home placement.

On January 18, police were twice dispatched to the father's apartment concerning two incidents between the father and M.B. Earlier that evening, police were called because the father and M.B. had gotten into a dispute about a vehicle in M.B.'s name. The father told officers M.B. still had some possessions at his apartment but she had not lived there for three months. Both M.B. and the father wanted the other to leave the apartment, and the father eventually left to stay at his cousin's house, where he had taken the child to stay before the fight. The father later returned to the residence to "try to talk to her, reason with her,"

and another fight broke out between the father and M.B., leading to M.B. stabbing the father in the shoulder. Rather than calling the police, the father left the apartment and walked to a nearby Walgreens. Although an officer drove past him while he was walking, he did not flag down the officer. A Walgreens employee called the police and reported there was a male inside that was bleeding and had stated he had been stabbed and assaulted. When the officer later asked the father why he had not stopped the officer when driving past, he told her, "I don't f**k with the police." M.B. was charged as a result of the incident.

The father did not report the incident to the Department, but the Department quickly learned of it and terminated the trial home placement. The Department worker and an officer went to the father's home to take the child back to foster care, but the father refused to release the child. Additional officers were called to the residence. The child was taken from the father's arms, and the father was "tased." The father was ultimately charged with interference with official acts. He was found guilty in April 2010. The father's visitation with the child was changed back to fully supervised visits.

The father lost his employment in February 2010, and he received unemployment compensation. Additionally, the father was taking three or four classes at a community college. A family team meeting was held in February to address the Department's expectations for reunification of the father and child. Another safety plan was created concerning M.B., and the Department authorized visitation progressing to semi-supervised visits in March 2010.

At the end of April 2010, the father was arrested for assault and first-degree harassment after an incident involving the mother. The mother reported to the Department that she had been receiving harassing calls from M.B. Additionally, she reported she and a friend had seen M.B. and the father together, and she tried to take a picture of them together with her phone. She reported that the father saw her and became very upset, and the friend reported the father had grabbed her. The mother stated the father followed her to her apartment, and police were called. As the officer was speaking to the mother and her friend, the father called the mother's phone. The mother put the call on speakerphone, and the officer heard the father threaten to kill the mother. The officer identified herself to the father, and the father stated he did not care who she was, he was going to kill the mother. The father stated several times while the officer was listening that he was going to kill the mother. The Department then moved the father's visitation back to fully-supervised visits. The father was angry about the visits reverting to supervised visits. He did not visit the child for approximately two weeks. The charges were ultimately dismissed against the father.

On May 10, 2010, both M.B. and the father were arrested at the father's apartment on outstanding warrants. The father testified he had called M.B.'s sister to tell her to tell M.B. to "stop everything," and M.B. just showed up at his cousin's residence and the police showed up about five-minutes after she arrived. Police were again called to the father's apartment on May 13 concerning a domestic disturbance, but the parties reported no assault.

A review hearing was held on May 13, 2010. The court directed the State to file a petition to terminate the father's parental rights. The State then filed its petition on May 17, 2010.

In June the Department's caseworker reported the father had ceased all communication with its workers. The Department learned the father had been evicted in June and moved in with his cousin, D.R., who had a significant criminal history and was not approved to be around the child. On June 10, officers responded to a disturbance between the father and M.B. about a fight over a car. The father reported that M.B. had slashed tires to his car, but the car was titled in M.B.'s name. On June 20, the father was arrested for domestic abuse assault causing injury following another run-in with M.B. M.B. reported that the father, her boyfriend, had assaulted her the night before. M.B. showed visible bruising on her face and arms, as well as scratches along her neck and chest. The officer went to D.R.'s house, and the father first informed the officer that he had never been in a relationship with M.B., but then changed his story, stating they had been dating for several months. D.R. told the officer the father and M.B. had been dating for nine months. The father denied assaulting M.B., and that matter was set for trial in October 2010. A permanency review hearing was held on June 24, and the child's placement in foster care was continued.

A hearing on the State's petition to terminate the father's parental rights was held on August 30 and September 24, 2010. The father testified that he had not obtained employment but he was still receiving unemployment compensation and taking classes at the community college. He also testified he had not

obtained housing outside his cousin's home and that was "one barrier . . . to returning [the child] to [him]" at the time of the hearing.

Regarding M.B., the father testified he was not in a relationship with M.B. and had been seeing someone new. He testified that his relationship with M.B. ended in October 2009, and she had been angry with him since then and had been sabotaging his attempt to be reunited with the child. He testified he did call the police on M.B., but the police did not do anything in response. He admitted that a couple of weeks before the second day of the termination hearing, M.B. had slashed his tires and scratched his vehicle, and testified that he continued to be a victim of M.B.'s actions. He also testified the mother had concocted stories about him to sabotage his attempt to be reunited with the child.

The Department's caseworker testified that the father had pretty much ceased all communication with the Department. She testified that she had listened to threatening voicemails left on the mother's phone by the father. She also testified that she believed he and M.B. had continued to have a relationship despite the father's denials. The worker testified that she did not believe the father should have unsupervised visits with the child. Although she believed the father would not harm the child, she testified that he continued to surround himself in dysfunctional and violent relationships where the child could be injured as a result. She also testified she witnessed the father's refusal to release the child when the trial placement ended resulting in the father being "tased" and that the experience was traumatic for her. She explained that the father

still [chose] to associate with people that are unsafe, or possibly dangerous to be around the child. He's not honest. He's not forthcoming with information. He has never followed the safety

plan that we put in place by the Department. He's had numerous criminal charges and he has consistently showed aggressive behavior, not cooperating with the Department.

Additionally the father did not have stable housing and was unemployed at that time. She testified that the child had been out the parental home for eighteen months and was in need of permanency.

The father's anger management counselor testified that he had been working with the father since June 2010. Regarding the father's progress, the counselor testified: "I don't know if I would actually characterize it as anger. I think that [the father] simply demonstrates very passionate feelings for wanting to be able and a feeling that he can parent this child." He testified that the father had told him he had not had any voluntary interactions with M.B. since October 2009. As to the father's failure to follow the safety plan, the counselor testified:

Based on the information that [the father] has given me, it would appear that when the police come into [the father's] life, he goes to jail, regardless of why they came into his life. If that is true, and I don't know that it is, but if it was true, then I think it would be extremely difficult to think that your way of safety was by calling the police.

However, he agreed it was reasonable to request background checks of persons living with the father.

At the end of the hearing, the child's guardian ad litem (GAL) stated:

I feel like I need to start by saying I know [the father] loves [the child] very much and [the child] loves him. And there is clearly a strong bond there.

This is a really—For me it's a difficult case because we have to go by the circumstantial evidence that exists. The credibility of [M.B.] is clearly in question. I don't doubt that for a second.

Where I come down is weighing the—the evidence that we know is accurate, the testimony of [the Department's case worker] that detailed several occasions where [the father] was with [M.B.]. I don't know how to sort out that relationship, other than to ask

myself would [the child] be safe right now in [the father's] care and do I believe that [the father] is not involved with [M.B.] currently? I do.

Am I convinced that [the father] and [M.B.] had not been together voluntarily prior to this in the relatively short—not too far past? I'm not so sure about that. I'm just too concerned about [M.B.] and her volatility and [the father] and his relationship with her to feel comfortable returning [the child] today.

I would be concerned about housing as well. I'm also concerned about [the father's] anger. [The Department's case worker] testimony was pretty compelling to me, the date of the removal where I think [the father] did have problems controlling his emotions with [the child] literally in his arms.

I think the State has met its burden. I wrestled with this simply because I think it is difficult for [the father] to prove the negative, but I think there's a lot of circumstantial evidence that I felt was credible enough to feel concerned about [the child's] safety in his care.

The GAL also stated that he did not think additional time should be granted.

On November 16, 2010, the juvenile court entered its order terminating the father's parental rights pursuant to Iowa Code section 232.116(1)(h). The court found termination was in the child's best interests and there were no known "exceptions" under section 232.116(3) in the case.

The father now appeals.

II. Scope and Standards of Review.

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

III. Discussion.

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

child's best interests, and Iowa Code section 232.116(3)(a) and (c) were applicable factors against the termination of his parental rights. He further argues the Department failed to comply with the notice provisions of the Fostering Connections to Success and Increasing Adoptions Act of 2008 section 103(3), 42 U.S.C. § 671(a)(29).

A. Grounds for Termination.

Termination is appropriate under section 232.116(h) where there is clear and convincing evidence:

- (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 months 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.

There is no dispute the first three elements of this section have been proved. However, the father contends there is insufficient evidence to show the child cannot be returned to his care at the present time. Specifically, he claims he was the victim of M.B.'s and the mother's sabotage, he would not harm the child, and the juvenile court erred in its finding of fact in several respects, including that he continued a relationship with M.B. Upon our de novo review, we find the State has met its burden.

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa

2000). The legislature incorporated a six-month limitation for children adjudicated CINA aged three and younger. Iowa Code § 232.116(1)(h)(3). Our supreme court has stated that “the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights.” *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code section 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

The juvenile court granted the father an additional six months for reunification in January 2010, and the child was then placed with the father on a trial basis. However, immediately after that placement, the father was stabbed in his own home by M.B. This occurred following their earlier altercation. Instead of staying away, he returned to “try to talk to her, reason with her.” He did not call the police after he was stabbed. He justified his inaction claiming the police did nothing when he called them about M.B.; yet, contrary to his claim, he told an officer after the stabbing that he did not flag her down when she drove by because he “[didn’t] f**k with the police.”

Although the father testified his relationship with M.B. ended in October 2009, his testimony is simply not credible. He and his cousin both stated to officers as late as June 2010 that the father was in a relationship with M.B. in June 2010 and had been for “several months.” Even if the father had ended the relationship with M.B. and he was merely the victim of M.B.’s actions, his testimony and actions, as well as inaction, demonstrate he felt he could handle

matters himself, including M.B.'s violence. Taking matters into his own hands ultimately created more chaos and violence in his life.

The father consistently failed to follow the safety plan requiring he call the police, thus putting the child at risk if the child was in his care. Furthermore, the evidence shows the father regularly threatened people. He made threats to kill the mother. He made threats to kill his cousin. He admitted to beating up K.L.R. at the beginning of the case. He continued to be involved in altercations, even after additional time was granted for reunification. The father's failure to disengage from chaotic and violent relationships clearly poses a danger to the child. Taking matters into his own hands proved disastrous in the past and also put the child at risk. The father's actions in the past, with little regard for the consequences, are a good preview of what may be expected in the future. See *C.B.*, 611 N.W.2d at 495 (noting evidence of a parent's past performance may be indicative of the quality of the future care that parent is capable of providing); *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (indicating "a good prediction of the future conduct of a parent is to look at past conduct").

The father agreed at trial that the child could not be returned to his care at that time, but asks for "a little more time" in his petition on appeal. However, "[w]hen the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). We agree with the juvenile court that "[a]dditional time will not correct the situation and allow the child to return home to the father."

Upon our de novo review, we conclude there was clear and convincing evidence the child cannot be safely returned to the father's care at the time of the hearing. We therefore agree that the State proved the grounds for termination under section 232.116(1)(h).

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.*

Taking these factors into account, we agree with the juvenile court that the child's best interests require termination of the father's parental rights. While we do not doubt the father's love for the child, "[i]t 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." *Id.* at 41. The record reveals that the child cannot be returned to the father at this time, and the child should not be forced to wait for permanency. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("[P]atience with parents can soon translate into intolerable hardship for their children."). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *J.L.W.*, 570 N.W.2d at 781. The child should not be forced to endlessly suffer the parentless limbo of foster care.

In re J.P., 499 N.W.2d 334, 339 (Iowa Ct. App. 1993). Given the consistent chaotic and violent environment in which the father surrounded himself, we agree with the juvenile court that termination was in the child's best interests.

C. Iowa Code sections 232.116(3)(a) and (c).

The father also contends his rights need not be terminated because of the close relationship between him and the child, and because the child could be placed with his sister, factors to consider under sections 232.116(3)(a) and (c) against termination of parental rights. Section 232.116(3)(a) provides termination is not required when a relative has legal custody of the child. Section 232.116(3)(c) provides termination is not required where it would be detrimental to the child due to the closeness of the parent-child relationship. The exceptions set forth in 232.116(3) have been interpreted as permissive, rather than mandatory. *J.L.W.*, 570 N.W.2d at 781, *overruled on other grounds by P.L.*, 778 N.W.2d at 39. In determining whether to apply this section, we consider the child's long-term and immediate best interests. *Id.*

Here, the child is not in the custody of a relative. Additionally, although there was evidence presented that the father and child were bonded, for the reasons stated above, we conclude termination is in the child's best interests. We note the child is doing well in foster care, and the father's sister is a possibility as an adoptive parent. We therefore decline to apply section 232.116(3).

D. Failure to Give Notice to Relatives.

Finally, the father contends the Department failed to comply with the notice requirements contained in Fostering Connections to Success and Increasing Adoptions Act of 2008 section 103(3), 42 U.S.C. § 671(a)(29). The Act provides, in relevant part:

In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

. . . .
(29) provides that, within [thirty] days after the removal of a child from the custody of the parent or parents of the child, the state shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions

After a careful review of the record, we find the father failed to make a proper record below on his claim. There was no record made concerning the claim at the termination hearing, and the juvenile court did not rule on the claim in its order terminating the father’s parental rights. Accordingly, the father failed to preserve error for our review. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) (“Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.”).

IV. Conclusion.

Because we find there was clear and convincing evidence the child cannot be safely returned to the father’s care at the time of the hearing, we agree with the juvenile court that the State proved the grounds for termination under section 232.116(1)(h). We further find termination of the father’s parental rights was in the child’s best interests, and we decline to apply section 232.116(3). Additionally, we conclude the father failed to preserve error for our review

concerning the alleged failure to comply with the notice provisions of the Act, 42 U.S.C. § 671(a)(29). Accordingly, we affirm the decision of the juvenile court terminating the father's parental rights.

AFFIRMED.