

IN THE COURT OF APPEALS OF IOWA

No. 1-475 / 11-0637
Filed June 29, 2011

**IN THE INTEREST OF M.J.S.,
Minor Child,**

**R.A.Z., Father,
Appellant.**

Appeal from the Iowa District Court for Lucas County, Monty Franklin,
District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Amanda DeMichelis, Chariton, for appellant father.

Marc Elcock, Osceola, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, and Paul M. Goldsmith, County Attorney, for appellee State.

Robert Bozwell, Centerville, for minor child.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

A father appeals the termination of his parental rights to his three-year-old daughter. He contends the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the child's best interests. Considering the father's lack of participation in services, denial of the need for services, and outstanding mental health concerns and anger issues, we conclude there is clear and convincing evidence the child cannot be returned to his care at this time. We further agree termination is in the child's best interests, despite any presence of a parent-child bond. We affirm termination of his parental rights.

I. Background Facts and Proceedings.

The child, born in January 2008, was removed from the mother's care in July 2009, due to the mother's suicidal and homicidal ideations toward her children,¹ which resulted in her hospitalization for mental health treatment. The child was placed in the father's custody, under the supervision of the Iowa Department of Human Services (DHS). The mother and father both reside in Murray. They were not involved in a relationship at the time, but retained some contact with each other. A safety plan requirement for the child's placement with the father was that the child have no unsupervised contact with the mother.

In April 2010, DHS discovered the father was violating the safety plan by allowing the mother to have unsupervised contact and care of the child. Also around that time, the father was accused of two sexual assaults.² The child was removed from the father's care and placed in the custody of the paternal

¹ The mother also has a one-year-old child with a different father.

² The accusations were never substantiated. One of the alleged assaults was on the mother, and the other on a close female friend of the father's.

grandmother. In November 2010, the child was placed in a foster family home. The child has bonded to her foster family, and the family has expressed their desire to adopt her.

The father is employed by the City of Murray for four hours per week as a garbage collector earning \$8.50 per hour, as well as a few seasonal jobs of mowing lawns and shoveling snow. He is barely able to pay his child support obligation for his two children.³ He lives with his mother, who is disabled, and provides some care for her. Most of the time, the home is “leaning towards the really minimal adequacy standards” in terms of cleanliness, warmth, and safety.

The father was offered numerous services to eliminate the need for removal, including mental health evaluation and services, anger management services, individual therapy, family safety risk and permanency services, and supervised visitation with transportation. Other than parenting skill development, it became very apparent throughout these proceedings that completion of mental health and anger management services was critical in order for the father to become a safe placement option for the child, due to the father’s lack of self-control and aggressive behavior throughout these proceedings. For example, the father brandished a metal pipe during an altercation with the mother and her paramour, and made threats against people who were saying bad things about him concerning these proceedings and the father’s other child who was also not in his custody. On at least one occasion, he was “volatile, angry, upset, cursing” toward a caseworker during a supervised visit with the child, and this aggressive

³ He has never had custody of his other child and does not exercise visitation. His parental rights toward that child were not at issue in these proceedings.

behavior took place with the child present. Understandably, after visits, the child's behavior would regress, including some anger issues with hitting, kicking, and pinching.

Unfortunately, the father was resistant to participation in many of the recommended services. Although he did appear to understand the parenting skills, he then failed to utilize them in his interactions with the child. In-home workers testified the father was inconsistent with discipline and life skills, and does not know how to parent the child appropriately. Caseworkers surmised there was no way the father would be able to take care of the child full-time. The father had no plan for how to take care of the child's necessities, including child care or doctor's appointments. He repeatedly told caseworkers "he would just figure a way when it happened."

Significantly, the father did not attend mental health therapy after August 2010. He also stopped attending anger management classes. Both of these were key requirements of the case plan. The father presented a myriad of excuses for his failure to complete these requirements, including lack of transportation because his truck broke down, and not having a phone to reschedule appointments. Yet he is able to use a phone on different occasions, and is able to find rides at other times. A major reason for his lack of participation likely stems from the father's belief that he does not need treatment. He has repeatedly expressed his opinion that he does not think treatment helps, and he has argued with caseworkers who say he needs to follow through.

The State filed its petition to terminate parental rights in December 2010. Following a hearing in March 2011, the juvenile court entered its order

terminating the father's parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), (h) and (i) (2009). The mother consented to the termination of her parental rights. The father appeals.

II. Standard of Review.

We conduct a de novo review of termination of parental rights proceedings. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Analysis.

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

A. Grounds for Termination.

We need only find termination proper under one ground to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). For termination under section 232.116(1)(i), the State must prove the child meets the definition of CINA based on a finding of physical or sexual abuse as a result of the acts or omissions of the parent and the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child. The father does not dispute those facts. The State must also present clear and convincing evidence the “offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.” Iowa Code § 232.116(1)(i)(3). The father argues the State failed to meet its burden on this element.

The father argues he “substantially complied” with services, maintained a relationship with the child, and was working toward independence by securing reliable transportation and applying to be his mother’s caretaker. He contends the testimony of the caseworkers “focused solely” on his “supposed lack of parenting skills,” but “in no way demonstrates that he is not a minimally adequate parent.” From our review of the record, we find the majority of the testimony at the termination hearing focused on the father’s untreated mental health concerns and anger issues. In fact, several caseworkers testified the father’s “unresolved anger issues are an imminent danger to the child.”

Of particular significance in these proceedings is the father’s repeated denial that he needed mental health and anger management services. Even at the termination hearing, the father testified specifically that he does “not believe”

he needs those services. Yet the father promised he would begin participating in such services, as he had promised throughout these proceedings. The father was aware of that requirement for nearly one year. His testimony is not credible. One caseworker noted that throughout her work with the father, “there was dishonesty and his inability to focus on himself instead of focusing on what other people had told him.”

We acknowledge the father’s anger issues and mental health concerns were not the sole trigger for the child’s removal from his care; but rather, the father’s allowing the child to have unsupervised contact with the mother raised the initial safety concerns for the child. Even assuming the father has discontinued all contact with the mother, the fact remains that the father has a history of violent and threatening relationships and interactions, at least some of which the child has been exposed to. To that end, we agree with the juvenile court that the father has not corrected the conditions that led to the initial adjudication and removal.

The child has been out of the father’s care since April 2010. The father has not followed through with recommendations for mental health treatment and anger management services since August 2010. When questioned, his answer was always, “I’m going to, or I haven’t gotten around to it, or I’m unsure I can get there.” The father has not made phone calls to the child on Sundays as he was allowed to, has not requested additional visitation, and has not requested unsupervised visitation. The father has exhibited aggressive behavior towards others, including caseworkers, in the presence of the child. It is clear the father is not a safe and appropriate placement for the child, and the child cannot be

returned to his care. We find clear and convincing evidence that grounds for termination exist under section 232.116(1)(i).

B. Factors in Termination.

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). In determining the best interest, this 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 conclude the child's best interests require termination of the father's parental rights. As the court observed:

Services have been provided to the father since the child was removed from her mother in July 2009 and were targeted towards returning the child to his care since her removal from his care on April 9, 2010. Despite all of these services, DHS and the service providers indicate that at best, the father might be able to parent the child for short periods of time but that he remains unable to consistently and appropriately be a full time parent responsible for her care, safety, support, and supervision twenty-four hours a day seven days a week. Accordingly, the child cannot be returned to the father's custody at this time, and based on his lack of cooperation with services and his inability to benefit from services, the child will not be able to be returned to the father's custody at any time in the foreseeable future. The child needs and deserves a stable and permanent home that she can rely upon for her care and needs, and the father is not able to provide that home for her. His parental rights should therefore be terminated so that the child may be adopted by parents who can provide for all of her needs and provide her with the permanency and stability that she needs and deserves.

The child is not safe in the father's care, nor is the father able to provide for her long-term nurturing and growth. It would be a detriment to the child's

physical, mental, and emotional condition to maintain the parent-child relationship with the father.

C. Exceptions or Factors against Termination.

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. The father contends his parental rights should not be terminated due to the closeness of the parent-child relationship. See Iowa Code § 232.116(3)(c) (noting the presence of evidence “that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship” is a factor that may weigh against termination). The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38; *J.L.W.*, 570 N.W.2d at 781. The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

Caseworkers testified a bond exists between the father and the child, but acknowledged that the bond is limited considering the child’s age, the time she has spent in the father’s care, and the minimal visitation she has had with the father. There is also evidence the child’s behavior deteriorates after visitation with the father. We also note that the child has lived in the same foster family home since November 2010, and is bonded to that family. Under these circumstances, we cannot maintain a relationship where there exists only a possibility the father will become a responsible parent sometime in the unknown future.

IV. Conclusion.

There is clear and convincing evidence that grounds for termination exist under section 232.116(1), termination of parental rights is in the child's best interests pursuant to 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm termination of the father's parental rights.

AFFIRMED.