

IN THE COURT OF APPEALS OF IOWA

No. 1-483 / 11-0734

Filed July 13, 2011

**IN THE INTEREST OF K.K. and D.K.,
Minor Children,**

**R.D.K., Father,
Appellant.**

Appeal from the Iowa District Court for Fayette County, Alan D. Allbee,
Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

John Sullivan, Oelwein, for appellant father.

Richard Buffington, Oelwein, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, W. Wayne Saur, County Attorney, and Nathan Lein, Assistant
County Attorney, for appellee State.

Melissa Anderson Seeber, Waterloo, for minor children.

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 and one-year-old son. He contends the State failed to prove the grounds for termination by clear and convincing evidence, termination was not in the children's best interests, and the State failed to make reasonable efforts for reunification. Considering the father's criminal history, minimal progress throughout these proceedings, lack of insight and parenting skills, and volatile behavior and relationships, we conclude there is clear and convincing evidence the children cannot be returned to his care at this time and termination is in the children's best interests. We affirm the termination of his parental rights.

I. Background Facts and Proceedings.

The father is twenty-six years old, and the mother is twenty-five years old. They have been involved in an on-again, off-again relationship for many years and have had three children together.¹ Their parental rights to the oldest child were terminated in 2006. The instant proceedings involve their younger two children, born in April 2008 and December 2009.

The children were removed from the family home in the middle of the night in July 2010, due to a domestic dispute between the parents. The parents consented to the children's removal. There were also concerns regarding lack of supervision by the parents, unsafe and unsanitary home conditions, exposure to sex offenders, and other domestic violence altercations between the parents. The children were adjudicated in need of assistance (CINA) in August 2010.

¹ The father believes he also has another child, who is approximately eight years old, with a different mother, but he has never had contact with that child.

Although the parents lived together, they were not involved in a committed relationship. The mother primarily cared for the children, but the mother and father sometimes “passed the kids back and forth.”

The family home was completely unkempt and without running water, and the parents had been given notice they were going to be evicted. A number of animals were present in the home, windows were left open, and the children were not supervised appropriately. The mother and children were spending time with a registered sex offender. The family had a history of founded child abuse assessments against the parents, and there were several ongoing investigations. The father was on probation for an April 2010 charge for carrying weapons. His criminal history also included charges for assault, theft, disorderly conduct, and alcohol-related offenses. At one time, the mother was employed as a bartender, but she had not been employed since 2008. For short periods of time during 2010, the father worked as a D.J. and at a restaurant, but was fired from both positions. The father was not able to find other employment, aside from some detasseling in the summer.

A case permanency plan was adopted, and the parents were offered numerous services addressed to eliminate the need for removal.² For a short time after the children were removed, the father continued to live with the mother and several visitations occurred in the family home. During these visits, the mother would care for and interact with the children while the father sat in a chair,

² Because the mother consented to the termination of parental rights, her efforts for reunification will not be discussed.

used his phone excessively, and told the mother what to do. The father did not interact with the children.

The father also had another girlfriend, Gerri, a married woman estranged from her husband. The father spent some nights at the home Gerri shared with her husband. The father's relationship with Gerri upset the mother and caused altercations between the parents, often occurring in the presence of the children.

On August 4, 2010, the father was arrested for a violation of his probation. The father was charged with assault arising from an altercation with Gerri's husband. The father spent one week in jail. Upon his release, the mother kicked him out of the home because she was upset he was continuing to have contact with Gerri. The father moved in with Gerri and her two children, who were also the subjects of CINA proceedings.

Gerri's husband also lives at the house. Although Gerri's husband has stated he would never hurt children, he has admitted being depressed. On one occasion, Gerri's husband attempted to shoot himself in front of Gerri's children, which resulted in the removal of all weapons from the house. The father continued to live with Gerri, despite Iowa Department of Human Services' (DHS) recommendations that he find another residence, until two weeks prior to the termination hearing when he moved in with a cousin.

The father spent ninety days in jail from November 2010 through February 2011 for a probation violation. Around this time, the father questioned his paternity to the children. The father's paternity to both children was confirmed by

DNA testing in January 2011. Prior to DNA testing, the father had minimal contact with the younger child, D.K., who was just over one-year-old by that time.

The father showed minimal improvement in his ability to safely parent the children and provide for their needs. Caseworkers reported the father's interest in the children seemed to be "material," and not genuine. As the court observed, "While he has been physically present for the majority of his interactions with his children, and parenting sessions, he has not made any progress in improving his parenting abilities. He remains at 'square one.'" Sadly, the record is replete with accounts of the father's "excessive" and "extreme" cell phone usage—to the point that he completely ignored the children during visits.

As the court observed, the father "repeatedly failed to intervene when the children's actions placed them in danger." For example, the father did not notice the younger child choking on a gummy bear the older child gave him, and the caseworker had to step in and remove the object from his throat. On a different occasion, he did not notice the older child running toward the street, or the younger child getting access to a kitchen knife. At a more basic level, the father failed to notice when a diaper needed changing, and he did not understand or show an interest in learning how to feed the children appropriately. Caseworkers agreed the father was inattentive, unreliable, inconsistent, and could not safely care for the children.

The father's behavior at visits was inappropriate in other aspects as well. The father had conversations on his phone in front of the children in which he would yell and swear. This occurred often enough that the older child began to

repeat the profane language she heard. The father was aggressive and threatening toward caseworkers. In addition, the father missed many visits, and left early or arrived late for others.

In the meantime, the children have remained together in foster care with the same family since their removal in July 2010. Both children “blossomed” in the family foster care placement, are “extremely bonded” with their foster parents and siblings, and are on track developmentally. The foster parents expressed their desire to adopt the children if parental rights were terminated.

The State filed its petition to terminate parental rights in December 2010. Following a hearing in April 2011, the juvenile court entered its order terminating the father’s parental rights pursuant to Iowa Code sections 232.116(1)(h) (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.

Section 232.116(1)(h) provides that termination may be ordered when there is clear and convincing evidence a child under the age of three who has been adjudicated a CINA and removed from the parents' care for at least the last six consecutive months cannot be returned to the parents' custody at the time of the termination hearing. Iowa Code § 232.116(1)(h). K.K. was two years of age and D.K. was less than one year of age when they were removed and placed in foster care for ten months while service providers worked with the father. The record does not provide any evidence that the children could safely be returned home with the father at the time of the termination hearing. Caseworkers and the guardian ad litem agreed reunification was not recommended.

Although the father did display some improvement in becoming more interactive with the children and less aggressive toward caseworkers in the

months leading up to the termination hearing, his progress was not sufficient to show more than a mere hope that he might eventually be able to parent the children safely and consistently. Our legislature has carefully constructed a time frame to provide a balance between the parent's efforts and the children's long-term best interests. *In re D.W.*, 791 N.W.2d at 707. "We do not gamble with the children's future by asking them to continuously wait for a stable biological parent, particularly at such tender ages." *Id.* (quoting *In re D.W.*, 385 N.W.2d 570, 578 (Iowa 1986) (internal quotations omitted)); see also *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) ("Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable."). The father continues to have parenting deficiencies and has not shown the ability to be fully attentive to the children's needs and do what it takes to become a responsible parent. We find clear and convincing evidence that grounds for termination exist under Iowa Code section 232.116(1)(h).

Despite the father's contentions to the contrary, we find the State provided reasonable services to reunify the family or eliminate the need for removal in this case. The father does not specify what services should have been provided, or what effect the receipt of additional services would have made. The State contends the father has failed to preserve this issue and argues that his objections came too late and are too vague to address. We agree. Upon our review, we find no mention was ever made in regard to the sufficiency of the

services.³ A parent's challenge to services by the State should be made when they are offered, not when termination of parental rights is sought after services have failed to remedy a parent's deficiencies. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005). The father fails to identify what services he previously requested, or how he otherwise challenged the adequacy of services prior to the termination hearing. We conclude this issue has been waived. See *id.* (concluding parent's reasonable efforts claims were not preserved on appeal where DHS "has an obligation to make reasonable efforts toward reunification, but a parent has an equal obligation to demand other, different, or additional services prior to a permanency or termination hearing").

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). *P.L.*, 778 N.W.2d at 37. In determining the best interests, 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 children's best interests require termination of the father's parental rights. As the court observed:

The best interests of the children in interest would be served by permanent adoptive placement with their foster parents. . . . The children have become integrated into the children's foster or kinship family. The children have been in the children's current placement for eight (8) months. The children's current placement is stable. It

³ The father spoke to caseworkers about additional visitation, but did not raise the issue to the court. Several caseworkers testified that the father's visitation with the children had not progressed to a point that additional visits could be offered.

is desirable to continue the children's current placement because the children are placed together in a loving and appropriate home with foster parents willing to adopt the children. The children are too young to be required to express a preference for their placement. The children's foster family is willing to integrate the children permanently into their family.

.....
 The bond between the children and the children's foster parents is stronger than that between the children and their biological father. The children call the foster parents "mommy" and "daddy" and always seek them out for comfort and affection. The children are integrated into the foster home including the other siblings and pets in the home. The children's foster parents seek to adopt the children if parental rights are terminated. The children's foster parents clearly love the children and seek to afford them the safety and nurture that has been missing in their biological parents' care and custody.

The father is not able to provide for the children's long-term nurturing and growth. It would be a detriment to the children's physical, mental, and emotional condition to maintain these parent-child relationships 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 factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *P.L.*, 778 N.W.2d at 38; *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). 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). 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 children's best interests pursuant to section 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.