

IN THE COURT OF APPEALS OF IOWA

No. 1-515 / 11-0709
Filed September 8, 2011

**IN THE INTEREST OF M.P. and A.P.,
Minor Children,**

**R.D.P., Father,
Appellant.**

Appeal from the Iowa District Court for Warren County, Kevin Parker,
District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Karen A. Taylor of Taylor Law Offices, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Criswell, County Attorney, and Karla J. Fultz, Assistant
County Attorney, for appellant.

Andrea M. Flanagan of Sporer & Flanagan, P.L.L.C., Des Moines, for
mother.

Paul White, Des Moines, attorney and guardian ad litem for M.P., attorney
for A.P.

Jason T. Hauser of Hauser Law Office, P.C., Des Moines, guardian ad
litem for A.P.

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

PER CURIAM

A father appeals from the order terminating his parental rights to two children. He contends the State did not prove the statutory grounds for termination by clear and convincing evidence and termination is not in the children's best interests. The State and the children's mother have filed briefs asking the juvenile court be affirmed. We affirm.

BACKGROUND. The children at issue were born in 1996 and 1998. The children came to the attention of the Department of Human Services in October of 2009 based on what was referred to as "ongoing domestic violence in the home." In August of 2009, the father was charged with domestic abuse assault causing bodily injury and harassment in the first degree;¹ a no-contact order issued.

The department sought the children's removal in late October, but following a hearing in early November, they were left in their mother's care and the father was given supervised visitation. The no-contact order was modified to allow the supervised visitation. The court found the children in need of assistance in December under Iowa Code section 232.2(6)(c)(2) (2009). By January of 2010, the daughter was refusing to participate in visits with the father.

¹ He subsequently pleaded guilty to assault causing bodily injury. The court granted a deferred judgment, placed the father on one year probation, ordered him to attend a batterer's education program, and imposed a civil fine. In June of 2010, following violation of his probation by making threats of physical violence against the mother, the father's deferred judgment was revoked, he was sentenced to 365 days in jail, the jail term was suspended, and the father was placed on one year probation. The no-contact order later was extended to five years.

Following a February disposition hearing, the juvenile court confirmed the children's placement with their mother and adopted a case permanency plan that required both parents to participate in therapy, and the father to participate in family safety, risk, and permanency services and a batterer's education program. In late March the court ordered the father to have a psychological evaluation and to sign releases so the department could receive the results. The father participated in treatment for mental health issues and domestic violence, but refused to sign releases. Visitation between the father and one child was suspended in early April after the father became threatening during a therapy session and a therapist determined continued visits would not be therapeutic.

In late April father threatened to hit the mother in the head with a bat. He was arrested and his deferred judgment from the assault charge subsequently was revoked and his probation was reset. In mid-July the court held a hearing on the department's application to waive reasonable efforts as to the father and his application for visitation. The court waived reasonable efforts in a July 23 order, ordered visitation between the father and one child be at the discretion of that child's therapist, and ordered visitation between the father and the other child be at the discretion of the department.

In December the State petitioned to terminate the father's parental rights to both children. Following hearings in early April of 2011, the court terminated the father's parental rights to both children under Iowa Code sections 232.116(1)(b), (d), (e), and (f). The court found the father caused problems with visitation and with both children and all service providers. It noted the father's

anger “is overwhelming and has caused him to rationalize the problems he has with others.” The court found the father “continuously blames the mother” and “has failed to take any responsibility.” The father testified that he had done what had been asked of him; that people, especially a caseworker, were against him and did not care for the children’s welfare; and that the testimony and reports of others about his inappropriate acts or statements were not true.

The court also found the father was not obeying the terms of his probation because he was violating the no-contact order. Although the father had completed the batterer’s education program, the court found his “testimony exhibits a lack of understanding of domestic violence and little internalization as to what he learned in the classes.” The court further found “very little positive change in father after all of the services provided.” Concerning best interests, the court found termination of the father’s parental rights appropriate and the “best placement for furthering the long-term nurturing and growth” of the children is with the mother, who best meets the “physical, mental, and emotional conditions and needs” of the children “because of stability and a loving and nurturing environment.”

The court concluded that returning either child to the father’s custody “would subject the child to adjudicatory harm” and that neither child could be returned to the father’s custody at the present time.

SCOPE OF REVIEW. Our review of termination-of-parental-rights proceedings is de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We review the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d

84, 85 (Iowa 1999). We give weight to the juvenile court's factual findings but are not bound by them. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998).

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). When the juvenile court terminates a parent's rights, we affirm if clear and convincing evidence supports the termination under the cited statutory provision. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The State has the burden of proving the allegations by clear and convincing evidence. "Clear and convincing evidence" is evidence leaving "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002) (quoting *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983)). If the juvenile court terminates parental rights on multiple statutory grounds, we may affirm if any ground is supported by clear and convincing evidence. See *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

DISCUSSION. The father contends that clear and convincing evidence does not support any of the statutory grounds for termination cited by the court and that termination is not in the best interests of the children.

From our review of the record, we find clear and convincing evidence supports termination under Iowa Code sections 232.116(1)(d) and (f). Although the father argues he has done what needs to be done and the children could be returned to him, the evidence is otherwise. His therapist testified he had dealt with his anger and aggressiveness, stating as support for his position, "It'd be

pretty hard for him to still have anger problems and to maintain a full-time job so I think that can sort of show how he's been doing." Yet the consistent view of other professionals involved in the case is that the father has not resolved his anger or aggressive actions and statements, and that view is supported by his actions. He has assaulted the mother, threatened her and one of the children, and been aggressive or threatening toward others involved in the case, threatening to kill them if his parental rights were terminated. The circumstances that led to the children being found in need of assistance continue to exist despite the offer and receipt of services. See Iowa Code § 232.116(1)(d)(2). Neither child would be safe from emotional or physical abuse if returned to their father's custody. See *id.* § 232.116(1)(f)(4).

The father also contends termination is not in the children's best interests. In considering whether to terminate, we give consideration to the children's safety, *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (quoting Iowa Code § 232.116(2)), and the parent's future capabilities, *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

The children should not have contact with their father or be returned to him because of his current anger issues.² We affirm.

AFFIRMED.

² There is a five-year no-contact order between the children and the father.