

IN THE COURT OF APPEALS OF IOWA

No. 1-776 / 11-1302
Filed October 19, 2011

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

**M.C., Father,
Appellant.**

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

A father appeals the juvenile court's ruling terminating his parental rights.

AFFIRMED.

Jesse A. Macro, Jr. of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellant father.

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 State.

Nicole Garbis Nolan of Youth Law Center, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

The child at issue in this case was born in November 2009. She tested positive for cocaine at birth and was removed from her mother's care in December 2009. The child was placed with a foster family, with which she has remained throughout these proceedings. The Iowa Department of Human Services (DHS) became involved with the mother, but the father was unknown at the outset of the case and was not involved in the child's life.

On February 22, 2010, paternity testing revealed Maurice was the child's father. Upon learning of his paternity, Maurice immediately became actively involved in the case plan and his child's life. At a permanency hearing on June 1, 2010, the juvenile court directed that the child could be placed in Maurice's care in six months if Maurice could: complete substance abuse treatment and aftercare, drop clean urine analyses, attend all visits with the child, complete a parenting class, obtain full-time employment, and obtain stable housing.

Maurice has a lengthy criminal history and a long history of alcohol abuse. Prior to his efforts in this case, Maurice had struggled to maintain steady employment or housing and described his lifestyle as that of a "gypsy."

Maurice began a substance abuse treatment program on April 15, 2010, and was successfully discharged on July 22, 2010. His discharge summary recommended that he attend at least two twelve-step meetings or weekly church. Maurice testified he had attended Alcoholics Anonymous meetings approximately once per week until roughly November 2010, when his attendance decreased. However, he testified he has maintained his sobriety since that time through

regular attendance at church. Maurice attended church with the child and the foster family until roughly September 2010. Since that time, Maurice testified he attended another church regularly with other members of his family.

Maurice regularly attended visits with the child, and the care coordinator who supervised the visits consistently reported that Maurice was able to care for the child and recognize the child's basic needs. Maurice progressed to unsupervised weekend visits and unsupervised weekday visits as arranged with the foster family.

On September 10, 2010, Maurice received his student loan money, as he had enrolled in classes for the fall. The following weekend, Maurice missed his visits with the child. Maurice testified he was out of town visiting family and had informed the foster mother he would be gone, but he did not know he needed to inform the DHS worker assigned to this case, Stephanie Overton, or the Family Safety, Risk, and Permanency Services (FSRP) worker, Kiana Banks. Banks reported the foster mother had no knowledge of Maurice's plans to leave town or miss visits. Maurice also missed his visits the next weekend. He testified he was in Wisconsin visiting his son. The foster mother reported Maurice called her on Saturday of this weekend and stated he had been out of town.

On October 7, 2010, care providers met with Maurice and expressed concern with this behavior as it was out of character for Maurice. Reports reflect Maurice understood their concern and apologized for his behavior. Care providers also addressed with Maurice reports from the foster mother that she often dropped the child off and/or picked the child up from Maurice's girlfriend's home. Overton had previously asked Maurice for information about this girlfriend

to conduct a background check. However, Maurice stated the woman refused to provide the information, and Overton had informed Maurice he should not have the child around the girlfriend until the background check could be completed. Maurice testified he never left the child alone with this girlfriend and allowed her only to do the child's hair.¹ Overton testified that, to the best of her knowledge, Maurice did not allow the child to have contact with this girlfriend again.

On November 7, 2010, the foster mother reported she had concerns Maurice had been drinking the previous night. The foster mother reported that when she picked the child up from Maurice at 10:00 p.m., "she was able to tell that Maurice was under the influence based on his demeanor and she could smell it." DHS ended Maurice's unsupervised visits at this time.

Soon after, on November 19, 2010, an FSRP worker not associated with this case reported that when Maurice arrived at her house to pick up donated furniture, he appeared to be intoxicated and smelled of alcohol. She noted she had never met him, so was unable to compare his behavior to when he was sober, but "it was apparent of his alcohol use." However, the child's foster father was with Maurice at the time and for several hours that day and stated he had no concerns that Maurice had been drinking. Because of the foster father's lack of concern, this incident was not discussed with Maurice. After these incidents, care providers consistently expressed concern with Maurice's unknown drinking habits, though no further incidents were reported.

¹ The child is African-American, and Maurice consistently took issue with the foster parents' ability to care for her hair.

Throughout the pendency of the case, Maurice made improvements and attempted to comply with the juvenile court's requirements. He dropped drug screens when required, and all of the screens were clean. However, Overton explained these screens did not effectively track alcohol consumption. Maurice also completed the parenting class and substance abuse treatment program as required.

Maurice worked as holiday help at the Salvation Army and worked temp jobs beginning in January. He also went back to school in January² and obtained additional student loan funds. He obtained a home through Anawim Housing. According to his agreement with Anawim, he was required to save \$100 per month in addition to paying his rent. As of the date of trial on March 11, 2011, Maurice was current on his rent but did not have enough money to pay April rent. He testified he would work over spring break to earn the additional money he needed to pay his rent.

Overton testified Maurice had the parenting skills necessary to parent the child. She testified there was absolutely no question that Maurice loved his daughter, but her concern was Maurice's judgment in terms of providing for the child's safety. She also testified she believed Maurice was capable of learning about services available to help him raise the child. Ultimately, however, Overton recommended terminating Maurice's rights, stating she was concerned about "Maurice's ability to remain stable; his ability to maintain a substance-free lifestyle; his ability to make appropriate relationship choices; and how those

² Maurice had withdrawn from his fall classes in October.

choices impact his child.” Based on her testimony, Overton’s biggest concern seemed to be Maurice’s alcohol use.

At trial, Maurice denied he had been drinking on the occasions reported by the foster mother and the FSRP worker. He explained that when the foster mother thought he was under the influence, he was very angry and was expressing his anger to the foster parents for “what they’re doing to my daughter’s hair.” He claimed the foster parents’ hair care routine was causing the child’s hair to fall out and that he had previously asked them not to style the child’s hair. Maurice testified he had not had an alcoholic drink since January 2010. The juvenile court found Maurice’s testimony that he had not had a drink since January 2010 was not credible. The court concluded Maurice’s behavior indicated he was intoxicated on the evening the foster mother reported she believed he was drunk.

The juvenile court terminated Maurice’s parental rights pursuant to Iowa Code section 232.116(1)(d) and (h) (2009). Maurice appeals, asserting: (1) the State failed to prove by clear and convincing evidence the statutory grounds for termination; (2) termination was not in the child’s best interests; and (3) the State did not make reasonable efforts to reunite Maurice with his child. We review termination of parental rights proceedings de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

II. Statutory Grounds

We conclude the termination of the father’s parental rights should be affirmed under section 232.116(1)(h), which includes as a fourth element the requirement that there is clear and convincing evidence the child cannot be

returned to the custody of the parent at the present time. This is the only element of section 232.116(1)(h) Maurice challenges on appeal.

Though the record clearly establishes Maurice loves the child and wishes to have her returned to his care, we conclude he cannot provide sufficient safety and stability to allow for the child's return at this time. Maurice disappeared from the child's life for nearly two weeks during a critical stage of the case without informing any of the care providers with whom he interacted on a regular basis of his plans to leave town. His absence caused him to miss visits with the child as well as an opportunity to secure stable housing, something that had been difficult up to that point.

More importantly, his absence marked the beginning of a change in behavior that caused concern for care providers and the child's foster parents. Shortly after returning to town, two incidents occurred in which care providers or the child's foster parents questioned Maurice's sobriety. Though Maurice attempted to explain away the incident with the foster mother, we give weight to the juvenile court's finding that Maurice was not credible in this regard and was intoxicated at that time. See *D.W.*, 791 N.W.2d at 706 ("We are not bound by the juvenile court's findings of fact, but we do give them weight, especially in assessing the credibility of witnesses."). This finding is supported by Maurice's behaviors and statements made to care providers. Further, Maurice's explanation that he was angry with the foster parents was not consistent with the foster mother's report that Maurice's behavior was overly gracious and he hugged her multiple times.

In addition, we are troubled by Maurice's willingness to allow the child to be around his girlfriend who, at least initially, refused to allow DHS to run a background check on her. Maurice testified he spent very little time with the woman and was involved with her primarily for "one night stands." Given the nature of his relationship with this woman and his lack of knowledge about her, we conclude this was not an appropriate location for Maurice to conduct visits, even if the child was only there for a short period of time. We believe this failure to ensure the child was in a safe environment shows a lack of judgment on Maurice's part. See *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests."). Maurice has failed to instill in this court any confidence that he would consistently provide a safe environment for the child. See *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) ("Insight for the determination of the child's long-range best interests can be gleaned from evidence of the parent's past performance for that performance may be indicative of the quality of the future care that parent is capable of providing."). We are also concerned by Maurice's failure to find steady employment and his reliance on student loans to secure and maintain housing, especially since Maurice dropped out of classes partway through the first semester.

Because we do not believe Maurice has shown he can consistently provide a safe and stable home free from the influence of alcohol, we conclude the juvenile court properly found the child could not be returned to Maurice's care at the present time and termination was proper under section 232.116(1)(h).

III. Best Interests of the Child

We also find termination of Maurice's parental rights is in the child's best interests. The child has lived with the same foster family for the majority of her life. See Iowa Code § 232.116(2)(b)(1). The child's foster parents have provided her with a stable environment and have expressed an interest in adopting her. See *id.* § 232.116(2)(b). The child has become integrated into her foster family and is flourishing in their care. *Id.* Using the framework provided in section 232.116(2), we conclude a termination of Maurice's parental rights best provides for the child's safety, long-term growth, and physical, mental, and emotional needs.

Maurice asserts termination is improper due to his bond with the child. We agree with Maurice that a close bond exists between himself and the child. However, the existence of a bond, by itself, is not enough. Rather, pursuant to section 232.116(3)(c), the court need not terminate if we find "clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." While a strong bond between parent and child is a special circumstance that militates against termination when the statutory grounds have been satisfied, it is merely a factor to consider, not an overriding consideration. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998).

After a full review of the record, we conclude termination of Maurice's parental rights would not be detrimental to the child. The child needs safety and stability, which we conclude Maurice cannot provide at the present time for the reasons given above.

IV. Reasonable Efforts

Maurice argues DHS failed to make reasonable efforts in refusing to allow him overnight visits and in refusing to place the child with a family member. We decline to address the State's argument that Maurice did not preserve this issue because we find DHS made reasonable efforts.

DHS denied Maurice's request for overnight visits based on Maurice's unannounced disappearance and concerns that Maurice was drinking again. Before Maurice exhibited this concerning behavior, he was given generous time for visits. DHS made reasonable efforts in determining the amount and type of visits Maurice received.

We also find DHS made reasonable efforts in spite of its refusal to place the child with a relative. The child was placed in foster care on December 3, 2009, after placement with her maternal grandmother did not work. The foster family provided a stable and healthy home for the child and desired to care for the child long-term. DHS conducted a home study at the home of Maurice's aunt, where Maurice lived for a period of time. However, DHS found this not to be an appropriate placement given the aunt's husband's criminal background. We conclude DHS considered relative placement and overnight visits and listed concrete and appropriate reasons for denying both.

V. Conclusion

Having found the statutory grounds for termination were met, termination was in the child's best interests, and none of the section 232.116(3) exceptions to termination apply, we affirm the juvenile court's ruling.

AFFIRMED.