

IN THE COURT OF APPEALS OF IOWA

No. 1-781 / 11-0558
Filed October 19, 2011

**IN THE INTEREST OF B.L.-F.,
Minor Child,**

**J.F., Father of B.L.-F.,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar, Judge.

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

AFFIRMED.

Tammy L. Banning of Tammy L. Banning, P.C., Waterloo, for appellant father.

Paul T. Shinkle of Gottschalk & Shinkle, Cedar Falls, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen A. Hahn, Assistant County Attorney, for appellee State.

Melissa Anderson-Seeber of Juvenile Public Defender's Office, Waterloo, attorney and guardian ad litem for minor children.

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

POTTERFIELD, J.

John is the father of a child, B.L.-F., born in June 2009. John has been diagnosed with intermittent explosive disorder and bi-polar disorder. He has been convicted of domestic assault upon the child's mother, as well as assaulting a police officer. He admits he is a violent person when he is not on his medication.

B.L.-F. was removed from her mother's custody in September 2009 and placed in a foster home due to the mother's inability to provide a safe and stable home.¹ John was incarcerated at the time of removal. B.L.-F. was adjudicated a child in need of assistance on January 28, 2010. By that time, John was in a residential facility, but had been participating in visits with B.L.-F.

On March 24, 2010, the parties stipulated the continued placement of the child in family foster care. John remained at a residential facility.

On June 22, 2010, a dispositional review hearing was held. John was unavailable to provide care because he had been arrested for probation violation.

On August 31, 2010, an initial permanency hearing was held. A trial home placement with the mother had not occurred because the mother had had contact with John and allowed the children to have contact with him in direct violation of a no-contact order and juvenile court orders. John was homeless and living in a car. He admitted needing anger management programming.

¹ Nine founded abuse reports for failure to provide supervision or adequate shelter had previously been made concerning the mother, B.L.-F., B.L.-F.'s half-sibling, or the mother's older children. B.L.-F. and her half-sibling were removed from the mother's custody at the same time. John is not the father of that other child. The mother's parental rights are not a subject of this appeal.

Further hearings on permanency and termination were held on January 26, January 27, and March 3, 2011, after which the juvenile court found:

[John] admits that he is homeless and jobless and not a placement option at this time. The child [has] been removed for seventeen months. His participation in services has been sporadic. He has participated in some visitation and when he is supervised at those visitations, the visitations go well. However, in the seventeen months of removal, he has never managed to progress to semi-supervised or unsupervised visitation. He has played only a minimal role in the life of his child through highly structured, short duration visitation in which his participation has been inconsistent primarily due to his incarceration. He has not sufficiently invested himself in any services to improve his parenting skills. . . . He has not had the opportunity and/or has made no attempt to make himself available as a placement option or to gain the skills necessary to correct the parenting situation that led to removal.

John's parental rights were terminated pursuant to Iowa Code section 232.116(1)(e) and (h) (2011). He appeals.

An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Our review is de novo. *Id.*

Under section 232.116(1)(h), the court may terminate if the child (1) is three years of age or younger; (2) has been adjudicated a child in need of assistance (CINA); (3) has been removed from the physical custody of the child's parents for at least six months of the last twelve months; and (4) there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents at the present time. John acknowledges he does not have permanent housing or employment and the child cannot be returned to him.

On appeal, John asserts the child could be returned to the mother and thus termination was not required. See Iowa Code section 232.116(3) (noting

the court “need not terminate” if “a relative has legal custody”). However, the mother’s rights were terminated and her appeal has been dismissed.

There is no doubt the statutory factors for termination exist and no factors weighing against termination in section 232.116(1)(3) are pertinent. Moreover, we agree with the juvenile court that the child’s “safety can best be ensured by termination and placement in an adoptive home,” which is the “the best placement for furthering the long term nurturing and grown of the children in a stable, safe and healthy environment.” *D.W.*, 791 N.W.2d at 708; see Iowa Code § 232.116(2). We therefore affirm.

AFFIRMED.