

IN THE COURT OF APPEALS OF IOWA

No. 1-782 / 11-0804
Filed October 19, 2011

**IN THE INTEREST OF L.M.W.,
Minor Child,**

**D.W., Father,
Appellant.**

Appeal from the Iowa District Court for Johnson County, Deborah Farmer Minot, District Associate Judge.

A father appeals the juvenile court order terminating his parental rights.

AFFIRMED.

Rachel Antonuccio of Cole & Vondra, L.L.P., Iowa City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Janet M. Lyness, County Attorney, and Emily Voss, Assistant County Attorney, for appellee.

Anthony Haughton, Linn County Advocate, Cedar Rapids, attorney and guardian ad litem for minor child.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

MULLINS, J.

A father appeals the juvenile court order terminating his parental rights to his daughter, L.M.W. (born July 2010), under Iowa Code section 232.116(1)(h) (2011).¹ The father argues the State failed to meet its burden of proof regarding the statutory ground for termination. Upon our de novo review, we affirm. See *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010) (reviewing termination of parental rights proceedings de novo).

The mother and father of L.M.W. are biological half-siblings. Although they knew each other while growing up, they did not live in the same household.

The father functions in the mild range of intelligence, significantly below average (the second percentile). A mental health evaluation revealed that the father demonstrates mildly impaired verbal cognitive abilities, borderline nonverbal reasoning and problem-solving abilities, below average memory functioning, and below average mental processing speed. The father receives social security disability insurance payments, but does not manage his own finances, and his maternal grandmother is his payee.

L.M.W. was born prematurely with a very low birth weight requiring her to spend the first five weeks of her life in a neonatal intensive care unit. At the hospital, the staff had immediate concerns regarding the mother's ability to meet L.M.W.'s needs. As a result, the hospital contacted the Iowa Department of Human Services (DHS), who sought and obtained a removal order. L.M.W. was placed into family foster care where she has remained. In September 2010,

¹ The juvenile court also terminated the parental rights of the child's mother. She has not appealed.

L.M.W. was adjudicated a child in need of assistance under Iowa Code section 232.2(6)(c)(2).

On March 9, 2011, the State filed a petition to terminate parental rights to L.M.W. The petition came to a hearing on April 25, 2011. At the hearing, the father testified that his home was not suitable for a child due to “bugs, and the floors are caved in.” He further testified he has signed up for public housing and services in Muscatine County, but has been put on a wait list that could take nine months to a year. He also admitted that he did not have a driver’s license due to an operating while intoxicated conviction in August 2010.

The evidence also showed L.M.W. has significant medical and developmental needs. Since her birth, L.M.W. has struggled with eating and maintaining a healthy weight. To help this, all formula intake was to be measured and documented in a notebook exchanged between the father and the foster care mother. At the start of the case, a DHS case worker was documenting and signing the notebook for the father. When this task was transitioned to the father, he often struggled to perform it consistently. L.M.W. also suffers from chronic ear infections and is developmentally delayed requiring increased attention in parenting.

On May 1, 2011, the juvenile filed an order terminating the father’s parental rights under Iowa Code section 232.116(1)(h).² The juvenile court found:

² The juvenile court actually cited Iowa Code section 232.116(1)(e) (“significant and meaningful contacts”) as the ground for termination in its order. We find this to be a typographical error. The order in its entirety focuses on whether the child could be

[The father], . . . , regularly visits [L.M.W.]. He is gentle and nurturing with her, obviously loves her, and is receptive to suggestions and directions. It is clear that she is a great joy in his life. However, it has been a struggle for [the father] to develop parenting skills beyond the basics of holding, rocking and diapering. Partly this is because the visits cannot occur in a home-like environment due to [the father's] lack of housing and transportation. But it is also apparent that [the father] lacks the necessary instincts to notice, respond to, and anticipate a baby's needs. He does not have the ability to generalize from one situation to another. After eight months of visits and services, he still needs close supervision and ongoing assistance. It is difficult to tell if this situation could ever improve to any significant extent even if visits were expanded.

. . . .
. . . . The Court is convinced after hearing [the father] testify and reviewing the record that he could not, on his own, maintain a suitable home for himself and [L.M.W.], nor could he properly prepare formula, keep track of her eating schedule and consumption, administer medications, and accurately keep track of and report any of this information. Although [the father] probably could care for [L.M.W.] on his own for short periods of time, it is difficult to imagine him performing all the tasks necessary to care for an infant, toddler, or preschooler on a daily basis, especially one with special medical and developmental needs.

The father appeals arguing section 232.116(1)(h) was not supported by clear and convincing evidence. We find the State met its burden of proof.

The record shows the father lacks adequate housing that would allow the child to be returned to his care at the present time or in the immediate future. He also does not have adequate transportation. In addition, although the father has shown he is caring and loving toward L.M.W., the evidence shows that he does not have the mental capacity to consistently meet L.M.W.'s significant present and future medical and developmental needs. See *In re J.W.D.*, 456 N.W.2d 214, 218 (Iowa 1990) (holding although mental disability alone is not a sufficient

presently returned to the father's care. In addition, on appeal, the father only challenges whether the State adequately proved section 232.116(1)(h). Accordingly, we will proceed under this subsection.

reason for the termination of the parent-child relationship, it is a proper factor to consider in determining whether the disabled parent lacks the capacity to meet the child's present needs as well as the capacity to adapt to the child's future needs); see *also* Iowa Code § 232.116(2)(a) (permitting court's to consider whether a parent's ability to provide for the needs of the child is affected by the parent's mental capacity or mental condition).

Upon our review, we affirm the juvenile court's thorough findings of fact and conclusions of law terminating the father's parental rights to L.M.W.

AFFIRMED.