

IN THE COURT OF APPEALS OF IOWA

No. 1-910 / 11-1403
Filed November 23, 2011

**IN THE INTEREST OF T.H. and J.H.,
Minor Children,**

J.M., Mother,
Appellant,

J.H., Father,
Appellant.

Appeal from the Iowa District Court for Lee (North) County, Emily S. Dean,
District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Bryan J. Humphrey of Humphrey Law Offices, Fort Madison, for appellant
mother.

Kimberly A. Auge of Napier, Wolf, Popejoy & Auge, L.L.P., Fort Madison,
for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael P. Short, County Attorney, and Clinton R. Boddicker,
Assistant County Attorney, for appellee State.

Kendra Abfalter, Fort Madison, for minor children.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

A father appeals from the termination of his parental rights to his children. We review his claims de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

J.H. is the father and J.M. is the mother of T.H., born in 2007, and J.R.H., born in 2009.¹ On October 28, 2009, the father took J.R.H. to the hospital after he noticed blood on the nipple of J.R.H.'s bottle. Hospital personnel observed J.R.H. had many injuries, including an abrasion on his upper lip that was bruised and purple, bruising to his left eyebrow, a small round bruise to his sternum, scratches to his right cheek, dried blood in both nostrils, and bruising under both armpits. The father complained J.R.H. had been crying "a lot." When asked about the child's injuries, he reported J.R.H. had injured himself. After X-rays were taken, it was determined J.R.H. had multiple rib fractures. A head CT revealed a right parietal linear skull fracture.

The parents were interviewed by law enforcement officers. Both parents initially reported the child had injured himself. However, the parents both changed their explanations for the injuries, including burping the baby too hard or squeezing him too hard. The father had no information or explanation as to how J.R.H.'s ribs became fractured.

"After reviewing all the medical records, law enforcement officer's report, the photographs taken on the day of admission and a week after the initial visit," a pediatrician at the University of Iowa Hospitals and Clinics opined that J.R.H.

was physically abused on multiple occasions leading to rib fractures, bruising on his chest, tear of his upper lip frenium, bruising of his upper lip and filtrum, bleeding in his nose, and

¹ The termination of the mother's parental rights is not at issue in this appeal.

bleeding in his ear. These are not injuries a [five] week old child could have caused himself. The bruises on his right cheek and the bruise on his upper eyelid margin could be due to either physical abuse or supervision neglect (his [sibling] might have hit him on his eye or on his cheek with toys or other objects, which would constitute supervision neglect).

The [bruises] and bleeding regarding his mouth and nose are definitely related to an impact. This extent of injuries could not have been caused by his [sibling] hitting him or falling on him. The lateral multiple rib fractures could have occurred from his [sibling] falling on top of him, but the multiplicity and various stages of healing on the same area raises significant concern for severe supervision neglect. On the other hand, lateral rib fractures can also be caused by the same mechanism that causes posterior rib fractures. Thus it is highly likely in this context that the child's rib fractures altogether might have been caused by an adult handling the child: i.e. squeezing the chest cavity front-to-back, which would explain the finger marks on the upper chest as well as [the] rib fractures.

In addition to these, there is no explanation for the parietal skull fracture, bruise on the chest bone, and bruising on the buttocks that the mother reported All of these are highly concerning that the child was in significant danger in the care of his care providers via physical abuse.

The children were removed from the parents' care and placed in the care of foster parents. They were later placed in the care of their paternal grandparents, where they have since remained.

The parents were offered extensive services, and they complied with and completed many of the services offered. However, the father continued to display anger issues throughout the case. Additionally, it was reported the parents continued to require prompting during their visits with the children, due to using inappropriate discipline, allowing the children to wander unsupervised, and leaving inappropriate items within the children's reach, among other things. The parents never provided a reasonable explanation for J.R.H.'s injuries, and at times they denied the baby was ever injured.

After the parents were given six additional months to work toward reunification, the State in March 2011 filed a petition to terminate their parental rights. A hearing on the petition was held in May 2011. The father testified he did not believe he had an anger problem even though he had displayed anger episodes during family team meetings. He also testified he “didn’t have a clue” how J.R.H.’s injuries occurred but he believed he could safely parent the children and the children could be returned to his care. He further testified he did not believe the pediatrician’s opinion that J.R.H. had been abused. However, the paternal grandfather testified he had concerns about the parents’ ability to properly supervise the children. Additionally, the Iowa Department of Human Services (Department) caseworker, the service provider, the court-appointed special advocate, and the children’s guardian ad litem all agreed that the children could not be safely returned to the parents’ care at the time of the hearing.

Following the hearing, the juvenile court entered an order terminating the parents’ parental rights to the children under Iowa Code section 232.116(1)(h) (2011). The father now appeals, contending the State failed to prove the grounds for termination by clear and convincing evidence and termination was not in the children’s best interests.

Termination is appropriate under section 232.116(1)(h) where there is clear and convincing evidence:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child’s parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

There is no dispute the first three elements of this section have been proved. However, the father makes a general argument that the juvenile court erred in finding there was clear and convincing evidence the children could not be returned to his care at the time of the termination hearing. Upon our de novo review, we find the State has met its burden.

We recognize the father substantially complied with the case plan throughout most of these proceedings and participated in supervised visitation with the children and numerous services. He was employed at the time of the termination hearing and had generally stable housing. Nevertheless, the Department and others recommended termination of the father's parental rights due to ongoing concerns that he continued to display anger issues, improper supervision of the children, and his denial that J.R.H.'s substantial injuries were the result of abuse or that the injuries existed. Given all of the foregoing, we agree with the juvenile court that there was clear and convincing evidence the children could not be returned to the father's home at the time of the termination hearing. See *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995).

The father also argues termination of his parental rights was not in the children's best interests. In considering whether to terminate, the court must then apply the best-interests framework established in Iowa Code section 232.116(2). *P.L.*, 788 N.W.2d at 37. In determining the best interests of a child, the 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 agree with the juvenile court that the children's best interests require termination of the father's parental rights.

It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child[ren].

Id. at 41. The record reveals the children cannot be returned to the father at this time, and the children should not be forced to wait for permanency. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("[P]atience with parents can soon translate into intolerable hardship for their children."). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *J.L.W.*, 570 N.W.2d at 781. The children should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993). We agree with the juvenile court that termination was in the children's best interests. Accordingly, we affirm the decision of the juvenile court terminating the father's parental rights.

AFFIRMED.