

IN THE COURT OF APPEALS OF IOWA

No. 1-925 / 11-1749
Filed December 7, 2011

**IN THE INTEREST OF D.A. Jr.,
Minor Child,**

**D.A. Sr., Father,
Appellant.**

Appeal from the Iowa District Court for Scott County, Christine Dalton,
District Associate Judge.

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

AFFIRMED.

Lauren M. Phelps and Randall L. McNaughton, Davenport, for appellant
father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael J. Walton, County Attorney, and Julie A. Walton,
Assistant County Attorney, for appellee State.

Dana L. Copell of Law Office of Dana Copell, Davenport, for appellee
mother.

Patricia A. Rolfstad, Davenport, attorney and guardian ad litem for minor
child.

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

VAITHESWARAN, P.J.

A father appeals the termination of his parental rights to his son, born in 2008. He contends (1) one of the statutory grounds cited by the district court does not exist and (2) the district court “failed to adequately consider whether termination of [his] (and also the mother’s) rights was in the child’s best interests, and completely failed to consider whether the statutory exceptions listed under Iowa Code sections 232.116(3)(c), (d) and (e) [apply].”

With respect to the first issue, the State concedes the district court should not have cited Iowa Code section 232.116(1)(f) (2011) as a ground for termination, as that provision requires proof the child is four years old or older, and this child was under four. However, the court cited the comparable provision for children under four, and the father does not challenge that ground for termination. See Iowa Code § 232.116(1)(h) (requiring proof of several elements including proof that child three years of age or younger cannot be returned to parent’s custody); see also *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (noting that a court’s decision to terminate the parental rights to a child may be affirmed if clear and convincing evidence supports any of the grounds relied upon by the court for terminating the parent’s rights).

We turn to the second issue. In considering whether to terminate a parent’s rights, the court “shall give primary consideration to the child’s safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.” Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). On our de

novo review, we conclude these factors favored termination of the father's parental rights.

The child was born prematurely and was placed in the neonatal unit of a hospital for seven months. The insertion of a ventilator caused him to develop chronic lung disease and an aversion to oral feedings. He also was diagnosed with chronic kidney disease, hypertension, and other serious medical conditions.

The child went home to his mother following the hospital stay. In early 2010, the Iowa Department of Human Services became involved with the family based on a complaint the mother was not taking her son to all of his medical appointments. The child was removed from the mother's care and, over the ensuing months, was placed in several homes. By late 2010, he settled in with a foster family that was able to accommodate his special needs with the assistance of nursing services.

The mother visited the child and maintained a bond with him but showed an unwillingness or inability to attend to his serious medical needs. Accordingly, the district court terminated her parental rights. The mother did not file an appeal.

The child's father was not a consistent presence in his life. When the department became involved, he was living with his mother in Illinois and was subject to federal parole conditions, including a prohibition from entering the state of Iowa. This condition limited his ability to see his son.

Nonetheless, the father was afforded an opportunity to care for the child during the summer of 2010. The father lost interest in less than a month, and his parenting role ended completely in September 2010 with his arrest on a federal

narcotics charge. The father was convicted and began serving a three-year sentence at an Illinois correctional facility. His anticipated release date was March 2012. Meanwhile, he had no contact with the child.

It is clear from this record the father was in no position to care for his son at the time of the termination hearing or in the imminent future. Recognizing this reality, the father appears to suggest that the child's mother would be an appropriate caretaker until he is released from prison. But, as noted, the mother's parental rights were also terminated, and she did not appeal. Additionally, the father cannot raise arguments that are unique to the mother. See *In re D.G.*, 704 N.W.2d 454, 459 (Iowa Ct. App. 2005) (“[I]n termination of parental rights proceedings each parent's parental rights are separate adjudications, both factually and legally.”). For these reasons, the mother's circumstances do not assist the father.

As for the claimed applicability of certain exceptions to termination, neither the father nor anyone else testified to his bond with the child. See Iowa Code § 232.116(3)(c) (allowing deferral of termination where “[t]here is 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”). Nor was there any evidence the child was in institutional care. See *id.* at § 232.116(3)(d) (allowing deferral of termination where “[i]t is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child”). And the father's incarceration did not qualify as an absence that would warrant deferral of termination. See *id.* at § 232.116(3)(e) (allowing deferral of

termination where “[t]he absence of a parent is due to the parent’s admission or commitment to any institution, hospital, or health facility or to active service in the state or federal armed forces”); *In re J.V.*, 464 N.W.2d 887, 890 (Iowa Ct. App. 1990), *overruled on other grounds by In re P.L.*, 778 N.W.2d 33 (Iowa 2010) (concluding “institution” in Iowa Code section 232.16(3)(e) “was not intended to include penal institutions”).

We conclude termination of the father’s parental rights was in the child’s best interests and none of the cited exceptions to termination applied.

AFFIRMED.