

**IN THE COURT OF APPEALS OF IOWA**

No. 2-077 / 11-2035  
Filed February 15, 2012

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

**K.B., Father,  
Appellant.**

---

Appeal from the Iowa District Court for Clinton County, Philip Tabor,  
District Associate Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

Matthew L. Noel of Blair & Fitzsimmons, P.C., Dubuque, for appellant  
father.

Jennifer Olsen, Davenport, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Mike Wolf, County Attorney, and Cheryl J. Newport, Assistant  
County Attorney, for appellee State.

Neill Kroeger, LeClaire, for minor child.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ. Tabor, J.,  
takes no part.

**DANILSON, J.**

A father appeals the termination of his parental rights to his daughter, K.M., who was born in December 2008 and voluntarily placed in foster care by the mother in October 2010.<sup>1</sup> Because statutory grounds for termination have been met, and extension of timelines would not be in the child's best interests, we affirm.

**I. Background Facts and Proceedings.**

K.M. has never lived with her father. Her mother was unable to provide for her and voluntarily placed her in foster care in October 29, 2010.<sup>2</sup> The mother gave the department of human services (DHS) the names of two putative fathers; K.B. was one of the putative fathers. On December 15, 2010, DHS sent a letter to K.B. at a Delmar, Iowa, address, informing him he had been named as a possible father and asking him to contact DHS social worker Sheryl Murphy. Murphy received no response to that letter.

A child in need of assistance (CINA) petition was filed on December 29, 2010.

The other putative father attended an uncontested CINA adjudicatory hearing on January 25, 2011, and the juvenile court adjudicated K.B. a CINA, continued her placement out of the mother's care, and ordered funds be made available for paternity testing.

---

<sup>1</sup> The mother's parental rights were terminated in May 2011, and she did not appeal.

<sup>2</sup> After K.M.'s birth, she was placed under a temporary guardianship with a family friend for several months, returned to her mother's care for a time, and then was cared for by a coworker of the mother for approximately six months. When the mother voluntarily placed K.M. in foster care, she was again pregnant and indicated she did not intend to keep the baby.

On March 9, 2011, an amended CINA petition was filed naming K.B. as an alleged father.

On March 14, the county attorney filed an amended petition for termination of parental rights listing two "alleged fathers," one being K.B.

On March 29, a return of service for the amended termination petition states no service on K.B. as he "is not living at address given, lives out of state, address unknown."

On March 23, a return of service for the amended CINA petition was filed with the court, which noted no service on K.B. at the Delmar address had been obtained "per landowner of address given, they have not seen [K.B.] in 2 months and once in a while the ex-girlfriend shows up to move items out of residence."

On March 25, Murphy sent K.B. a letter to the same Delmar, Iowa, address informing K.B. that paternity testing was scheduled for April 14, 2011.

On April 4, 2011, K.B. applied for and was granted appointed counsel. On the application for appointment of counsel form is listed the same Delmar, Iowa, address used by DHS. "Relationship to child" shows a check mark by "parent"; but a handwritten entry next to "other" states "no DNA paternity test @ present time."

K.B. attended the paternity testing appointment on April 14, 2011.

On June 7, 2011, a hearing was held and K.B. attended. In a June 8, 2011 order, the court wrote:

Pursuant to the stipulation of the parties and the evidence submitted, clear and convincing evidence exists to support the conclusion that the child is in need of assistance pursuant to Sections 232.2(6)(a), (c)(2), and (g), Iowa Code (2011). Specifically, the Court FINDS this child was given to a family

member of the mother. The mother's rights have been terminated. The father has had paternity testing. The testing has not come back to show that he is clearly the father, and the Court believe that jurisdiction of this Court is important for the child's permanency.

K.M. remained in foster care.

K.B. attended a family team meeting on June 23, 2011. K.B. stated he had moved and would provide his new address and phone number as he did not have it that day.

K.B. missed a scheduled visit with his daughter the week of June 20, explaining he had hurt his back. He did not call his service provider to confirm his visit the following week.

A dispositional hearing was held on July 13, 2011. K.B. did not attend, but his counsel did. A social history was introduced which indicated K.B.

does a good job with giving [K.M.] her space as he is a stranger to her. [K.B.] get[s] down on the floor and plays with toys with [K.M.]. [K.B.] appears to want to work on his relationship with his daughter.

In the July 14 dispositional order, the court noted K.B. had requested services. The court ordered "[s]ervices will be provided to the father according to the Case Plan, and visitation has been established and will continue." The court also ordered adoption of the proposed case plan "with the understanding that termination is not the current goal as to the father."

In July 2011, a new Family Safety, Risk and Permanency (FSRP) service provider took over the case. A worker for the FSRP provider, as well as Murphy, attempted to call the phone number they had for K.B., but got a message it was no longer a working phone. A letter sent to K.B. at the address DHS had available was returned. K.B. had no visits with K.M. in July 2011. At the end of

July, K.B. contacted Murphy stating he had moved to Lost Nation and would get back to her with his new address and phone number.

From July 15 to August 12, 2011, the FSRP provider's calls to K.B. were unsuccessful. On August 12, 2011, K.B. returned a call to the FSRP provider cancelling a visit stating he had to work. K.B. stated he was having trouble with his phone.

K.B. did not receive visits with K.M. in September 2011.

K.B. acknowledged receipt of the amended CINA and termination petitions in a document signed and filed on October 18, 2011. That document indicates a Miles, Iowa, address for K.B.

A termination hearing set for November 15, 2011, was rescheduled for November 29 pursuant to K.B.'s request.

According to a November 23, 2011 DHS report to the court, on October 18, 2011, K.B. contacted Murphy informing her he had been unable to contact his FSRP worker and was told he had a new worker, Renee Snyder. He was given the current worker's contact information. K.B. had two hours of supervised interactions with K.M. the week of October 24, 2011; two two-hour supervised visits the week of October 31; and one two-hour visit the week of November 7 (he cancelled the second visit due to having other sick children). The week of November 14, 2011, K.B. had one visit and refused the other saying "he did not want to be in the same room with the provider." K.B. had a visit scheduled with K.M. the week of November 21 that did not occur. The report to the court indicates this was because:

[K.B.] was offered an interaction with his daughter at the [library]. The interaction was set to begin at the [library] from 9:00 a.m. and [K.B.] had called to confirm the visit on November 22, 2011 as he is supposed to do. It was agreed upon that [K.B.] would meet Jeanne Brus, FSRP worker and [K.M.] at the Library and other arrangement would be made if the library was not available. The library does not open until 10:00 a.m. Jeanne Brus attempted to contact [K.B.] when he did not arrive. [K.B.] did not answer the first time but did answer on her second attempt. She inquired where he was at, he indicated he could see her from where he was at, so she told him to come over to see his daughter and they would work something else out. [K.B.] did not approach her. He did not participate in the interaction with his daughter although he indicated he was able to physically see the child.

[K.B.] later called and came to DHS to relay his frustration and indicated that he had gone to Grace Lutheran Church to inquire if he might be able to use some of their space. He did not share this information with Jeanne Brus when it would have been possible for him to spend time with his child. Therefore he missed another interaction with his child.

In Murphy's report to the court she observes that when K.B. does interact with K.M., "he does a good job of nurturing her and getting down on the floor to interact with her." She also notes that:

[K.B.] appears to care about his daughter however there are significant concerns about his ability to follow through with meeting all of her needs since he has not even done so to be able to spend time with the child to further increase his bond with her.

She summarized:

[K.B.] has not shown he is committed to his daughter; he has missed over half of her life due to his choices of not coming forward in the beginning of her life. [K.B.] has not made efforts to do his interactions or put her needs first. [K.B.] has moved three times since April of 2011. [K.B.] does not have a full time job, and has not paid child support to his other children since February of 2011. [K.B.] has not displayed stability for himself which is a concern that he will not be able to do for his daughter.

[K.M.] is very settled in her current foster home. When [K.M.] entered family foster care she was four to five months delayed. [K.M.] has been evaluated again by AEA and is four to five months ahead in all of her areas of development. DHS does not base a recommendation of TPR on a child's attachment to a

foster family however, there does not appear to be a strong commitment on the part of her father to allow her to develop that attachment to him. [K.M.] is very bonded to the foster parents and their two sons. [K.M.] identifies the current foster parents as the adults in her life who will meet her needs. She has shown a health attachment to them. . . . They have indicated a commitment to adopt her.

At the termination hearing held on November 30, 2011, K.B.'s testimony was evasive and showed no acceptance of responsibility for his lack of contact with K.M. As an example, after reluctantly acknowledging he had no visits in July, August, or September, and not being able to recall how many times he visited K.M. in October:

Q. Can you tell the Court why you did not have visits during those months? A. Which months? Can you be more specific?

Q. June, July, August, September, and not until October 27, 2011, did you have a visit. Explain to the Court why you did not visit with your child during those months? A. In June?

Q. All of those months, sir. A. I—I thought, according to my records, I did visit with [K.M.] in DeWitt park in June. And then there was a gap to where I had a worker that I did not visit with—have any visits with that was assigned to my case, which she did do a home visit. She came out and did an inspection and never heard anything else from her, which she no longer works for the agency.

Q. Whose fault is it that there were no visits in the summer months up until October 27th, 2011, sir? A. I'm not sure. I don't have control—

Q. Do you— A. —of it. DHS controls it.

. . . .

Q. Wouldn't you agree with me, sir, that it's difficult to set up visits if you don't contact people and you don't have a phone in which people can contact you? A. That's logical, I believe.

Q. Okay. Tell the Court what your housing situation has been in the past year. A. As far as what?

Q. Well, starting in January, where did you live? A. . . . Delmar, Iowa.

Q. And have you lived there since January— A. No.

Q. —of 2011? A. No.

Q. Okay. How long did you live there? A. Where?

Q. The address you just gave, sir. A. How long did I live there? Since January, you're saying, or prior to that?

Q. When did you move out of there? A. In early June of 2011.

Q. Okay. Were you living with anyone there? A. Where?

Q. Delmar, Iowa, sir.

Eventually, K.B. stated he did not see K.M. because he was out of town working as a concrete finisher on various jobs. He stated he quit working for one employer at the end of August 2011 and was “trying to get my business plan all together, get my own thing going.” He was currently living in Miles, Iowa, with his ex-wife and two of his five children. In addition to K.M., K.B. stated he had two other children with two different women: a teen girl he saw once a month and a five-year-old boy, “I don’t see . . . often”—the last time being six months prior. He testified he was in arrears on child support for his other children and had not provided financial support for K.M.

The court ordered K.B.’s parental rights terminated pursuant to Iowa Code section 232.116(1)(b), (e), and (h) (2011).<sup>3</sup> K.B. appeals.

---

<sup>3</sup> Iowa Code section 232.116(1) provides in pertinent part:

Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

. . . .

(b) The court finds that there is clear and convincing evidence that the child has been abandoned or deserted.

. . . .

(e) The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child’s parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, “*significant and meaningful contact*” includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative



## II. Standard of Review.

Our review of termination of parental rights proceedings is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). 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. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). We will uphold an order terminating parental rights if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. *Id.* Evidence is "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

## III. Analysis.

Termination of parental rights under chapter 232 follows a three-step analysis. *In re P.L.*, 778 N.W.2d at 39. First, the court must determine if a ground for termination under section 232.116(1) has been established. *Id.* If a ground for termination is established, the court must, secondly, apply the best-interest framework set out in section 232.116(2) to decide if the grounds for

---

duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

....

(h) The court finds that all of the following have occurred:

(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.

termination should result in a termination of parental rights. *Id.* Third, if the statutory best-interest framework supports termination of parental rights, the court must consider if any statutory exceptions set out in section 232.116(3) should serve to preclude termination of parental rights. *Id.*

**A. Grounds for Termination.** The juvenile court cited three independent grounds for termination under Iowa Code section 232.116(1). On appeal, we may affirm the juvenile court's termination order on any ground that we find supported by clear and convincing evidence. Because we conclude grounds for termination exist under section 232.116(1)(h), we need not address the other two grounds found by the juvenile court. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999).

Section 232.116(1)(h) provides termination may be ordered when there is clear and convincing evidence a child under the age of three who has been adjudicated a CINA and removed from the parents' care for at least the last six consecutive months cannot be returned to the parents' custody at the time of the termination hearing. Upon our de novo review of the record, we have no substantial doubts these conditions have been proved.

K.B. has been out of her parents' custody since October 2010. The record does not provide any evidence that K.M. could safely be returned home with K.B. at the time of the termination hearing. K.B. has never parented K.M. in other than supervised visits, and those have been minimal. K.B. does not have stable housing, employment, transportation, or a commitment to K.M.'s well-being. While he claims not to have known K.M.'s mother was pregnant or that the child

was his,<sup>4</sup> and lays the blame for his lack of visits at DHS's door, it is clear K.B. has not taken seriously his responsibilities to K.M. even after his parentage was proved. He had no visits with his daughter for three months and did not inform DHS how to contact him. He did not work after August 2011, which he used an excuse for his earlier inability to attend visits. There is no reason in this record to explain his failure to visit K.M. in September and October, or even to check on her welfare.

K.B. contends he should be granted an additional six months to pursue reunification. See Iowa Code § 232.104(2)(b). Under some circumstances extensions could be appropriate. "The judge considering them should however constantly bear in mind that, if the plan fails, all extended time must be subtracted from an already shortened life for the children in a better home." *In re A.A.G.*, 708 N.W.2d 85, 92-93 (Iowa Ct. App. 2005) (citation omitted). In order to continue placement for six months, the statute requires the court to make a determination the need for removal will no longer exist at the end of the extension. *Id.* We cannot do so.

Because K.M. had already been out of the home for over twelve months at the time of the termination hearing, and K.B. understood the critical nature of the timeline he was facing when he sought services in June 2011, we view the proceedings with a sense of urgency. See Iowa Code § 232.104(1) (setting a twelve-month period). Just prior to the termination hearing, K.B. did attend some visits. K.B.'s belated and minimal attempts to build a relationship with his daughter are too little, too late. See *C.B.*, 611 N.W.2d at 495.

---

<sup>4</sup> There is some indication in the record these claims are not accurate.

Our legislature has carefully constructed a time frame to provide a balance between the parent's efforts and the child's long-term best interests. *Id.* at 494. "Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). We find clear and convincing evidence that grounds for termination exist under Iowa Code section 232.116(1)(h).

**B. Factors in Termination.** Having found statutory grounds for termination exist, we turn to further consider the circumstances described in section 232.116(2) that drive the actual decision-making process. In deciding whether to terminate parental rights based on a particular ground, we must give primary consideration to "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." Iowa Code § 232.116(2). We may consider whether the child has been placed into a foster family, the extent to which the child has been integrated into the family, and whether the foster family is able and willing to adopt the child. *Id.* § 232.116(2)(b). Additional factors are identified under the statute to further assess the integration of the child into the foster family. *Id.*

Upon our *de novo* review, we find the considerations guiding the decision support termination. K.M., a child who had been moved several times prior to her current foster care placement, has made up her deficits and has been successful in forming attachments to her caretakers. She does not have a close relationship with her father—by all accounts, she has seen him but a handful of times in her life. She is fully integrated into her current placement, a family who

is willing to adopt her and provide her with permanency. K.B. has not shown himself to be a capable parent in the statutory time frame allotted to him and accordingly find the factors of section 232.116(2) support termination.

**C. Exceptions to Termination.** K.B. cites none, and we find no exception in section 232.116(3) applies to make termination unnecessary. We therefore affirm the termination of K.B.'s parental rights.

**AFFIRMED.**