

IN THE COURT OF APPEALS OF IOWA

No. 2-079 / 11-2036
Filed March 14, 2012

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

M.H., Father,
Appellant,

T.L., Mother,
Appellant.

Appeal from the Iowa District Court for Jackson County, Phillip Tabor,
District Associate Judge.

A mother and father appeal separately from the order terminating their
parental rights. **AFFIRMED ON BOTH APPEALS.**

Les M. Blair III of Blair & Fitzsimmons, P.C., Dubuque, for appellant-father.

John L. Kies of Kies Law Firm, Bellevue, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Chris Raker, County Attorney, and Sara Davenport, Assistant
County Attorney, for appellee.

Mark R. Lawson of Mark R. Lawson, P.C., Maquoketa, guardian ad litem
for minor children.

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

BOWER, J.

Tiffany, the mother of both children, and Matthew, the father of J.H., appeal from the order terminating their parental rights.¹ Both claim the ground for termination is not supported by the evidence and termination is not in the children's best interest. We affirm on both appeals.

I. Background.

This family first came to the attention of the department of human services in December 2009 in a child abuse investigation that resulted in a founded report of denial of critical care and failure to provide adequate shelter. Pursuant to a safety plan, the children, E.L., born in December 2007, and J.H., born in May 2009, remained with the parents. At the time, the family was living with Matthew's parents. The family soon moved into their own home. In February 2010 a domestic assault resulted in an order of protection between Matthew and Tiffany, and Matthew was ordered to complete a batterer's education program. The family then moved in with Tiffany's parents. In March the parents voluntarily placed the children with the maternal grandparents in March. The mother received voluntary services from an in-home provider and the department. However, by July, Tiffany had become belligerent and refused to work with the in-home provider and the department. A petition to adjudicate the children in need of assistance was filed in August. Following a hearing in September, the court concluded the children were in need of assistance under Iowa Code section

¹ The court also terminated the parental rights of E.L.'s father. He is not involved in this appeal.

232.2(6)(c)(2) (2009), and continued the children's placement with the maternal grandparents. That placement was confirmed in subsequent orders.

Following a permanency hearing in July 2011, the court found "none of the parents have been participating successfully in the case plans." Given the lack of progress of the parents and their failure to address the circumstances that would constitute adjudicatory harm to the children if they were returned to the parents' care, the court ordered that termination of parental rights be pursued.

In September, the State petitioned to terminate parental rights. The petition came on for a contested hearing on December 1. The court issued its order terminating Tiffany's and Matthew's parental rights under Iowa Code section 232.116(1)(h) (2011). The court, after considering the elements in section 232.116(2), concluded termination was in the children's best interests and "failure to terminate parental rights would be contrary to the welfare of both children, as the termination of parental rights is the only reasonable means to establish permanency for these two children."

Both parents appeal.

II. Scope and Standards of Review.

We review terminations of parental rights de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the district court's findings of fact, especially concerning credibility, but are not bound by them. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Grounds for termination must be supported by clear and convincing evidence. *Id.* Evidence is "clear and convincing" if there

are no “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

III. Merits.

A. Mother. Tiffany contends clear and convincing evidence does not support terminating her parental rights under section 232.116(1)(h). She also contends termination is not in the children’s best interest.

Termination of parental rights under chapter 232 follows a three-step analysis. *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 by clear and convincing evidence. *Id.* Second, if a ground for termination has been established, the court must then apply the best-interest framework set forth in section 232.116(2) to decide if the grounds for 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 elements set forth in section 232.116(3) should work to preclude termination of parental rights. *Id.*

Statutory Ground. There is no dispute the first three elements of section 232.116(1)(h) are satisfied. The children are three years old or younger, they have been adjudicated children in need of assistance, and have been removed from their parents physical custody for more than six months. Tiffany contends the children could be returned to her now. She argues she is in compliance with the case plan, she is employed part time, she has no history of substance abuse, and she parents the children appropriately during visitation.

By the time of the hearing, Tiffany was living at Maria House, a women's shelter that allows children. She had given birth to another child in November and that child was with her at Maria House. The program director at Maria House testified that Tiffany has problems following the shelter rules and that Tiffany appeared to have the parenting knowledge of a first-time parent, not the parent of three children. More than once, Tiffany left the child unattended while she went outside to smoke. The director noted Tiffany violated the rules several times, including having alcohol in her room. Tiffany struggles with rules and with keeping her room neat and clean. The director also testified that if E.L. and J.H. were placed with Tiffany and her newborn child, it would be "pretty tight quarters" but not "impossible." However, it does not appear Tiffany has had any overnight visitation with the children at Maria House to see how she can handle three children together.

Although Tiffany has worked at completing the responsibilities in the case permanency plan, much of her effort has come only since the State filed the petition to terminate her parental rights. She did not see her children between July 28 and October 2 because "we had to search for employment, and they had a lot of different, like programs and stuff that they wanted us to get into." Of the nine hours of counseling Tiffany participated in, virtually all of them occurred after the termination petition.

Of greater concern to us is Tiffany's relationship with Matthew. He has serious problems with anger and violence. When Tiffany and Matthew are together, they fight. Tiffany testified her intention was to continue in a

relationship with Matthew and to raise their children together. During the pendency of this case, they only lived together in their own home for about a month, and the result was domestic violence. Matthew has an explosive temper and sometimes refuses to take the medication prescribed to help him control it. Matthew's violent anger was of such concern to the department that he still had only supervised visitation with his child at the time of the termination hearing.

A child "cannot be returned to the custody of the child's parents as provided in section 232.102" if doing so would place the child at risk of harm that would justify finding the child in need of assistance. See Iowa Code § 232.116(1)(h)(4); see also *id.* § 232.102(5), (7), (9). Tiffany has not demonstrated the ability to care for all three children on her own. She has indicated her intention to reunite with Matthew and raise the children with him. His propensity for violence and unpredictable behavior simply is too great to allow for a safe return of the children to Tiffany. Clear and convincing evidence supports the juvenile court's finding the children could not be returned to Tiffany's care at the time of the termination hearing. We affirm the statutory ground for termination cited by the court.

Best Interests. Tiffany contends termination of her parental rights is not in the children's best interests "because of the strong parental bond between mother and children." In considering the best interests of the children, we 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." *Id.* § 232.116(2). In determining the

immediate and long-term best interests of the children, we consider what the future would likely hold if they were returned to their parents. See *In re J.W.D.*, 458 N.W.2d 8, 10 (Iowa Ct. App. 1990). “Insight for that determination is to be gained from evidence of the parents’ past performance for that performance may be indicative of the quality of future care the parents are capable of providing.” *In re A.J.*, 553 N.W.2d 909, 913 (Iowa Ct. App. 1996). Case history records are entitled to much probative force when a parent’s record is examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

There is evidence of a bond between Tiffany and the children. Yet she could go five weeks without exercising visitation with them at about the time the State was petitioning to terminate her parental rights. Even though Matthew’s anger and violence issues present a danger to her children, Tiffany affirmed her intention to reunite with Matthew and raise the children with him. Tiffany has had over a year to reunite with her children, but failed to do so. The children are in a safe, stable home with Tiffany’s parents. There is no evidence that the parent-child bond is so close that severing the parent-child bond would be detrimental to the children. See Iowa Code § 232.116(3)(c). We conclude termination of Tiffany’s parental rights was appropriate under section 232.116(2).

No discretionary factor enumerated in section 232.116(3) affects our determination the district court was correct in terminating Tiffany’s parental rights.

B. Father. Matthew contends clear and convincing evidence does not support terminating his parental rights to J.H. He argues the court’s order “is full of legal conclusions, but fails to state a single fact relating to the father to support

any of them.” Matthew argues he has completed all the requirements of the case plan except for couples’ counseling, he loves his child and is bonded with the child, his visits went well, he demonstrated appropriate parenting skills, and he was able to meet the child’s emotional needs. Additionally, Matthew argues his [parents’] home is clean and appropriate for his daughter, he is employed [doing odd jobs], and he can support her. Matthew contends “verbal disagreements with the mother when the children are not present does not constitute grounds for termination.”

By the time of the termination hearing, Matthew was having a single, two-hour, supervised visit with his daughter each week. J.H. was two years old. In response to the concerns expressed by the service providers regarding Matthew’s tendency to lose his temper and become physically violent, Matthew replied, “It depends on how hard I’m provoked and towards who it may be shown.” He has been diagnosed with ADHD,² OCD,³ and Explosive Disorder. He admitted going off his medications for a while a couple of months before the termination petition was filed “kind of testing myself to see if they were working.”

Matthew was living with his father, who had been on unemployment for some time. Matthew works odd jobs. He has not completed couples’ counseling with Tiffany. Matthew and Tiffany have parented the children independently for only about a month. “[O]ur statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.” *In re R.M.*, 431 N.W.2d 196, 199 (Iowa Ct. App. 1988). Given the instability in

² Attention deficit/hyperactivity disorder.

³ Obsessive-compulsive disorder.

Matthew's life, his past and continuing volatile relationship with Tiffany, and his tendency toward explosive, violent reactions to provocation, we agree with the court that J.H. could not be returned to Matthew's care at the time of the termination hearing. Clear and convincing evidence supports termination under section 232.116(1)(h).

Matthew does not separately argue termination of his parental rights to J.H. is not in her best interests and he does not cite to section 232.116(2) in his contention that termination of his parental rights is not supported by clear and convincing evidence. Nonetheless, when we consider the statutory factors in section 232.116(2) and the immediate and long-term interests of the child, we, like the district court, conclude termination of Matthew's parental rights is in J.H.'s best interest. At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Our legislature has made the determination that point is reached when the statutory time for patience with a parent has passed. *C.B.*, 611 N.W.2d at 494. Matthew has had more than twice the statutory time allowed to demonstrate he can safely parent his daughter. J.H. and her half-sibling are in a stable, secure placement with their maternal grandparents, who seek to adopt them. We conclude the current placement best promotes the children's physical, mental, and emotional growth, and is in their best interests. We affirm the termination of Matthew's parental rights as in J.H.'s best interests.

Matthew does not argue any discretionary factor enumerated in section 232.116(3) serves to preclude termination of his parental rights, and we find none applies here.

We affirm the termination of Tiffany's parental rights to E.L. and J.H. and the termination of Matthew's parental rights to J.H.

AFFIRMED ON BOTH APPEALS.