

**IN THE COURT OF APPEALS OF IOWA**

No. 2-154 / 12-0007  
Filed March 28, 2012

**IN THE INTEREST OF S.L.,  
Minor Child,**

**J.L., Father,  
Appellant.**

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Appeal from the Iowa District Court for Cerro Gordo County, Gregg R. Rosenblatt, District Associate Judge.

A father appeals the termination of his parental rights to his child.

**AFFIRMED.**

Colin C. Murphy of Law Offices of Colin C. Murphy, P.C., Clear Lake, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Carlyle D. Dalen, County Attorney, and Nichole Benes, Assistant County Attorney, for appellee.

Sarah Reindl, Mason City, attorney and guardian ad litem for minor child.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**BOWER, J.**

A father appeals the termination of his parental rights to his child. He contends the State failed to prove the grounds for termination by clear and convincing evidence and that termination is not in the child's best interest. The father also contends the court improperly denied his motions to continue and for a new trial.

Upon review, we conclude the juvenile court was within its discretion to deny the father's motions to continue trial and for a new trial. Although the father's housing situation was one of the concerns impacting the decision of whether the child could safely be returned to his care, other concerns regarding the father's ability to parent the child safely were sufficient to support termination of his parental rights. Because clear and convincing evidence exists and termination is in the child's best interest, we affirm.

***I. Background Facts and Proceedings.***

S.L. was born in June 2010 and came to the attention of the Department of Human Services (DHS) in January 2011 after the mother left the child in the care of the paternal grandparents. The grandfather reported his belief that the mother was using methamphetamine and stated she would often leave the child for several days at a time. The child was removed from the mother's care and placed in foster care. The mother tested positive for amphetamines and methamphetamine.

A child protective assessment was completed, with founded child abuse against the mother for denial of critical care and failure to provide proper

supervision. Following a February 10, 2011 hearing, the child was adjudicated in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) (child likely to suffer harmful effects as a result of parent failing to exercise reasonable care in supervising the child) and (n) (drug abuse results in the child not receiving adequate care) (2011). The child continued in foster care throughout this case.

Several areas were identified as impediments to the parents' ability to care for the child safely. These included: the mother's substance abuse, the parents' mental health and low-functioning, and domestic abuse between the parents. Although they attended visitation regularly with the child during the first few months following the CINA adjudication, they did not participate in services. In April 2011, the mother was arrested and charged with two counts of identity theft, to which she later pled guilty.

The mother attempted substance abuse treatment but was unsuccessfully discharged in September 2011. She tested positive for methamphetamine on September 2, 2011. The mother stopped attending counseling sessions with her last session on September 17, 2011. The parents began missing visitation with the child and refused drug testing. On September 26, 2011, the police were called to the parents' home because of a verbal domestic dispute between them.

The father has stable employment but did not maintain housing throughout the pendency of this case, living with the mother or with friends. He had not yet obtained housing at the time of termination and was living with the mother. The father also did not have a valid driver's license, but continued to drive. While the father continued to participate in services, he was argumentative and resistant.

A termination petition was filed on September 12, 2011, and trial was held on October 6, 2011. The father's oral motion to continue the proceedings was denied. At the hearing, the child protective investigator testified regarding her concerns about the parents' illegal drug use, mental health, lack of supervision, and domestic violence. She opined the parents' prognosis for change was poor. The family support worker testified that while the child appeared to be more attached to the father than the mother, the child was most strongly attached to the foster parents and daycare providers. She was concerned regarding the parents' poor judgment in financial matters. The father acknowledged that he did not have a suitable home for the child if she were returned to his care.

The court-appointed special advocate (CASA) recommended the parents' rights be terminated, citing the mother's relapse to drug use, the parents' lack of participation in visitation, the parents' mental capacity, and their tumultuous relationship. She was also concerned that the father did not have a driver's license and had taken a trip to Chicago with a registered sex offender. The CASA also testified the child is very bonded to the foster parents and the foster placement is very stable and beneficial to the child.

The care coordinator testified the child could not be safely returned to either parent, given the mother's continued drug use and failure to complete treatment, unresolved mental health concerns for both parents, the father's unstable housing and lack of forthrightness, and the parents' unstable relationship.

The juvenile court entered its order terminating the parents' rights on December 6, 2011. It found that although the DHS had made reasonable efforts to reunite the parents with the child, clear and convincing evidence showed the child could not safely be returned to either parent and terminated their rights pursuant to section 232.116(1)(h). The court found termination was in the child's best interests and that none of the exceptions found in section 232.116(3) applied.

The father filed a motion for new trial based on newly-discovered evidence because he obtained housing on November 19, 2011. The juvenile court denied the motion, stating that the father's pending application for housing assistance was considered by the court in its ruling. The court did not consider the evidence to be newly discovered and the father appealed.

## ***II. Motion to Continue.***

The father first contends the juvenile court abused its discretion in denying his motion to continue. We review the juvenile court's denial of a motion for a continuance under an abuse of discretion standard. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). We only reverse if injustice will result to the party desiring a continuance. *Id.* Reversal is only warranted where denial of the motion is unreasonable under the circumstances. *Id.*

The father asserts a continuance was warranted to allow him additional time to reunite with the child. He argues this additional time would have allowed the DHS to further evaluate his ability to parent the child, as well as enabled him to secure appropriate housing so the child could be returned to his care.

Although the law requires a “full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,” this patience is built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). This is because patience on behalf of a parent can quickly translate into intolerable hardship for the child. *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). “The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987).

Observing the foregoing principles, we find the father has failed to show the district court abused its discretion in denying his motion to continue. The father had nearly eight months of time between the CINA adjudication and the termination hearing to obtain appropriate housing but waited until the eve of termination to apply for housing assistance. We find the denial of the motion was not unreasonable under the circumstances and determine the court did not abuse its discretion.

### ***III. Termination of Parental Rights.***

Our review of termination decisions is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the juvenile court’s findings of fact even though we are not bound by them. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We especially give weight to the juvenile court’s findings when assessing witness credibility. *Id.*

We will uphold an order terminating parental rights where there is clear and convincing evidence the grounds for termination under section 232.116 have

been proved. *Id.* Evidence is clear and convincing where there are no serious doubts as to the correctness or conclusions of law drawn from the evidence. *Id.*

The father contends the juvenile court erred in terminating his parental rights because the grounds for termination were not proved by clear and convincing evidence. The juvenile court terminated the father's parental rights pursuant to Iowa Code section 232.116(1)(h). Termination is appropriate under this section where clear and convincing evidence shows the following:

- (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.

The father does not dispute the first three elements were proved. Instead, he contends the State failed to prove the child could not be returned to his care at the time of termination.

The father's argument centers on the fact he did not have adequate housing. The father claims that while he did not have a place to live at the time of the termination hearing, he was in the process of applying for housing assistance and could obtain housing shortly thereafter. We reject his argument. While housing was one obstacle to having the child returned to his care, it was not the only one. The State's witnesses continued to have concerns about the father's ability to safely parent the child. While he did demonstrate some appropriate basic child care skills, the father never progressed beyond

supervised visitation with the child and required suggestions or direction. There were also concerns regarding his financial responsibility, lack of a driver's license, relationship with the mother, and conflict with service providers. Clear and convincing evidence shows termination was appropriate under section 232.116(1)(h).

The father also contends termination is not in the child's best interest. The best interest determination requires us to "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." *P.L.*, 778 N.W.2d at 40 (citing Iowa Code § 232.116(2)). The father states termination is detrimental to the child due to the closeness of the parent-child relationship.<sup>1</sup>

We conclude termination is in the child's best interest. Although there was evidence the child was bonded with the father, the child still went to service providers when tired or when the father could not discern the child's needs. The child appeared to be better attached to the foster parents and daycare providers than either of the parents.

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<sup>1</sup> The father argues termination is not in the child's best interests due to the closeness of his bond with the child. We note that this is also a factor that may be considered in determining not to terminate parental rights under section 232.116(3)(c) (stating the court need not terminate parental rights 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"). Regardless of whether we consider this as part of a best interests analysis under section 232.116(2) or as an exception to termination found in section 232.116(3), our determination is the same.



Because the State has proved the grounds for termination by clear and convincing evidence and termination is in the child's best interest, we affirm the order terminating the father's parental rights.

**IV. Motion for New Trial.**

Finally, the father contends the court abused its discretion in denying his motion for new trial. The father brought the motion because he was approved for housing assistance after the close of evidence and successfully obtained independent housing. The father contends this new evidence would likely have changed the result of the termination proceedings.

Our scope of review of a ruling on a motion for a new trial depends on the grounds asserted in the motion. *Roling v. Daily*, 596 N.W.2d 72, 76 (Iowa 1999). If the motion is based on a discretionary ground, we review it for an abuse of discretion. *Id.* But if the motion is based on a legal question, our review is on error. *Id.* Where a motion for new trial is based on newly-discovered evidence, our review is for an abuse of discretion. *Benson v. Richardson*, 537 N.W.2d 748, 762 (Iowa 1995).

We find no abuse of discretion in denying the father's motion for new trial. The juvenile court stated it considered the father's application for housing assistance as part of the evidence in the record. The court further found that no party requested to hold the record open for consideration of the outcome of the father's housing application. Even if the evidence the father had obtained housing was considered to be newly discovered, it would not have changed the outcome if a new trial had been granted. *See Yoder v. Iowa Power & Light Co.*,

215 N.W.2d 328, 335 (Iowa 1974) (noting that in order to warrant a new trial, the newly-discovered evidence must be such that it would probably change the result if a new trial were granted). Although the father believes “the only obstacle standing in the way of reunification was the short-term lack of housing he experienced once his relationship with [the mother] ended,” we disagree. As stated above, a plethora of concerns existed regarding the father’s ability to safely parent the child; only one of those concerns related to his lack of housing.

Having considered and rejected the father’s arguments on appeal, we affirm.

**AFFIRMED.**