

IN THE COURT OF APPEALS OF IOWA

No. 2-479 / 12-0774
Filed July 11, 2012

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

**J.M., Father,
Appellant.**

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Christopher Welch of Blair & Fitzsimmons, P.C., Dubuque, for appellant father.

William Lansing of William A. Lansing, P.C., Dubuque, for mother.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney General, Ralph Potter, County Attorney, and Jean Becker, Assistant County Attorney, for appellee State.

Heather Norman of Norman, Fleming & Norman, Dubuque, for minor child.

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

DANILSON, J.

J.M., the biological father of K.S., appeals from the order terminating his parental rights. He contends the trial court erred in finding clear and convincing evidence to support termination under Iowa Code section 232.116(1)(b). Clear and convincing evidence demonstrates the statutory grounds for termination have been met under Iowa Code section 232.116(1)(h), and an extension of six months would not be in the child's best interests as the father's interest in the child has been too little and too late. We affirm.

I. Background Facts and Proceedings

J.M. is the biological father of K.S., born in June 2011. K.S. came to the attention of the Iowa Department of Human Services (DHS) after his birth, due to his mother's escape from incarceration in Dubuque. She was found in the hospital shortly after giving birth to K.S. Authorities returned the mother to the correctional facility after her release from the hospital, at which time K.S. was put in the care of N.S., the mother's spouse. Though the mother had informed J.M. of the pregnancy in May 2011, he did not believe her and took no action to establish paternity. At that time, J.M. was residing in Texas.

As a result of the mother's incarceration, K.S. was placed in the care of N.S., who demonstrated significant problems with alcoholism and an inability to properly care for K.S. In June 2011, after unsuccessful exploration of placement with a friend of the mother, DHS obtained a voluntary consent from the mother for foster care placement.

Removal of K.S. occurred on September 14, 2011. On October 31, 2011, K.S. was adjudicated a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(n) and (o).

J.M. traveled to Iowa and submitted to paternity testing in late October 2011. His paternity was confirmed in November, but J.M. was not notified of the paternity results or offered services until December due to his change of address.

J.M. was able to travel from his home in Texas to see K.S. for the first time in February 2012. J.M. had two visits with K.S. before returning to Texas. Although K.S. was very slow to warm up to J.M., the visits went relatively well. J.M.'s parents also sought involvement in K.S.'s life and attended the visits between J.M. and his son.

On March 13, 2012, the State petitioned for termination of the parental rights of J.M., the mother, and N.S. Both J.M. and the mother requested an extension of time to obtain additional reunification services and to allow time for the mother's release from prison. The State argued that both biological parents and N.S. had abandoned K.S. under Iowa Code section 232.116(1)(b), and that grounds for the termination also existed under section 232.116(1)(h).¹

¹ Section 232.116(1) provides in pertinent part, "the court may order 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":

....

h. The court finds 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.

Parental rights of all parties were terminated.² The court found that J.M. was responsible for the delay in his contact with K.S. The juvenile court noted,

Even after [J.M.] received the results of the paternity test, there is no evidence that he maintained consistent contact with the Department, that he had any contact with the foster parents inquiring about [K.S.]'s well-being, or that he ever provided any type of gifts, supplies, or support for [K.S.]. Parental responsibilities include more than subjectively maintaining an interest in a child.

The court further determined that an extension for J.M. would be inappropriate due to his inability to have consistent visits with K.S. and lack of interest in DHS services following the confirmation of his paternity.

On appeal, J.M. contends that the trial court erred in finding clear and convincing evidence that his parental rights should be terminated. He further contends the trial court erred in finding clear and convincing evidence that an extension for time to continue reunification efforts would be detrimental to the minor child and that termination was in the best interests of the child.

II. Standard of Review

We conduct a de novo review of termination-of-parental-rights proceedings. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. Evidence is considered “clear and convincing” when there are no “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

(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.

² N.S. and the mother do not appeal.

III. Analysis

Iowa Code section 232.116, which governs the termination of parental rights, follows a three-step analysis. *P.L.*, 778 N.W.2d at 39. The court must first determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must then apply the best-interests framework set out in section 232.116(2) to decide whether the grounds for termination should result in the termination of parental rights. *Id.* If the best-interests framework supports the termination of parental rights, the court must finally determine whether any statutory exceptions detailed in section 232.116(3) weigh against termination of parental rights. *Id.*

A. Grounds for Termination.

The juvenile court cited two independent grounds for termination under Iowa Code section 232.116(1). We need only find termination proper under one ground to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). Because we conclude grounds for termination are met under section 232.116(1)(h), we need not discuss section 232.116(1)(b). *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 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. Here, K.S. has been out of the care of his father for the entirety of his young life, and has been out of the care of his mother since her

return to incarceration in June 2011. K.S. was adjudicated CINA in October 2011, pursuant to Iowa Code section 232.2(6)(n) and (o). K.S. could not be returned to J.M.'s care at the time of the termination hearing due to his inexperience with small children and his lack of a relationship with K.S. Although J.M. indicated he wanted to be considered as a placement option for K.S. in January 2012, he made only one trip to Iowa in February for his first and second visits with K.S. He has had no visits since then. At the termination hearing, J.M. did not dispute that he was not an option for permanent placement, but instead desired a six-month extension to address the concerns of the juvenile court that prevented him from being a permanent placement option at the time of the termination.

While J.M. demonstrated some desire to be involved in K.S.'s life by traveling to Dubuque on one occasion and visiting with K.S. twice during that time, K.S. cannot be forced to continue waiting for J.M. to become more involved in his life. "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). At K.S.'s young age of only one year, the wait for stable parenting would be detrimental. 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. *D.W.*, 791 N.W.2d at 707. "We do not gamble with the children's future by asking them to continuously wait for a stable biological parent, particularly at such tender ages." *Id.* (internal quotation marks omitted). Upon

our de novo review of the record, we find clear and convincing evidence that grounds for termination exist under Iowa Code section 232.116(1)(h).

B. Factors in Termination.

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interests, this 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 conclude that the child's best interests require termination of the father's parental rights. J.M. has had only two short visits with K.S. and has not had consistent or ongoing contact with DHS or the foster parents regarding the well-being of K.S. We agree with the juvenile court's conclusion that J.M. has not established any meaningful relationship with K.S. and permanent placement with J.M. is not an option.

C. Exceptions or Factors Against Termination.

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. The factors weighing against termination in section 232.116(3) are permissive, not mandatory. *See In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). Under

these facts, we can find no consequential factors weighing against termination that require a different conclusion.

D. Extension of Time.

J.M. maintains that an additional six months of reunification efforts would be “extremely helpful” in determining if K.S. could be returned to him. At the conclusion of a termination hearing, an additional six months may be granted if the court expects the child’s removal to no longer be necessary at the conclusion of the extension. See Iowa Code §§ 232.104(2)(b), 232.117(5). The juvenile court denied the request due to J.M.’s lack of experience, minimal contacts with K.S., and his inability to have consistent contacts.

IV. Conclusion

We appreciate that J.M. had little time between being notified of the paternity test results in December 2011 and the termination hearing on April 13, 2012. However, he was informed of the pregnancy in May 2011 and, as our supreme court has stated under similar facts, “he must be charged with some sense of involvement on the basis of his encounter” with the mother. See *In re M.M.S.*, 502 N.W.2d 4, 7 (Iowa 1993). However, he chose to be indifferent about the child until he was notified of the paternity test results. Moreover, as observed by the juvenile court, after receiving the test results “there is no evidence that he maintained consistent contact with the Department, that he had any contact with the foster parent inquiring about [the child’s] well-being, or that he provided any type of gifts, supplies, or support” for [K.S.] We agree with the juvenile court that an extension was not warranted under these facts.

The father does not dispute that there is clear and convincing evidence that grounds for termination exist under Iowa Code section 232.116(1)(h). Termination of parental rights is in the child's best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm termination of the father's parental rights.

AFFIRMED.