

IN THE COURT OF APPEALS OF IOWA

No. 2-818 / 12-1343
Filed September 19, 2012

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

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

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

Juan, the father of A.D.M., appeals the termination of his parental rights.

AFFIRMED.

Douglas L. Roehrich, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Grant K. Dugdale, Assistant Attorney General, Patrick Jennings, County Attorney, and Dewey Sloan, Assistant County Attorney, for appellee.

John Polifka, Sioux City, for mother.

Francis Cleary, Sioux City, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

Juan, the father of A.D.M., appeals the termination of his parental rights.¹ Because clear and convincing evidence supports termination under Iowa Code section 232.116(1)(d) (2011), termination is in the child's best interests, and no factor serves to preclude termination, we affirm.

I. Background Facts and Proceedings.

A child-in-need-of-assistance (CINA) petition concerning A.D.M., born March 30, 2011, was filed the day after he was born, as his mother was then herself under the jurisdiction of the court as a CINA. Adjudicatory hearings were continued three times for various reasons,² which afforded the parents almost eight additional months in which to demonstrate progress with the case plan. They failed to do so; a removal application was filed and the child removed on September 22, 2011.

A.D.M. was placed with his paternal grandmother until it became necessary to move him due to domestic disputes between his father and grandmother. A.D.M. was placed with his paternal great aunt and uncle on October 17, 2011 and has remained there since that time.

¹ The mother's rights were also terminated. She did not appeal.

² The first continuance was due to insufficient time on the court docket to convene a contested hearing. The second continuance was entered while the mother was demonstrating temporary progress at the House of Mercy, with hopes that adjudication would be unnecessary. The third continuance was necessary because the guardian ad litem/attorney for the child was not present. Thus, the hearing originally scheduled for April 25, 2011, did not take place until December 13, 2011.

A.D.M. was adjudicated a CINA on December 13, 2011, pursuant to Iowa Code sections 232.2(6)(b),³ (c)(2),⁴ and (n).⁵ The court found domestic violence between the mother and father, the father's significant criminal history,⁶ his inconsistency in follow-through with services, his failure to maintain contact with the Department of Human Services (DHS), lack of stable housing, and lack of employment all supported a CINA adjudication.⁷

The father was allowed overnight visitations after a family team meeting on April 3, 2012, but as the juvenile court observed, he

lacked follow-through with the sharing of information regarding the visits, and concerns were noted with regards to his parenting skills. [The father], when given the opportunity to attend a parent education program, stated that he did not need to attend a parenting class and he was tired of DHS coming up with "more bullshit" for him to do.

Moreover, after A.D.M.'s overnight visits with his father, the child began to hit his head on the floor.

³ Section 232.2(6)(b) provides that a "child in need of assistance" is an unmarried child "[w]hose parent . . . has physically abused or neglected the child, or is imminently likely to abuse or neglect the child."

⁴ Section 232.2(6)(c)(2) provides that a "child in need of assistance" is an unmarried child who has suffered or is imminently likely to suffer harmful effects as a result of the "failure of the child's parent . . . to exercise a reasonable degree of care in supervising the child."

⁵ Section 232.2(6)(n) provides that a "child in need of assistance" is an unmarried child "[w]hose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care."

⁶ At the time of the adjudicatory hearing, the father had convictions for possession of drugs, disorderly conduct, criminal mischief, traffic violations, and several charges of driving with a suspended or revoked license.

⁷ The court also noted the mother's history of anger management problems, unsuccessful discharge from the House of Mercy program, unwillingness to meet with the DHS case manager, and her relationship with a male who has a significant history of gang and drug involvement.

A review hearing was conducted on May 15, 2012. The father was already under probationary supervision by the Department of Corrections. He failed to utilize this opportunity for reform, and assaulted A.D.M.'s mother on May 6, 2012, days before the review hearing. A no-contact order was entered due to the ongoing violence between the mother and father.

On June 26, 2012, the father was found guilty of domestic abuse assault against A.D.M.'s mother. He was ordered to complete a batterer's education program, which takes several months to complete. At the time of the termination hearing, he had yet to begin the batterer's education program or parenting classes, despite continued concerns about his parenting skills. He was uncooperative with signing releases of information, minimized or withheld information about his life, and failed to understand his shortcomings as a parent.

Notwithstanding the difficulties A.D.M. experienced while transitioning after visits with his father, the visits continued until a couple of weeks before the termination hearing. The visits were ultimately discontinued after the father failed to respond to messages from the family consultant and A.D.M.'s great aunt and left A.D.M. in the care of his sister despite the fact that he was told not to do so.⁸

A permanency and termination hearing was held on July 10, 2012. The father asked for a continuance to give him time to meet goals of the case plan.⁹ The State and guardian ad litem both resisted a continuance given the amount of time that had already passed during the pendency of the proceedings with

⁸ His sister had a founded denial of critical care report due to caring for her children while under the influence of methamphetamine.

⁹ The mother also asked for a continuance to allow her to attend parenting class and meet other goals of the case plan.

inadequate progress demonstrated by both parents. The court denied the motion to continue the hearing, but indicated that it would consider continuation of entry of a permanency order after hearing the evidence. The court ultimately denied the request.

The child's DHS social worker testified that the parents continued a relationship over the past three years, despite reporting to the court that they were not a couple. The mother was again pregnant with the father's child. While he was repeatedly dishonest with DHS about it, the father lived with a different girlfriend who was also pregnant with his child. The relationship between the mother and father continued to be violent, as evidenced by the recent assault. The worker believed that the relationship would put A.D.M. at risk.

While the father had exercised visitation in April, the worker characterized him as "defiant" and he neglected to address concerns about his parenting that were raised in a May team meeting. In June, he failed to return A.D.M. from visitation after leaving the child in his sister's care. The worker testified that A.D.M. returned to his placement dehydrated, wearing only a soiled diaper, and "very red, looking sunburned."

The worker opined that while the father had demonstrated some progress since the initiation of the proceedings in February, it was inadequate.¹⁰ She

¹⁰ She observed that the father had obtained independent living arrangements, maintained a job for five months, and submitted to a substance abuse evaluation. He did not miss visitation, but was at times late for visits and shortened visits. He did not have a driver's license, failed to understand the importance of maintaining A.D.M.'s schedule and sleeping arrangements and other developmental needs, did not know how many words A.D.M. could say, and rejected the recommendation for parenting classes. The father had not provided any form of support like clothing or toys.

testified that an extension of time to give the parents another opportunity to demonstrate their ability to safely parent was not warranted.

They've both made some progress in some areas but not to the point that I believe the child would be in a safe or stable home. This particular child does not do well in the transitioning back and forth on the visits. He acts out after he's returned from visits for a couple days before he settles back in his routine, and I think it's time for permanency for him.

She also did not believe that an extension coupled with a guardianship would be in A.D.M.'s best interest because of "verbal attacks" that the father made about the paternal relatives with whom A.D.M. is placed, and because of the need for safety, stability, and permanency at A.D.M.'s tender age.

The juvenile court entered an order terminating the father's parental rights on July 10, 2012, pursuant to Iowa Code sections 232.116(1)(d) and (h).¹¹ The court concluded that the circumstances that led to the CINA adjudication continued to exist, and A.D.M. could not be placed in the father's care within a reasonable period after considering A.D.M.'s age and need for permanency. The father appeals, challenging the statutory grounds for termination and whether termination is in the child's best interest, noting the court's denial of his request for an extension of time to demonstrate the ability to parent.

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). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa

¹¹ The mother's rights were also terminated pursuant to the same sections.

2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* 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.” *Id.*

III. Discussion.

Iowa Code chapter 232 governing termination of parental rights follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

A. Grounds for Termination.

When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the juvenile court’s order on any ground we find supported by the record. *D.W.*, 791 N.W.2d at 707. Section 232.116(1)(d) provides that termination may be ordered when the child has been adjudicated a CINA after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, after the adjudication the parents were offered or received services to correct the

circumstance that led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

A.D.M. was adjudicated a CINA pursuant to Iowa Code sections 232.2(6)(b), (c)(2) and (n), on December 13, 2011. Factors supporting the CINA adjudication included domestic violence between the mother and father, the father's significant criminal history, his inconsistency in follow-through with services, his failure to maintain contact with DHS, lack of stable housing, and lack of employment. At the time of adjudication, the mother was not able to provide care because she had been placed into shelter care. Seven months later, at the time of the termination hearing, the mother remained unable to care for the child and the other circumstances that led to the CINA adjudication continued to exist.¹²

The father was found guilty of domestic abuse assault against the mother on June 26, 2012.¹³ After a substance abuse assessment yielded a diagnosis of alcohol abuse, intensive outpatient treatment was recommended. The father did not consider himself an addict and had periods of sporadic attendance at outpatient treatment services. He was uncooperative in facilitating a needed surgical procedure for A.D.M. and did not attend the surgery. He also failed to address concerns about his parenting, which were raised in a May 2012 family team meeting, failed to cooperate with signing releases of information, failed to respond to messages from the family consultant, and withheld relevant

¹² While the father obtained employment and housing, the remaining problems persisted despite services offered and received.

¹³ This conviction represents a violation of his probation.

information about his life. Though he was offered parent education training, he refused. As the juvenile court observed, he claimed that he did not need parenting classes and stated that “he was tired of DHS coming up with ‘more bullshit’ for him to do.”

We conclude clear and convincing evidence supports statutory grounds for termination of the father’s parental rights under section 232.116(1)(d).

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.*

The DHS worker testified that the father was neglectful of A.D.M. when the child was in his care during periods of visitation. A.D.M. demonstrated difficulty with transitioning after visitation. After the visitation was discontinued, he improved. She further noted an “ongoing pattern of domestic violence between [the mother] and [the father], and . . . a pattern of violence just on the part of [the father].”¹⁴ She concluded termination was in the child’s best interests. The State and guardian ad litem concurred.

A.D.M. was removed from parental custody on September 22, 2011. He was placed with his paternal great aunt and uncle on October 17, 2011, and has

¹⁴ A.D.M. was removed from the paternal grandmother’s home due to violent arguments between the father and his own mother.

remained there since that time. The court observed that A.D.M. “continues to thrive in the home of his paternal great aunt and uncle. . . . He is bonded and attached to his caretakers to whom he now refers to as ‘Mom’ and ‘Dad.’ His great aunt and uncle will adopt [A.D.M.] if parental rights are terminated.”

At the termination hearing, the father requested additional time to comply with services. The court denied his request. We are also convinced additional time would not result in reunification of this family, and is not in the best interest of A.D.M.

Evidence of a parent’s past performance may be indicative of the quality of future care. *In re A.B.*, 815 N.W.2d 764, 778 (Iowa 2012). The father failed to demonstrate in the ten months between the removal and termination hearing that he would comply with services offered, or that he was capable of progressing toward reunification with a six-month extension of services. At the time of the termination hearing, he had lost his visitation privileges altogether and remained less than cooperative.

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.* (quoting *In re D.W.*, 385 N.W.2d 570, 578 (Iowa 1986) (internal quotations omitted); see also *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) (“Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable.”).

We conclude termination of the father's parental rights is in A.D.M.'s best interest.

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 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).

The juvenile court found that "[n]one of the discretionary factors set forth in Iowa code section 232.116(3) serve to preclude a termination of the parent-child relationships in this matter." The father does not challenge this conclusion. Upon our de novo review, we find no reason to disturb the juvenile court's ruling.

IV. Conclusion.

Clear and convincing evidence that grounds for termination of parental rights exists under sections 232.116(1)(d), 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.

AFFIRMED.