

IN THE COURT OF APPEALS OF IOWA

No. 2-857 / 12-1407
Filed October 3, 2012

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

**D.C., Father,
Appellant.**

Appeal from the Iowa District Court for Clay County, Charles K. Borth,
District Associate Judge.

A father appeals the order terminating his parental rights. **AFFIRMED.**

John P. Greer of Greer Law Offices, Spencer, for appellant father.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, Michael J. Houchins, County Attorney, and Kristi Busse,
Assistant County Attorney, for appellee State.

James Hastings, Okoboji, for appellee mother.

Shannon Sandy of Sandy Law Firm, P.C., Spirit Lake, attorney and
guardian ad litem for minor child.

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

VOGEL, P.J.

Devius appeals the termination of his parental rights to his daughter, M.S., born in May 2010.¹ He asserts reasonable efforts toward reunification were not made, there was not clear and convincing evidence to support the district court findings, and termination was not appropriate due to his bond with M.S. We affirm.

The district court terminated Devius's rights under Iowa Code section 232.116(1)(h) (child is three or younger, adjudicated child in need of assistance (CINA), removed from home for six of last twelve months, and child cannot be returned home) (2011). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We review termination of parental rights cases de novo. *Id.*

M.S. came to the attention of the Iowa Department of Human Services (DHS) when she was born testing positive for marijuana in her system. DHS began providing the family voluntary services at that time, but with only minimal compliance by Devius. Concerns for M.S.'s safety began to escalate in March 2011 when the mother's progress began to deteriorate. M.S. was placed with her maternal grandmother on May 4, 2011, and has not been able to return to her parents' care since that time. M.S. was adjudicated in need of assistance on May 24, 2011, pursuant to Iowa Code section 232.2(6)(o). Devius was advised to cooperate with substance abuse evaluations and follow recommendations, cooperate with random drug testing, cooperate with Family Safety, Risk, and

¹ The parental rights of M.S.'s biological mother were also terminated. She does not appeal. On appeal the guardian ad litem joins in the State's argument supporting termination of Devius's parental rights.

Permanency (FSRP) services, and cooperate with mental health evaluations and recommendations.

An initial petition to terminate was filed on November 30, 2011, and a hearing was held on January 25, 2012. In a February 24, 2012 order, the district court found M.S. could not be returned to her parents' care, and that the State had proven the grounds for termination as to both parents, by clear and convincing evidence. In spite of that finding, the court decided to not terminate at that time due to considerations under Iowa Code sections 232.116(2) and (3). However, the district court specifically found "Devius has made no effort to be reunified with his daughter. Nonetheless, the court sees no benefit in terminating his parental rights today if [the mother] is being given additional time to work toward reunification."

Devius and the mother did not take advantage of the second chance the district court gave them, and a second termination hearing was held on July 11, 2012. The court again concluded M.S. could not be returned to her parents' care, the State had proved the elements to support termination, and termination was in M.S.'s best interest. Devius appeals.

Devius's first argument on appeal—that the state did not make reasonable efforts to reunify him with his daughter—has not been preserved for review. See *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005) ("The Department has an obligation to make reasonable efforts toward reunification, but a parent has an equal obligation to demand other, different, or additional services prior to a permanency or termination hearing."). Devius did not request different or additional services but claims on appeal that because of the animosity M.S.'s

maternal grandmother has for him, he was denied reasonable visitation with M.S. However, the record reflects that Devius was offered liberal visitation, and Boys Town offered its building as a neutral site, to be open for additional visitation to accommodate Devius's work schedule. The State clearly provided the father with reasonable services regarding visitation with his daughter and Devius never requested anything different.

Devius's next argument is that the State failed to prove by clear and convincing evidence that the child could not be safely returned to his custody. The district court sent a clear message to Devius that he was on borrowed time when it came to addressing his substance abuse problem in the February 24, 2012 order: "If he continues to ignore the court's orders after being given this 'second chance,' however, the court will not hesitate to terminate his rights notwithstanding any action taken or not taken as to [biological mother's] rights."

Devius's personal problems are the intertwining of his unresolved substance abuse and criminal acts. Even after receiving a "second chance" in the February 2012 order, Devius tested positive for marijuana use in March 2012. Several additional attempts to have Devius submit to drug testing were made but he did not cooperate with the requests. Devius had ample opportunity to prove his assertion that he was no longer using marijuana but declined to cooperate with those who offered him assistance. After a multiple-month hiatus from receiving any substance abuse treatment, Devius made a last minute effort at the end of June 2012, just before the second termination hearing. A report dated June 25, 2012, from Compass Pointe Behavioral Health Services reads, "The client reports no one has suggested he/she stop using." That report underscores

Devius's poor understanding of what he needed to accomplish to be a responsible parent to M.S. and regain her custody.

Criminal troubles also plagued Devius and he was arrested on May 2, 2012, for drug related charges stemming from crimes allegedly committed in the autumn of 2011. During a police interview after his arrest, Devius told the officer that "if he kept his nose clean until July, he was going to get custody of M.S. back," and that he wanted "to do whatever it [took] to get these charges away so he can be with his daughter." The very next evening, May 3, 2012, police were called to Devius's residence where he was hosting a party that involved marijuana as well as minors consuming alcohol.

At the time of the July 2012 termination hearing, Devius had three separate class D felonies pending. While the crimes were allegedly committed before the first termination hearing in which the "second chance" was given, we agree with the district court that it is "nonetheless indicative that his involvement with illegal drugs at the time of the previous termination of parental rights hearing was even greater than the court was led to believe at that time."

Because of Devius's failure to address his substance abuse problems, along with his pending criminal charges and general failure to work towards reunification, we find the district court was correct in determining that clear and convincing evidence supports the termination of Devius's parental rights to M.S. under Iowa Code § 232.116(1)(h).

Lastly, Devius argues that his bond with M.S. is so strong as to render termination detrimental to the child. Iowa Code § 232.116(3)(c).² Devius does not argue how termination would be detrimental to M.S., nor is there any evidence that their bond is exceptionally close. The testimony was that the relationship between M.S. and Devius is “more like an older brother and sister or uncles and aunts coming to visit once a week for two hours.” M.S. has resided with her maternal grandmother since May 2011 and the grandmother is willing and able to adopt M.S. M.S. is well situated there, being both safe and well nurtured.

The paramount consideration in parental termination proceedings is always the best interests of the child. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). Children should not be asked, “continuously [to] wait for a stable biological parent, particularly at such tender ages.” *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010). It was made abundantly clear to Devius that to have his daughter returned to him, he must improve his situation so that M.S. could be safely returned to his care. His lack of effort was clear to the district court as well as to us on our review. The State has proved the statutory elements warranting termination, which was in her best interests, and there is no support for Devius’s assertion that termination would be detrimental to M.S. We therefore affirm the district court’s order terminating Devius’s parental rights.

AFFIRMED.

² In his brief, Devius cites Iowa Code § 232.116(2) but the substance of his argument is under § 232.116(3)(c) and we will examine under the latter of these two sections.