

IN THE COURT OF APPEALS OF IOWA

No. 2-917 / 12-1478
Filed October 31, 2012

**IN THE INTEREST OF J.F.,
Minor Child,**

J.L., Mother,
Appellant,

J.F., Father,
Appellant.

Appeal from the Iowa District Court for Marshall County, Stephen A. Owen, District Associate Judge.

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

Jennifer Meyer of Jennifer Meyer Law, P.C., Marshalltown, for appellant mother.

Darrell G. Meyer, Marshalltown, for appellant father.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, Jennifer Miller, County Attorney, and Joshua A. Vander Ploeg, Assistant County Attorney, for appellee State.

Kevin O'Hare of Peglow, O'Hare & See, P.L.C., Marshalltown, attorney and guardian ad litem for minor child.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

DOYLE, J.

A mother and father separately appeal from the order terminating their parental rights. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

The mother and father have a history of criminal activity and substance abuse. The mother also has a history of involvement with Iowa Department of Human Services (Department), including the termination of her parental rights to another child. The mother is currently in prison, serving a ten-year sentence for possession with the intent to deliver.

The child at interest here was born in late 2011, during the mother's incarceration. At that time, the child's father was also incarcerated. The child was placed in family foster care with the foster parents of the child's half-sibling. The child has since remained.

The State filed a petition to terminate the parents' parental rights in May 2012. At that time, the father had moved to a half-way house. Following a hearing, the juvenile court entered an order terminating the both parents' rights under Iowa Code section 232.116(1) paragraphs (e) and (g) (2011). The court's order also terminated the mother's parental rights under paragraph (h) of section 232.116(1).

Both parents now appeal, separately. We review their claims de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

II. Discussion.

A. The Father.

The father asserts three claims: (1) the State failed to prove the child could not be returned to the father within a reasonable amount of time; (2) the State failed to prove that the father had not participated in services that would have resulted in the child being returned to his care and that termination was in the best interest of the child; (3) the court erred in failing to allow the record to remain open for a reasonable amount of time to allow for evidence to be presented by the father to show he had obtained appropriate residence for the child. We address his arguments in turn.

The father first argues the State failed to prove the child could not be returned to him within a reasonable amount of time. The State alleges error was waived because the father did not specifically address in his appeal any of the paragraphs of Iowa Code section 232.116(1) under which the juvenile court terminated his parental rights. “We will not speculate on the arguments [appellant] might have made and then search for legal authority and comb the record for facts to support such arguments.” *Hylar v. Garner*, 548 N.W.2d 864, 876 (Iowa 1996). The father failed to cite authority to support any claim regarding the grounds upon which the juvenile court ordered termination, and this issue has been waived. See Iowa R. App. P. 6.903(g)(3) (“Failure to cite authority in support of an issue may be deemed waiver of that issue.”).

Even if we were to reach the general argument the father makes, we would find that the district court was correct in terminating his parental rights

under Iowa Code section 232.116(1)(e).¹ This paragraph allows termination if a court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so.

Iowa Code § 232.116(1)(e). The legislature defined "significant and meaningful contact" as including, but not limited to

the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

Id.

There is no question the first two elements of section 232.116(1)(e) were met. Upon our de novo review of the record, we find clear and convincing evidence in the record that the father has not affirmatively assumed the duties of parenting. His own poor judgment and criminal conduct have resulted in his inability to sustain meaningful contact with his child. His visitation with the child did not even begin until May 2012, after he was discharged from jail to a half-way house.

¹ If the juvenile court terminates parental rights on more than one statutory ground, we need only find one proper ground to affirm. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010).

Additionally, even if the father were released to street probation today, the evidence indicated the child could not be returned to his care within a reasonable amount of time. Here, the child has been out of her parents' care for the entirety of her life, over six months at the time of the termination of parental rights hearing. The evidence at the hearing indicated the child could not be returned to the father's care for at least another six months and likely far beyond, given the father's outstanding criminal charges. While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). "We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children." *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997) (affirming termination based on the lack of "significant and meaningful contact" while father was in prison). Children are not equipped with pause buttons, and permanency for his child should not be deferred until the father reestablishes himself as a law-abiding citizen after release from the half-way house. Accordingly, we affirm the termination of his parental rights under section 232.116(1)(e). See *E.K.*, 568 N.W.2d at 830-31. For the same reasons, and assuming without deciding the issue was preserved, we find no error in the court's "failure" to allow the record to remain open to allow for evidence to be presented by the father to show he had obtained appropriate residence for the child.

Finally, considering the factors of section 232.116(2), "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,” we agree with the juvenile court that termination of the father’s parental rights was in the child’s best interests. See *P.L.*, 778 N.W.2d at 39, 41. The record demonstrates that the child cannot be returned to the father at this time. Moreover, our supreme court has stated that “the legislature, in cases meeting the conditions of section 232.116(1)(e)(1), (2), and (3), has made a categorical determination that the needs of a child are promoted by termination of parental rights.” *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990). 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). The child needs and deserves permanency. She is doing very well in the foster family’s home and resides there with her half-sibling. The foster parents wish to adopt the child. We conclude termination was in the child’s best interests as set forth under the factors in section 232.116(2). We therefore affirm the juvenile court’s termination of the father’s parental rights.

A. *The Mother.*

The mother also asserts the same three issues as the father, including arguing the State failed to prove the child could not be returned to the father within a reasonable amount of time. However, “in termination of parental rights proceedings each parent’s parental rights are separate adjudications, both factually and legally.” *In re D.G.*, 704 N.W.2d 454, 459 (Iowa Ct. App. 2005). We have held that one parent does not have standing to assert the unique rights of the other. *Id.* at 459-60. Accordingly, the mother lacks standing to assert such arguments. See *id.*; see also *In re K.R.*, 737 N.W.2d 321, 323 (Iowa Ct. App.

2007) (stating the father did not have standing to assert an argument on the mother's behalf "in an effort to ultimately gain a benefit for himself, that is, the reversal of the termination of his parental rights").

The mother also asserts termination of her parental rights is not in the child's best interests. Again considering the factors of section 232.116(2), "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," we agree with the juvenile court that termination of the mother's parental rights was in the child's best interests. See *P.L.*, 778 N.W.2d at 39, 41. The record demonstrates that the child cannot be returned to her at this time. For the same reasons stated above concerning the father's parental rights and the child's best interests, we agree with the juvenile court that termination of the mother's parental rights was in the child's best interests. Accordingly, we affirm the juvenile court's termination of each parent's parental rights on both appeals.

AFFIRMED ON BOTH APPEALS.