

IN THE COURT OF APPEALS OF IOWA

No. 2-982 / 12-1736
Filed December 12, 2012

**IN THE INTEREST OF D.E. AND Y.E.,
Minor Children,**

**D.T.E., Father,
Appellant.**

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

A father appeals the order terminating his parental rights to two children.

AFFIRMED.

Nicolas G. Fontanini of Law Offices of Nicolas G. Fontanini, Ames, for
appellant father.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant
Attorney General, Stephen Holmes, County Attorney, and Tiffany Meredith,
Assistant County Attorney, for appellee State.

Daniela Matasovic of Matasovic Law Firm, Ames, for appellee mother.

Patrick Peters of Payer, Hunziker, Rhodes & Peters, L.L.C., Ames,
guardian ad litem and attorney for minor children.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

A father appeals the termination of his parental rights to his two children, born in 2003 and 2005. He contends (1) the record lacks clear and convincing evidence to support the grounds for termination cited by the district court, (2) termination was not in the children's best interests, and (3) termination would be harmful to the children given the closeness of the parent-child bond.

I. The district court terminated the father's parental rights pursuant to several statutory provisions. We may affirm if we find clear and convincing evidence to support any of the cited grounds. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). On our de novo review, we believe termination was warranted under Iowa Code section 232.116(1)(f) and (h) (2011) (requiring proof of several elements, including proof that a child of a certain age cannot be returned to parent's custody). *See id.* (setting forth the standard of review).

The children were removed based on allegations that their parents were using drugs in the children's presence as well as concerns about domestic violence in the home. The father was later found guilty of domestic abuse assault and served time in jail and at a halfway house before being released on probation.

Initially, the father did not cooperate with reunification services. Following his release, his attitude changed. He gave a Department of Human Services employee a substance abuse evaluation that stated he was not in need of treatment; took parenting and anger management classes; participated in domestic violence group counseling; obtained a sixty-hour-per-week job and an apartment; and began exercising weekly supervised visits with the children.

Those visits went well. A service provider who supervised them acknowledged the children were excited to see him, shared a bond with him, and said they loved him. She noted that, in the seven months preceding termination, the father only missed four of approximately thirty scheduled visits. In sum, the father appeared well on the road toward reunification with his children.

This positive outlook changed shortly before the first of two termination hearings. Just as the father was to discharge his criminal sentence, he admitted to recent marijuana usage. Based on this admission, his probation officer expressed concern with returning the children to his care and custody.

The service provider who supervised visits expressed a similar concern, stating she had “not seen . . . any consistent drug screens whatsoever provided.” “With difficulty,” she recommended termination of the father’s parental rights.

Because drug use precipitated the removal of the children, the father’s failure to cooperate with drug screening was particularly problematic. Had he provided samples for testing, a department employee reported he could have transitioned to semi-supervised visits with the children. The employee stated, “It is unknown what the holdup is . . . and why he has not been able to provide this worker with the needed information to move forward with his children.”

We acknowledge that the father’s work hours made it difficult to provide urine samples. But, two tests were scheduled during non-work hours, and the father did not provide samples on those dates.

We conclude the State proved that the children could not be returned to the father’s custody.

II. “[T]he court shall 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.” Iowa Code § 232.116(2). Additionally, “the court must consider if any of the exceptions contained in section 232.116(3) allow the court not to terminate.” *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010).

The father contends termination was not in the children’s best interests given the parent-child bond, his claimed ability to parent and meet the children’s needs, and the fact that the two African-American children were being placed with “Caucasian foster parents in a community . . . with overwhelmingly Caucasian demographics.” He also contends termination was harmful given the closeness of the relationship.

There is no question that this young father shared a bond with the children. The service provider, the department caseworker, and the foster mother conceded as much. There is also no question he acted appropriately during supervised visits. And, finally, the record supports the father’s assertion that his African-American children were placed with white foster parents in a small, predominantly white community. See *In re L.L.*, 459 N.W.2d 489, 496–97 (Iowa 1990) (considering retention of racial identity as a factor in the best interests analysis). But the primary concern was the children’s safety, and the professionals overseeing the case opined that the father’s continued drug usage would compromise their safety. Based on this evidence, we conclude termination was in the children’s best interests and the closeness of the parent-child relationship did not militate in favor of a different result.

We affirm the termination of the father's parental rights his two children.

AFFIRMED.