

IN THE COURT OF APPEALS OF IOWA

No. 3-118 / 12-2258
Filed February 27, 2013

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

**A.S., Father,
Appellant.**

Appeal from the Iowa District Court for Monroe County, William S. Owens,
District Associate Judge.

A father appeals the termination of his parental rights to his child.

AFFIRMED.

Michael S. Fisher of Fisher Law Office, Oskaloosa, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, and Steven Goodlow, County Attorney, for appellee.

Monty McCoy, Centerville, for mother.

Julie De Vries of De Vries Law Office, P.L.C., Centerville, attorney and
guardian ad litem for minor child.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

BOWER, J.

A father appeals the termination of his parental rights to his child. He contends the State failed to prove the grounds for termination. He also contends he should have been granted additional time to prove his parenting abilities. Finally, he contends termination is not in the child's best interests.

The State has proved the grounds for termination under section 232.116(1)(f) (2011) by clear and convincing evidence. Furthermore, termination is in the child's best interests. There is no compelling reason to delay termination of the father's parental rights. Accordingly, we affirm.

I. Background Facts and Proceedings.

The child first came to the attention of the Department of Human Services (DHS) in December 2010 after the father called 911 to report the mother had attempted suicide. Later that day, the DHS received a report that the father had been found unconscious on the kitchen floor with a half-empty can of beer next to him. The child, who was then three years old, was unsupervised in the home.

Although the father refused a breath test, he appeared intoxicated to a DHS worker and admitted that he and the mother had problems with alcohol. The child was initially placed with a paternal aunt but later moved to the maternal grandparents' home. The child was adjudicated to be a child in need of assistance (CINA) in March 2011, with legal custody given to the maternal grandparents.

Initially, the father participated in family safety, risk, and permanency (FSRP) services and substance abuse treatment. However, after the father

reportedly relapsed on alcohol, it was recommended that he attend a more intensive treatment program and support meetings. Again, he complied with the recommendations for a time.

The child was returned to the mother's care in August 2011. She was later arrested, and in October 2011, the child was placed with the father. However, in December 2011, the DHS was informed the father was consuming alcohol and had been too intoxicated to care for the child. He and his girlfriend got into an argument, and the police were called to the home. The father was arrested, and the child was placed with the maternal grandparents again.

The father was committed for mental health and substance abuse concerns on December 16, 2011. after threatening to harm himself. At the time of his hospitalization, his blood alcohol concentration was .240. The father was released two days later.

In July 2012, the father admitted he was an alcoholic, but he continued to use alcohol. While he had been diagnosed with adjustment disorder, depression, anxiety, and alcohol abuse, the father was not seeing a counselor. The father had prescriptions for medication that he had not filled and admitted he was not taking his medication as prescribed.

On August 6, 2012, the State filed a petition to terminate parental rights. A hearing was held on October 1, 2012. In its December 17, 2012 order, the juvenile court terminated the mother and father's parental rights pursuant to Iowa

Code section 232.116(1)(f), finding termination in the child's best interests.¹ The court also found termination should not be avoided under the grounds set forth in section 232.116(3).

II. Scope and Standard of Review.

We review termination of parental rights proceedings de novo. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). While we are not bound by the juvenile court's fact-findings, we do give them weight, especially when assessing witness credibility. *Id.*

We will uphold a termination order if clear and convincing evidence supports the grounds for termination under section 232.116. *Id.* Evidence is "clear and convincing" where there are "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Analysis.

Termination of parental rights under Iowa Code chapter 232 follows a three-step analysis. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The first step is to determine whether a ground for termination under section 232.116(1) is established. *Id.* If so, the court then applies the best-interest framework set out in section 232.116(2) to determine 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 of the factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

¹ The mother also consented to the termination of her parental rights under section 232.116(1)(a). The termination of her parental rights is not at issue in this appeal.

The juvenile court terminated the father's parental rights under section 232.116(1)(f). Termination is appropriate under this section where clear and convincing evidence establishes:

- (1) The child is four years of age or older.
- (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 twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Iowa Code § 232.116(1)(f). There is no dispute the first three elements have been met: the child was six years of age at the time of termination, had been adjudicated a CINA, and had been out of the parents' care for at least eighteen of the past twenty-two months. We find clear and convincing evidence establishes the child cannot be safely returned to the father's care. The father admitted at the termination hearing that the child could not be returned to him at the present time.

We also find termination is in the child's best interests. In making this determination, we "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." *P.L.*, 778 N.W.2d at 39. While the social work case manager testified the father does a good job with the child when sober, the evidence establishes the father's issues with alcohol use remain unaddressed. When using alcohol, the father is often angry and inappropriate, and has exposed the child to domestic violence with the

mother and his girlfriend. The father has also failed to address his mental health issues.

While the law requires a “full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,” this patience is built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). This is because patience on behalf of a parent can quickly translate into intolerable hardship for the child. *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). “The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). While the father requests additional time to prove himself as a parent, he has had nearly two years to address the concerns that led to the child’s removal. He has not made even minimal progress in that time. We find the child’s need for permanency trumps the father’s request for additional time. As the juvenile court found, there is no credible evidence to suggest it would be in the child’s best interests to wait even one additional day for permanency.

Finally, we find the provisions of section 232.116(3) should not be applied to avoid termination. Section 232.116(3)(a) states that the court need not terminate the parent-child relationship if a relative has legal custody of the child. Section 232.116(3)(c) provides that the court need not terminate if there is clear and convincing evidence that termination would be detrimental to the child due to the closeness of the parent-child relationship. The provisions of section 232.116(3) are permissive, not mandatory. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by P.L.*, 778 N.W.2d at 39-

40. 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), overruled on other grounds by *P.L.*, 778 N.W.2d at 39-40.

We agree with the juvenile court's finding that the circumstances set forth in section 232.116(3) do not militate against termination. While the child is in the care of a relative, continued foster care is not in the child's best interests. See *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989). The evidence shows the child needs permanency, not guardianship. The father cannot provide that permanency. The child has done well in the care of the maternal grandparents, who the juvenile court found "would doubtless provide [G.S.] with a safe, permanent, and nurturing home into the future if parental rights are terminated."

There is no credible evidence that the child has a close bond with the father that would make termination of parental rights detrimental to the child's well-being. In the nearly two years between the child's removal and the termination order, the child was in the father's care for only a couple of months. The child's therapist testified that the child has an "anxious" attachment to the father and has expressed fear of the father after observing him intoxicated and violent.

The grounds for termination have been proved and termination is in the child's best interests. Accordingly, we affirm the juvenile court's order.

AFFIRMED.