

**IN THE COURT OF APPEALS OF IOWA**

No. 3-121 / 12-2309  
Filed February 27, 2013

**IN THE INTEREST OF J.W.E.L.,  
Minor Child,**

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

---

Appeal from the Iowa District Court for Ringgold County, Monty W. Franklin, District Associate Judge.

A father appeals the termination of his parental rights. **REVERSED AND REMANDED.**

Jane Orlanes of Orlanes Law Office, P.L.C., Clive, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Clinton L. Spurrier, County Attorney, for appellee.

Marc Elcock, Osceola, for mother.

Carol Clark, Lamoni, attorney and guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**MULLINS, J.**

A father appeals from a juvenile court order terminating his parental rights under section 232.116(1)(d), (e), and (h) (2011). He argues the State failed to prove statutory grounds for termination by clear and convincing evidence. We reverse the juvenile court and remand for further proceedings to allow the father a reasonable amount of time to work toward reunification.

**I. Background Facts & Proceedings**

J.W.E.L. was born in November 2010. J.W.E.L.'s mother and father were never married and have no plans to maintain a relationship. For the first seven months of J.W.E.L.'s life, J.W.E.L. lived with the mother and J.W.E.L.'s brother, J.V.H.L. (born March 2008). During that time the father's status as J.W.E.L.'s biological father was uncertain. The father was the sole caretaker of his other two children from previous relationships.

In July 2011, the Department of Human Services (DHS) found J.W.E.L. and J.V.H.L. in deplorable living conditions in a house that was subsequently condemned. As a result, DHS filed a founded child abuse report against the mother. The mother agreed to place custody of J.W.E.L. and J.V.H.L. with the children's maternal grandparents. In August 2011, biological testing confirmed the father was J.W.E.L.'s biological father.

In September 2011, the State filed a petition to adjudicate J.W.E.L. a child in need of assistance. The following month, both the mother and the father were present at the adjudication hearing. The juvenile court adjudicated J.W.E.L. a child in need of assistance based on the mother's failure to safeguard J.W.E.L.

and her poor decisions regarding J.W.E.L.'s care and safety. The court ordered J.W.E.L. to continue to live with the maternal grandparents under DHS supervision. The court ordered no contact between the father and J.W.E.L. until DHS could assess the father's parenting abilities. Later that month, the mother gave birth to a third child, J.L.J.L.<sup>1</sup>

The juvenile court held a dispositional hearing in November 2011. The juvenile court confirmed J.W.E.L.'s status as a child in need of assistance. The court ordered J.W.E.L. to continue living with the maternal grandparents under DHS supervision. The court also ordered visitation between J.W.E.L. and the father at DHS's discretion. The father arranged for visitation at the grandparent's home every other week, although he lived two hours away and worked six to seven days a week.

The father exercised one visit in November 2011, one visit in February 2012, and two visits in March 2012. The DHS report indicated the visits in March went "extremely well" and the father "did a great job interacting with [J.W.E.L.] and taking care of his needs."

In April 2012, the father exercised another visit with J.W.E.L. When the father arrived, J.W.E.L. "clapped," "smiled big," and "appeared happy." The report noted the father "appears very attentive to [J.W.E.L.] [J.W.E.L.] appears comfortable with him. [The father] meets [J.W.E.L.]'s needs during the visit, fed him, played with him, kept him in sight at all times, talked to him, [and] engaged

---

<sup>1</sup> J.V.H.L. and J.L.J.L. were fathered by different men. Although the court ultimately terminated parental rights to both J.V.H.L. and J.L.J.L., neither is the subject of this appeal.

him in conversation.” The DHS worker supervising the visit indicated the visit went very well and had “no concerns about [the father]’s interaction with [J.W.E.L.]”

After the April 2012 visit, DHS reported the father did not consistently meet the terms of the visitation arrangement and had no personal contact with J.W.E.L. until August 2012. The father did maintain regular phone contact with the mother to check on J.W.E.L.

The father expressed difficulty in consistently meeting the terms of the visitation arrangement. He explained that he worked six to seven days a week loading trucks on a farm and earned approximately twelve dollars per hour. He was having a hard time making financial ends meet while caring for two other children on his own and paying child support for J.W.E.L. At the time, the father lived approximately two hours away from J.W.E.L. The father explained that the four-hour round trip for visitation placed a financial hardship on his family and took the limited time he had away from his other children.

In an August 2012 CASA report, the CASA worker indicated she had observed two of the father’s visits with J.W.E.L. The report noted the father “interacts very well with [J.W.E.L.]” The CASA worker also reported the father “cares for [J.W.E.L.] very much and calls [the mother] regularly to check on [J.W.E.L.]” The CASA worker noted inconsistency in the father’s visitation over the past year and at that time recommended terminating his parental rights.

In August 2012, the juvenile court held a permanency and dispositional review hearing. The court confirmed J.W.E.L.’s status as a child in need of

assistance, recognized that the permanency goal of reunification with the mother was no longer viable, and ordered the State to initiate proceedings to terminate the mother's and the father's parental rights. In September 2012, the State filed a petition to terminate parental rights. The petition alleged DHS made reasonable efforts "to return the child to his mother's home, and those efforts have not been successful."

In early September 2012, the father quit his job and moved himself and his two children closer to J.W.E.L. To alleviate financial concerns, the father moved in with his parents—the children's paternal grandparents. After moving closer to J.W.E.L., the father significantly increased his interaction with the child. He also obtained gainful employment in the area. In the six weeks leading up to the termination hearing, the father exercised two four-hour visits and one six-hour visit every week. By all accounts, the visits went very well. Visitation progressed to two unsupervised overnight visits shortly before the termination hearing. DHS reported no safety concerns during these visits and did not question the father's parenting abilities.

On October 22, 2012, a CASA worker issued a report noting J.W.E.L. "lights up when he sees [the father] and is very excited for his visits." The CASA worker changed her earlier recommendation of termination and now recommended the juvenile court give the father additional time to work toward reunification. DHS also issued a report dated October 22, 2012. The report indicated the father's interactions with J.W.E.L. have increased since his move. The report noted there were "no concerns during the interactions" and indicated

“a bond is apparent between [the father and J.W.E.L.]” At that time, the DHS worker recommended more time for the father to work towards reunification.<sup>2</sup>

On October 31, 2012, the juvenile court held termination of parental rights proceedings. The mother consented to termination. The father resisted termination and testified on his own behalf. He requested the court place J.W.E.L. in his care. If the court decided not to place J.W.E.L. in his care, he requested additional time to work toward reunification. The juvenile court terminated the mother’s parental rights under Iowa Code section 232.116(1)(d) and (h) (2011).<sup>3</sup> The court terminated the father’s parental rights under section 232.116(1)(d), (e), and (h). The father appeals the termination of his parental rights.

## **II. Standard of Review**

We review termination of parental rights *de novo*. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give non-binding deference to the juvenile court’s finding of fact. *Id.* We will only uphold the juvenile court’s order if the State presents clear and convincing evidence of a ground for termination. *Id.* The State presents “clear and convincing” evidence “when there are no ‘serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.’” *Id.* (internal citations omitted). Our primary concern is the best interests of the child. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

---

<sup>2</sup> The DHS worker later testified her supervisor advised her to change her recommendation to urge termination of parental rights.

### **III. Analysis**

The father contends the State failed to present clear and convincing evidence to terminate parental rights under Iowa Code section 232.116(1)(d), (e), and (h). To determine whether the court terminated the father's parental rights properly, we consider each statutory ground in turn. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) (setting forth the proper analysis for terminating parental rights).

#### **A. Iowa Code section 232.116(1)(d)**

Under section 232.116(1)(d), the State must show the court previously adjudicated the child a child in need of assistance after "finding the child to have been physically or sexually abused or neglected as the result of the act or omissions of one or both parents, or the court has previously adjudicated a child who is member of the same family to be a CINA after such a finding." If, after the State offered services to the parent, "the circumstances that led to the adjudication continue to exist," the juvenile court may order the termination of parental rights. *D.W.*, 791 N.W.2d at 707 (citing Iowa Code § 232.116(1)(d)).

In this case, it is undisputed that the court adjudicated the child a child in need of assistance. The adjudication was based on the mother's failure to provide adequate shelter and supervision. During the time of the mother's neglect or abuse, the father was unaware that he was the child's biological father. The father only learned he was the biological father a month before the State filed its petition to adjudicate.

At issue is whether any circumstances leading to adjudication continue to exist despite the offer of services to the father. See Iowa Code § 232.116(1)(d). At the time of adjudication, the father had not established significant contact with J.W.E.L. After adjudication, the father's financial state, considerable work schedule, responsibility as the sole caretaker for two other young children, and the distance from J.W.E.L. led to inconsistent visitation from November 2011 through August 2012. During that time, however, the permanency goal was to reunite J.W.E.L. with the mother in the mother's home. In August 2012, the court ordered the State to initiate termination proceedings, and it was clear reunification with the mother was no longer a viable option.

At the point he learned that the child would not be returned to the mother, the father quit his job and moved himself and his two young children closer to J.W.E.L. The father significantly increased his interaction with the child in the months leading up to the termination hearing. Visitation eventually progressed to unsupervised overnight visits. In the weeks before termination, both the CASA worker and the DHS worker recommended additional time for the father to work toward reunification. During the father's interactions with the child, neither DHS nor CASA expressed any safety concerns. The father's housing was appropriate and approved as a site for unsupervised overnight visitation. By all accounts, the father interacted appropriately with J.W.E.L. and a bond between the two was evident. With respect to the father, the State failed to present clear and convincing evidence that despite the offer of services the circumstances that led

to the adjudication continue to exist as to his ability to care for the child at the time of termination. *See id.*

**B. Iowa Code section 232.116(1)(e)**

Under section 232.116(1)(e), the State must prove by clear and convincing evidence that the court adjudicated the child a child in need of assistance, the child has been removed from the parent's physical custody for at least six consecutive months, and "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." The Code defines the phrase "significant and meaningful contact" as including "the affirmative assumption by the parents of duties encompassed by the role of being a parent." See Iowa Code § 232.116(1)(e)(3) (defining significant and meaningful contact). Section 232.116(1)(e)(3) requires, in addition to financial obligations, "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."

There is no question the child was adjudicated as a child in need of assistance and had been removed for the requisite period of time under section 232.116(1)(e)(1) and (2). At issue then is whether the State presented clear and convincing evidence the father failed to maintain significant and meaningful contact during the six consecutive months before the termination hearing.

As previously discussed, the father's low income, his considerable work obligations, his responsibility as the sole caretaker for two other young children, and the distance from J.W.E.L. led to few personal visits from November 2011 through August 2012. During that time, the father maintained telephone contact with the mother about J.W.E.L. When the permanency goal changed from reunification with the mother in the mother's home to termination of parental rights, the father moved his family to be closer to J.W.E.L. In the six weeks leading up to termination, the father significantly increased interactions with J.W.E.L. and exercised two four-hour visits and one six-hour visit per week, every week. Beyond providing financial support, the father's genuine efforts led a CASA worker and a DHS worker to recommend additional time for the father to work toward reunification and progress visitation to unsupervised overnight visits. These efforts, while occurring in the six weeks leading up to termination, must be counted as significant and meaningful contact within the "previous six consecutive months" under section 232.116(1)(e)(3), especially in light of the fact that the plan for reunification had focused solely on the mother until less than three months before the termination hearing. Accordingly, we find the State did not meet its burden to prove grounds for termination under section 232.116(1)(e).

**C. Iowa Code section 232.116(1)(h)**

To terminate parental rights under section 232.116(1)(h), the State must prove by clear and convincing evidence that the child is younger than three years of age, has been adjudicated a child in need of assistance, has been removed from the physical custody of the child's parents for at least six months of the last

twelve months notwithstanding a trial period less than thirty days, and the child cannot be returned to the custody of the child's parents at the time of termination. There is no question the child has been adjudicated in need of assistance, has been removed for the requisite period of time, and is of the requisite age pursuant to section 232.116(1)(h)(1)–(3). At issue is whether the State proved by clear and convincing evidence the child could not be returned to the father's care at the time of the termination hearing as provided in section 232.102. See *id.* § 232.116(1)(h)(4).

To meet its burden to prove the child cannot be placed in the father's care, the State must present clear and convincing evidence the child has suffered or is imminently likely to suffer an adjudicatory harm under the father's care. See *id.* §§ 232.116(1)(h), .102(5)(a)(2), .2(6)(c); *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). The State need only show the child is likely to suffer an adjudicatory harm; it need not show that the circumstances leading to the original adjudication exist at the time of termination. *A.M.S.*, 419 N.W.2d at 725.

The State emphasized the father's lack of contact with the child, poor financial status, and instability of female relationships present a risk of adjudicatory harm to J.W.E.L. As previously discussed, in the months leading up to the termination proceedings, the father significantly increased interaction with J.W.E.L. The father interacted with the child appropriately and presented no safety concerns. At the time of the termination hearing, the father was gainfully employed and living with his parents to alleviate financial concerns. Although the State emphasized the stability of the father's relationships with other women, we

find the State has not presented clear and convincing evidence J.W.E.L. is likely to suffer an adjudicatory harm as a result of such relationships. We find the State was unable to identify a risk of adjudicatory harm to the child under the father's care. As a result, we find the State failed to meet its burden to prove grounds for termination under section 232.116(1)(h).

Parents have a constitutionally protected interest in the "care, custody, and management of their child." See *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Notwithstanding this constitutional interest, we recognize that the precious days of childhood will not "await the wanderings of judicial process." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). To balance a parent's interest with the child's need for permanency and stability, our state legislature built a measure of patience into chapter 232 beyond which courts must view termination proceedings with a sense of urgency. See *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). While our primary concern is the best interests of the child, the juvenile court cannot terminate parental rights on the basis of a best interest analysis in lieu of statutory grounds for termination. See *P.L.*, 778 N.W.2d at 40 (setting forth the proper analysis for terminating parental rights). Under the unique facts and circumstances of this case, we find the State failed to present clear and convincing evidence of the statutory grounds for termination and find that it was premature to terminate the parental rights of a loving and capable father who, upon the collapse of the permanency plan to reunite the child with the mother, significantly stepped up his efforts to be a caretaker of his child. He

should be given a reasonable period of time to prove his commitment and abilities to parent J.W.E.L.

#### **IV. Conclusion**

We find the State has failed to prove statutory grounds for termination under Iowa Code section 232.116(1)(d), (e), and (h). Accordingly, we reverse the juvenile court's order and remand for an order pursuant to Iowa Code section 232.117(2) dismissing the petition to terminate the father's parental rights.

**REVERSED AND REMANDED.**