

IN THE COURT OF APPEALS OF IOWA

No. 3-164 / 13-0074
Filed March 13, 2013

**IN THE INTEREST OF N.A.S.,
Minor Child,**

**E.S., Father,
Appellant.**

Appeal from the Iowa District Court for Scott County, Cheryl Traum,
District Associate Judge.

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

AFFIRMED.

Matthew D. Hatch, Bettendorf, for appellant.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney
General, Michael Walton, County Attorney, and Julie Walton, Assistant County
Attorney, for appellee.

Brenda Drew Peeples, Davenport, for mother.

Dana Copell, Davenport, 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 under Iowa Code section 232.116(1)(f) (2011) by clear and convincing evidence. He also contends termination is unnecessary because the child is in a relative placement. Because the father does not challenge the termination of his parental rights under Iowa Code sections 232.116(1)(d), (h), and (i), we affirm on these grounds. We also find termination is in the child's best interests.

I. Background Facts and Proceedings.

N.S. was born in 2010 and was adjudicated to be a child in need of assistance in August 2010. N.S. was removed from the parents' care at birth due to the mother's substance abuse and alcohol abuse. After the mother made some improvements, N.S. was returned to the parents care in November 2010 before being removed again in April 2011. N.S. was placed with the father for a few months before being placed with the paternal grandparents in August 2011. Again, the mother made improvements, and N.S. was returned to the parents' care in June 2012. The child was removed for the final time in August 2012 due to domestic violence between the parents and the mother's substance abuse and mental health issues. N.S. was again placed with the paternal grandparents.

The father also has a history of substance abuse. Although he participated in the recommended substance abuse treatment, the father continued to drink alcohol and refused to submit to drug testing. The father also has a history of domestic violence and failed to complete a batterer's education

program as ordered. The father failed to participate fully in the services offered him. Although he attended some visits with the child, he failed to participate in the majority of the visitation offered.

The State filed a petition seeking to terminate the parents' rights on October 8, 2012. A termination hearing was held in December 2012. On December 28, 2012, the district court entered its order terminating both the mother and father's parental rights. The mother does not appeal.

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 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 no "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.*

The juvenile court terminated the father's parental rights pursuant to Iowa Code sections 232.116(1)(d), (h), (i), and (l). We need only find grounds to terminate under one of these sections to affirm. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999). The father only argues the juvenile court erred in terminating his parental rights under section 232.116(1)(l). Because the father makes no argument regarding sections 232.116(1)(d), (h), and (i), we affirm the termination of his parental rights on these grounds. See Iowa R. App. P. 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue.").

The father also contends the provision of section 232.116(3)(a) should be applied to avoid termination. This section states that the court need not terminate the parent-child relationship if a relative has legal custody of the child. Iowa Code § 232.116(3)(a). The factors weighing against termination in 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 find it is in the child's best interests that the father's parental rights be terminated. The father had over two years to become a better parent, but failed to participate fully in the services offered to him. Although the father completed substance abuse treatment, he has failed to demonstrate any progress because he refused to participate in drug testing. Domestic abuse was still an issue at the time of termination. Additionally, the father was unemployed and lacked stable housing. As the juvenile court found, "The issues that are present [at termination] are the same issues that were present at the beginning of the case."

The father's past performance is indicative of the quality of care he is capable of providing in the future. See *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). Given the importance of establishing child custody quickly so the children are not suffering indefinitely in parentless limbo, *id.*, we find the child's best interests require termination.

AFFIRMED.