

IN THE COURT OF APPEALS OF IOWA

No. 3-390 / 13-0313

Filed April 24, 2013

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

J.A., Father,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A father appeals the termination of his parental rights. **AFFIRMED.**

MaryBeth A. Fleming, Dubuque, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Jean A. Becker, Assistant County Attorney, for appellee.

William A. Lansing, Dubuque, for intervenor grandmother.

Sara Stork Meyer of Clemens, Walters, Conlon & Meyer, P.C., Dubuque, attorney and guardian ad litem for minor child.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

A father appeals the termination of his parental rights. He contends the juvenile court erred in not granting a second extension of time to seek reunification. He also argues termination was not in the child's best interests. We affirm.

The juvenile court terminated the father's parental rights pursuant to Iowa Code section 232.116(1)(f) (2013).¹ The father does not contest that statutory grounds for termination exist. The child is older than four years of age, was adjudicated a child in need of assistance after having tested positive for methamphetamine. The child was removed from the parents' custody in August 2011 and has been in out-of-home placement for more than seventeen months. At the time of the termination trial, the father was in a residential correctional facility (halfway house) and the child could not be returned to his care. The statutory elements for termination have been established by clear and convincing evidence. See Iowa Code § 232.116(1)(f).

The father, however, argues the court abused its discretion in not granting him an extension of time. The court had already granted a three-month

¹Section 232.116(1)(f) authorizes the court to terminate parental rights if:

- (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.

extension on October 16, 2012. On October 27, 2012, the father tested positive for methamphetamine at the correctional facility. Though he states he has not failed a drug screen since then and has begun to deal with his mental health issues, his efforts come too late. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (“A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting.”).

Once the statutory limitation period lapses (here, twelve months), termination proceedings must be viewed with a sense of urgency. *Id.*; *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). The father began using illegal substances when he was eight years old. He has failed to maintain sobriety in recent history except when in a very structured environment. We commend the recent progress the father has made in attempting to overcome his long-standing substance abuse issues, but this late progress gives little confidence that the father will be able to maintain sobriety and commit to change.

[A] good prediction of the future conduct of a parent is to look at the past conduct. Thus, in considering the impact of a drug addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future. Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.

In re N.F., 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (citations omitted).

Granting the requested extension would require our finding that at the end of six months, the need for removal will no longer exist. See *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa Ct. App. 2005) (citing Iowa Code section 232.104(2)(b)).

From our de novo review of the record, see *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010), we cannot make such a finding. This child deserves permanency and should not have to wait longer for her father to become a responsible parent. See *In re D.W.*, 791 N.W.2d 703, 707–08 (Iowa 2010).

We agree with the juvenile court that termination of parental rights and adoption will best provide for the child's long-term nurturing and growth, and her physical, mental, and emotional needs. See Iowa Code § 232.116(2). The father argues that termination is not in the child's best interests because the child is in the care of the grandparents and has a close bond with the father. These two factors are noted in Iowa Code section 232.116(3) as factors that the court may consider to avoid termination of parental rights.

Whether any exception in section 232.116(3) applies to make termination unnecessary is permissive, not mandatory. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). 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).

In determining this issue and referring to Iowa Code section 232.116(3) the juvenile court stated,

Given the unique circumstances of the present case, including the young age of the child, length of time out of the home, and lack of any sustained progress by parents, the Court does not find it would be in the best interests of the [child] to apply said Code section.

We agree.

The child has done well in the grandparents' home where the child has lived since August 2011. They have provided a safe, stable, and structured home. The grandparents are in the process of completing an adoptive home study. Under these circumstances, we cannot maintain the father-child relationship where there exists only a possibility the father will become a responsible parent sometime in the unknown future.

We affirm the termination of the father's parental rights.

AFFIRMED.