

IN THE COURT OF APPEALS OF IOWA

No. 3-425 / 13-0316

Filed June 12, 2013

**IN THE INTEREST OF C.S., C.B.,
and E.B.,
Minor Children,**

**C.B., Father,
Appellant,**

Appeal from the Iowa District Court for Dallas County, Virginia Cobb,
District Associate Judge.

A father appeals from the termination of his parental rights to his children.

AFFIRMED.

Laura J. Lockwood of Tagtow & Lockwood, P.L.L.C., Des Moines, for
appellant-father.

Christine Sand of Wild, Baxter & Sand, P.C., Guthrie Center, for mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, Wayne Reisetter, County Attorney, and Sean Weiser, Assistant County
Attorney, for appellee.

Michelle Saveraid of Youth Law Center, Des Moines, attorney and
guardian ad litem for minor children.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

BOWER, J.

A father appeals the termination of his parental rights to his children. He contends the State failed to prove the grounds for termination by clear and convincing evidence. He also contends termination was not in the children's best interests and that he should be granted additional time to reunify with them.

Clear and convincing evidence supports terminating the father's parental rights under Iowa Code section 232.116(1)(h) (2011). We also find termination to be in the children's best interest. There is no evidence that termination would be detrimental to the children due to a close relationship with the father. An extension of time to allow the father to prove himself a capable parent is not warranted. Accordingly, we affirm.

I. Background Facts and Proceedings.

The children, born in 2010 and 2011, came to the attention of the Department of Human Services (DHS) in May of 2011 after it was discovered that their half-sibling had been sexually abused. The DHS determined that the mother and father had failed to adequately address that child's mental health needs. In addition, the parents were homeless and, as a result, roamed the streets with the children from 10 p.m. until 5 a.m. when they had no place to sleep. Other times they stayed with family members who had open cases with the DHS, as well as criminal charges.

The children at issue were removed from the parents' care in July 2011 and were placed with a foster family near where their half-sibling was living. In October 2011, the children were adjudicated to be in need of assistance pursuant

to Iowa Code section 232.2(6)(f). The children have remained with the same pre-adoptive foster family since their removal and are reportedly doing well in this placement.

The father suffers from bipolar disorder and has anger issues that make him easily frustrated and make it difficult to control his emotions. His mental health issues prevent him from holding a job; as a result, the father applied for social security disability benefits. Following the DHS's involvement with the family, the father received services to address his mental health needs. The parents were also provided a Family Safety, Risk, and Permanency service worker, who provided the parents with services to improve their self-sufficiency, parenting skills, and relationship issues.

Despite the receipt of numerous services, the parents did not demonstrate progress in their ability to safely parent the children. In February 2012, the State filed a petition to terminate their parental rights, which was amended in August 2012. Following a hearing, the juvenile court entered its order terminating both the mother and father's parental rights under sections 232.116(1)(d), (g), and (h). Both parents appealed, although the mother's appeal was dismissed as untimely.¹

II. Scope and Standard of Review.

We review termination of parental rights proceedings de novo. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012). While we are not bound by the juvenile

¹ The mother submitted a brief with this appeal, advocating against terminating the father's parental rights. However, she has no standing to do so. See *In re D.G.*, 704 N.W.2d 454, 560 (Iowa Ct. App. 2005) (holding one parent cannot argue facts or legal positions pertaining to the other parent).

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. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). 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 father first contends the State failed to prove the grounds for termination by clear and convincing evidence. The juvenile court terminated his rights pursuant to Iowa Code sections 232.116(1)(d), (g), and (h). 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).

Termination is appropriate under section 232.116(1)(h) where the State proves the following:

- (1) The child is three years of age or younger.
- (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 six of the last twelve months, or for the last six 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)(h). The father does not dispute the first three elements have been proved. Instead, he argues the State failed to prove by clear and convincing evidence that the child cannot be returned to his care.

Clear and convincing evidence shows the children cannot be returned to the father's care at the present time. At the time of the termination hearing, the father was living in transitional housing in a communal setting. He was unemployed, and his sources of income consisted of \$100 per month he made from collecting and recycling cans, a rent voucher, a \$20 personal voucher, and food stamps. In addition, the evidence presented at the termination hearing demonstrates the father lacks insight into how to safely parent the children. Despite the receipt of various services, the father fails to redirect the children in situations that place their safety—and the safety of other children—at risk. Visits with the children remained supervised due to safety concerns from the DHS worker and C.B.'s therapist.

The father testified that he is in a position to have the children returned to his care. He claims he can keep the children safe. Aside from this self-serving

testimony, there is no evidence to support the father's position. Rather, the father's past performance is indicative of the quality of the future care he is able to provide. See *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). Because the children cannot be safely returned to the father at the present time, the grounds for termination under section 232.116(1)(h) have been proved.

The father next contends termination is not in the children'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 at 39.

We find termination is in the children's best interests. The children were very young at the time of their removal; one child was one year of age and the other was only a few months old. They have remained out of the home since their initial removal more than eighteen months ago. The older child has exhibited negative behavior as a result of the parents' failure to maintain a safe home during the child's first year of life. As a result, the child is in therapy. The father continues to struggle to maintain his mental health and fails to show insight into how to safely parent the children. By all accounts, the children require permanency. They are doing well in a pre-adoptive foster home that meets their needs. There is no evidence that termination would be detrimental to the children.

The father also contends the provision of section 232.116(3)(c) should be applied to avoid termination. This section states that the court need not

terminate the parent-child relationship if the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship. Iowa Code § 232.116(3)(c). 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 the termination is appropriate. Given their young age at the time of their removal, there is no evidence the children are significantly bonded to the father. The DHS worker opined that termination of the father's parental rights will not be detrimental to the children.

Finally, the father requests an additional six months to reunite with the children. 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). By the time the termination order was entered, the children had already been in foster care for eighteen months, more than half of their lives.

For the reasons previously cited, we find an extension of time is not in the children's best interests. Additionally, the DHS worker opined that even another

six months of services would not help the father to meet the children's needs. "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). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *J.L.W.*, 570 N.W.2d at 781. The children need and require permanency; terminating the father's parental rights will allow the children to be adopted and achieve permanency in a safe home, which the father is unable to provide. Accordingly, we affirm the termination of the father's parental rights.

AFFIRMED.