

**IN THE COURT OF APPEALS OF IOWA**

No. 3-626 / 12-0266  
Filed July 10, 2013

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

**C.S., Father,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Rachael E. Seymour,  
District Associate Judge.

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

Lynn C.H. Poschner of Borseth Law Office, Altoona, for appellant father.

William E. Sales III of Sales Law Firm, P.C., Des Moines, for mother.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant  
Attorney General, John P. Sarcone, County Attorney, and Jennifer G. Galloway,  
Assistant County Attorney, for appellee State.

Charles Fuson and Nicole Garbis-Nolan of the Youth Law Center, Des  
Moines, attorney and guardian ad litem for minor children.

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

**DOYLE, P.J.**

A father appeals from the order terminating his parental rights to his child.

We affirm

***I. Background Facts and Proceedings.***

C.S. is the father and A.M. is the mother of D.S., born in April 2009. At the time of the child's conception, the parents lived in Chicago, Illinois. About one month into her pregnancy, the mother moved to Iowa, and she informed the father via telephone that she was pregnant.

The child tested positive for marijuana at birth and subsequently came to the attention of the Iowa Department of Human Services (Department). The mother voluntarily participated in services with the Department. Meanwhile, the father came to Iowa occasionally to visit the child, or the mother traveled with the child to Chicago, where the father would see the child. After the child's birth, the father saw the child once, sometimes twice, a month. He would occasionally send the mother diapers or money for diapers if she requested.

The mother failed to resolve her ongoing issues, and, in April 2010, the State filed a child in need of assistance (CINA) petition. A copy of the petition was mailed to the father at his Chicago address. Thereafter, the child was removed from the mother's care. Although he denied receiving the petition, the father admitted he learned of the removal approximately a week after it had occurred. Nevertheless, he did not contact the Department about the removal or his interest in caring for the child. The child was adjudicated a CINA in June 2010.

The mother continued to participate in services, and the Department's caseworker requested the mother to tell the father that the Department wished to get in touch with him. In August, the father contacted the caseworker, but, because he was at work at the time, the conversation was short. He learned there was an upcoming permanency hearing in October 2010.

The father traveled to Iowa and participated in the October permanency hearing. Paternity and hair-stat tests were performed at that time, and the father tested positive for PCP. The father admitted he had used PCP once in September 2010, but he stated he had not used PCP for some twenty years prior thereto. The father admitted he had a long history of using marijuana. His criminal history revealed he had been arrested for domestic violence and for possession of illegal substances, including marijuana. Following the hearing, the juvenile court entered its order directing the State to file a petition for termination of the parents' parental rights, and the State did so in January 2011.

While the father was in Iowa for the October 2010 permanency hearing, the father had a supervised visit with the child. He did not have another visit with the child until March 2011. Starting in April 2011, the father started having visits with the child every two weeks, traveling from Chicago to Iowa to see the child.

Trial on the petition was held on May 18 and June 6, 2011. The father admitted he had had approximately twenty visits with the child since her birth. Additionally, the father testified concerning a recent interstate compact home study of the father's home in Chicago, admitting the home study was not supportive of placement with him at that time.

In November 2011, the juvenile court entered its order terminating the father's parental rights. Approximately fourteen days later, the father filed his "Motion to Reopen Record and/or Enlarge and Amend Findings and Ruling," which was subsequently denied by the juvenile court. In its order, the court stated the father's motion was in essence a request the court "reopen the record to consider new evidence as to [his] conduct after the case was submitted but before the court entered its written findings and conclusions of law." The court explained that any objections to the findings were required to be raised within ten days pursuant to Iowa Rule of Civil Procedure 1.942, and, consequently, the father's motion was untimely and denied for that reason. The court further stated it could not reopen the record to receive additional evidence after it had entered a final adjudication on the merits of the termination petition.

The father appeals. The appeal was transferred to this court on June 11, 2013. We review termination of parental rights *de novo*. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011).

## ***II. Discussion.***

On appeal, the father contends the State failed to prove the grounds for termination by clear and convincing evidence. Additionally, he asserts the juvenile court erred in finding termination of his parental rights was in the child's best interests and in not reopening the case after it had entered its ruling terminating his parental rights. We address his arguments in turn.

### ***A. Grounds for Termination.***

The juvenile court entered its order terminating the father's parental rights pursuant to Iowa Code section 232.116(1) paragraphs (b), (d), (e), and (h), (i)

(2011). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). We choose to focus our attention on 232.116(1)(h). Under that paragraph, parental rights may be terminated if the court finds by clear and convincing evidence that the child is three years of age or younger, has been adjudicated a CINA, has been removed from the physical custody of his parents for at least six months of the last twelve months, and there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents at the present time. Iowa Code § 232.116(1)(h). The father concedes the first three elements were proved; it is the last element the father challenges here. Upon our de novo review, we find the State has met its burden.

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). The legislature incorporated a six-month limitation for children adjudicated CINA aged three and younger. See Iowa Code § 232.116(1)(h)(2), (3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code section 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

Here, although the father contends the child could have been placed in his care at the time of trial, the evidence presented at trial paints a different picture.

Despite the father's awareness that the mother abused alcohol and drugs, he left the child to her care after the child's birth. After he was informed the child had been removed from the mother's care in May 2010, he did not become involved in the case until October 2010. Only after the State filed its petition in January 2011 did the father seek visitation with the child, and even then, by the second day of trial in June, he had only had a total of approximately twenty visits with the child since her birth. However, most revealing is the report following the home study performed by the state of Illinois in May 2011, which recommended against placement of the child with the father at that time. The report indicated the state of Illinois would be willing to restudy the father once he had completed its recommendations, including among other things continued drug testing and completion of a parenting class, "as [the father] appeared to have little knowledge about how to raise a young child." The report stated if the father and the paternal grandmother, with whom the father lived, had negative drug-test results for six months, the state of Illinois would then reconsider the father for placement of the child. We find the State proved by clear and convincing evidence that the child could not be returned to the father's care at the time of the termination hearing. Accordingly, we agree with the juvenile court that termination of the father's parental rights was proper under Iowa Code section 232.116(1)(h).

***B. Best Interests.***

If a statutory ground for termination is determined to exist, the court may terminate a parent's parental rights. *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). In considering whether to terminate, the court must then apply the best-interest framework established in section 232.116(2). *Id.* The legislature highlighted as

primary considerations: the children's safety, the best placement for furthering the long-term nurturing and growth of the children, and the physical, mental, and emotional condition and needs of the children. *Id.*; see also Iowa Code § 232.116(2). "A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Those best interests are to be determined by looking at the child's long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the child if the child is returned to the parent. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993).

Under the facts and circumstances in this case, and considering the child's long-term and immediate best interests, we agree with the juvenile court that termination of the father's parental rights is in the child's best interests. Here, the child had had very little contact with the father prior to the termination hearing in June 2011. By that time, the child was thriving in foster care with her half-sibling, and the child was bonded and attached to her foster parent, who wished to adopt the child. Additionally, the Department's case worker believed removing the child from the foster parent's care would be disruptive and not in the child's best interests given the child's prior removals from the mother's care and then her maternal grandmother's care. Finally, given the recommendations following the home study the father needs to complete for the state of Illinois to even consider restudying his home for placement of the child, along with the father's history of drug use and his late interest in the case, delaying permanency

for this child is simply not warranted. Accordingly, we conclude termination was in the child's best interests as set forth under the factors in section 232.116(2).

***C. Motion to Reopen Record and/or Enlarge and Amend.***

Iowa Rule of Civil Procedure 1.904(2) provides: "On motion joined with or filed within the time allowed for a motion for new trial, the findings and conclusions may be enlarged or amended and the judgment . . . modified accordingly or a different judgment . . . substituted." Iowa Rule of Civil Procedure 1.1007 requires a motion for new trial "be filed within fifteen days after filing of the . . . decision with the clerk . . . , unless the court, for good cause shown and not ex parte, grants an additional time not to exceed [thirty] days." Consequently, the time allowed to file a motion to enlarge or amend is fifteen days.

The father filed his motion to enlarge or amend fourteen days after the juvenile court filed its termination order. The court concluded, however, that the motion was not timely because it was not filed within ten days of the court's decision.<sup>1</sup> We agree with the father that the court's denial of his motion to enlarge or amend based on untimeliness grounds was clearly an error. Nevertheless, our analysis does not end there.

Our supreme court has explained that "a motion to enlarge or amend is available only to address rulings on factual issues tried without a jury and that any legal issues raised in the motion must have been addressed in the context of an issue of fact tried by the court without a jury." *Baur v. Baur Farms, Inc.*, \_\_\_\_

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<sup>1</sup> The juvenile court's reliance on the ten-day deadline of rule 1.942 was misplaced. That rule governs the filing of written objections to a master's report.



N.W.2d \_\_\_, \_\_\_ (Iowa 2013). Motions under rule 1.904(2) “are permitted so that courts may enlarge or modify findings based on evidence already in the record. They are not vehicles for parties to retry issues based on new facts.” *In re J.J.S., Jr.*, 628 N.W.2d 25, 29 (Iowa Ct. App. 2001) (quoting *In re Marriage of Bolick*, 539 N.W.2d 357, 361 (Iowa 1995)). Here, the father clearly sought to present new evidence to the juvenile court regarding his ability to be an appropriate parent to his child. In short, the father sought to relitigate the same issues presented in to the juvenile court at the termination hearing with new facts. Rule 1.904(b) “does not authorize such relief.” *J.J.S.*, 628 N.W.2d at 30. The court did not err in denying the father’s motion to enlarge or amend.

As to the father’s motion to reopen the record, the juvenile court found the request untimely because it was made after the court had already rendered its decision. “Considering the inherently more substantial rights at stake in termination proceedings,” our court has previously concluded that juvenile courts do not have the ability to reopen the record to receive additional evidence after final adjudication on the merits of a termination petition. *Id.* at 30-31. As we have previously explained:

[W]e must balance the policies behind recognizing informal procedural rules in juvenile court with the goal of promoting the child’s best interests, including the goal of establishing permanency in the child’s life. While we recognize the importance of the informal rules in juvenile court to further the goal of obtaining all information relevant to determining the best interests of a child, we do not subscribe to a rule that would indefinitely prolong a final decision regarding permanency. There must be a sense of finality to orders of the juvenile court to advance the best interests of the child.

*Id.* at 29. Termination of the father's parental rights was proper under Iowa Code section 232.116(1)(h) and was in the child's best interests based upon the evidence presented at trial, as set forth in the November 2011 ruling. Because we find no procedural rule or other authority supporting the father's contention the case could be reopened so he could present new evidence as though no final adjudication had occurred, we cannot conclude the juvenile court erred in denying the father's motion to reopen the proceeding.

***IV. Conclusion.***

For the foregoing reasons, we affirm the juvenile court's order terminating the father's parental rights.

**AFFIRMED.**