

**IN THE COURT OF APPEALS OF IOWA**

No. 3-698 / 13-0822  
Filed August 7, 2013

**IN THE INTEREST OF J.B.,  
Minor Child,**

**B.A., Father,  
Appellant.**

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Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

A father contests the juvenile court's refusal to allow him an additional six months to work toward unification with his son. **AFFIRMED.**

Michael H. Bandy of Bandy Law Office, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven J. Halbach, Assistant County Attorney, for appellee.

John Harris of McCrindle Law Office, Waterloo, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

**TABOR, J.**

J.B., now two years of age, has been in foster care since he was eight months old. His father, Brett, contests the juvenile court's refusal to allow him an additional six months to work toward unification with his son. Reviewing the record de novo—but giving deference to the juvenile court's first-hand assessment of Brett's "reluctant testimony"—we affirm the order terminating parental rights.

***I. Factual and Procedural Background***

Brett has never had custody of J.B. J.B.'s biological mother, S.K.B., was married to S.B. when she gave birth to J.B. in December 2011. When S.K.B. identified Brett as the biological father during her pregnancy, he "really didn't believe her."

In August 2012, the Iowa Department of Human Services (DHS) asked the juvenile court to issue an order temporarily removing J.B. from the home of S.K.B. and S.B. after S.K.B. was charged with child endangerment for leaving the infant alone in a car outside her apartment building. The removal order detailed S.K.B.'s history of violence, substance abuse, and mental health concerns. The removal order did not list a biological father.

The juvenile court adjudicated J.B. as a child in need of assistance (CINA) on October 3, 2012. The order expressed continued concerns about the volatility of the relationship between S.K.B. and S.B. The order also noted Brett had appeared at the hearing as the putative biological father of the child. Brett acknowledged that when he saw photographs of J.B., he believed he might be

the father. Brett requested, and the court ordered, DNA testing. The court also ordered that Brett participate in random drug screens and a psychological evaluation. The DHS offered Brett visitation with J.B. and family, safety, risk and permanency (FSRP) services. Brett participated in one DHS family team meeting and visited J.B. a couple of times, but the FSRP workers lost contact with Brett in mid-October 2012.<sup>1</sup>

The juvenile court held a disposition hearing on November 27, 2012. This time Brett did not appear with his attorney, who took no position on behalf of his client. The court observed that Brett had “apparently dropped out of the case.” The court ordered that J.B. would remain in foster care.

On February 22, 2013, the State filed a petition seeking to terminate the parental rights of S.K.B., S.B., and Brett, as the “alleged father.” Also in late February, Brett reinitiated contact with the DHS case worker. After their meeting, Brett underwent paternity testing, participated in a mental health evaluation, and started supervised visits with J.B. Brett attended eighteen of twenty-five arranged visits with his son between February 25 and April 30, 2013.

In March 2013, both S.K.B. and S.B. consented to having their parental rights terminated.

The juvenile court heard evidence regarding the termination of Brett’s parental rights at a hearing on May 1, 2013. The DHS case worker and Brett were the only witnesses. The case worker testified that Brett was not employed

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<sup>1</sup> Brett testified that he was hospitalized in Iowa City during this time period, but acknowledged that nothing prevented him from notifying the DHS of his situation.

and depended on his girlfriend's father for housing and financial support.<sup>2</sup> Brett asked the court to defer permanency for three months to allow him time to have more visits with J.B. and to fix any deficiencies in his housing situation. The court told Brett at the close of the hearing: "It is clear the child cannot be returned to your custody today. It is clear to me that additional time would not be enough time for you to stabilize your own life and provide primary care for this child." The court issued a written order granting the petition to terminate Brett's rights on May 14, 2013. Brett challenges the termination in this appeal.

## ***II. Analysis***

Brett does not dispute the juvenile court's conclusion he could not presently take over J.B.'s care.<sup>3</sup> Rather, Brett insists with an extension of permanency for six months he would be prepared for the role of parent. See Iowa Code § 232.104(2)(b). In support of his extension request, Brett asserts he "learned he was the father of [J.B.] late in the CINA process."

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<sup>2</sup> Brett, who was twenty-six years old, lived with his eighteen-year-old girlfriend's family. The DHS worker described their home as "extremely cluttered" and not yet toddler-proofed.

<sup>3</sup> The juvenile court terminated Brett's parental rights under Iowa Code section 232.116(1)(h) (2013), which authorizes termination if the court finds each of 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 months 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 the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Section 232.104(2)(b) gives a juvenile court the option to continue placement after a permanency hearing if the court can enumerate “specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child’s home will no longer exist at the end of the additional six-month period.” *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa Ct. App. 2005). Here, the juvenile court did not believe extra time would end the need for removal, explaining as follows:

There is no evidence that such a period of time would bring radical change about in Brett’s life and lifestyle that would permit the court to transfer custody to him. There is nothing in the evidence or the reluctant testimony of Brett that gives the court any confidence that meaningful change could occur. This child should not be forced to wait to see if his parent will grow up.

We review the juvenile court’s conclusion de novo, but we give weight to its fact findings, particularly, its credibility determinations. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012). That giving of weight is particularly important in cases like this, where the juvenile court has had the opportunity to see the parent testify and can take his measure in person. We accord deference to the court’s dim view of Brett’s testimony and its lack of confidence that he could achieve meaningful change in six months.

While it is true Brett was not definitively determined to be J.B.’s father until well into the CINA proceedings, that is because Brett waited more than five months to make himself available for paternity testing. And not only did Brett delay the DNA test, but he cut off all communication with the DHS just after he started visits with his young son. From October 15, 2012 until February 20, 2013, Brett had no contact with the FSRP coordinator. Those were precious

months wasted in J.B.'s development and time that J.B. has invested in bonding with his pre-adoptive family.

We share the juvenile court's concern about Brett's precarious living situation. Brett highlights on appeal that he had lived in the same home for more than one year at the time of the termination hearing. But he neglects to clarify that it was the home of his teenage girlfriend's father, who was supporting them. The evidence also revealed Brett had fathered another child with a different mother; at the time of the termination hearing he was not providing any support for that child, who was born within a few months of J.B. Like the juvenile court, we do not foresee the type of changes in Brett's behavior that would allow J.B. to be placed in his care.

Under some circumstances, deferral of termination is appropriate. *A.A.G.*, 708 N.W.2d at 92–93. But when we consider such a deferral, we must “bear in mind that, if the plan fails, all extended time must be subtracted from an already shortened life for the children in a better home.” *Id.* In this case, we agree with the juvenile court's assessment that an extension of time was not warranted.

**AFFIRMED.**