

IN THE COURT OF APPEALS OF IOWA

No. 3-808 / 13-0884
Filed September 5, 2013

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

**B.S. Jr., Father,
Appellant**

**G.S., Minor Child,
Appellant.**

Appeal from the Iowa District Court for Buchanan County, Alan D. Allbee,
Associate Juvenile Judge.

A father and his child appeal from the order terminating the father's
parental rights. **AFFIRMED ON BOTH APPEALS.**

Kevin Schoeberl of Story & Schoeberl, Cresco, for appellant father.

Linnea Nicol, Assistant Public Defender, Waterloo, for appellant child.

Steven Ristvedt, Independence, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Shawn M. Harden, County Attorney, and Jennalee A. Zapitul
and Michael Hudson, Assistant County Attorneys, for appellee State.

Kelly Smith of Banning & Smith, Waterloo, guardian ad litem for child.

Considered by Eisenhauer, C.J., and Vaitheswaran and Doyle, JJ.

EISENHAUER, C.J.

A father and his child appeal from the order terminating the father's parental rights.¹ The father contends the State failed to prove the child could not be returned to his care or termination was in the best interests of the child. He also argues our expedited appeal process is unconstitutional. The child contends the State failed to prove he could not be returned to his father's care. The child, who is eleven years old, objects to the termination. See Iowa Code § 232.116(3)(b) (2013).² We affirm on both appeals.

When the child first came to the attention of the department of human services, he was living with his mother and had visitation with his father on weekends. Because of the unsafe and unsanitary condition of the home, the child and his younger half-siblings were adjudicated children in need of assistance under Iowa Code section 232.2(6)(c)(2) in August 2011. The two younger children were removed from the home and placed in foster care in November.

In February 2012 the dispositional order was modified, and the child was placed in foster care. The court did not consider the father as an appropriate full-time placement for the child but was willing to consider him as a concurrent placement if the child could not be returned to the mother within a reasonable time and the father was able to improve the deficits in his parenting. The court noted the father has a full-scale IQ of sixty-one, was diagnosed with attention

¹ The mother's parental rights were terminated. She is not involved in this appeal.

² Because there have been no substantive changes to any of the relevant code provisions during the pendency of these proceedings, we will refer to the 2013 code throughout this opinion.

deficit hyperactivity disorder (ADHD) (combined type), had alcohol and cannabis dependence, and borderline intelligence. The father had a strict, rigid, and authoritarian style of parenting; he lacked an understanding of child development and had unrealistic expectations of children; and was non-empathetic. The father participated in supervised visitation.

In an October 2012 dispositional review order, the court denied the father's request the child be placed with him. At the time, the father was homeless. The court also denied the father's request for unsupervised visitation. The court noted the father's visitation with the child remained supervised because of his lack of progress in improving his parenting skills and his inability to manage his anger. Because of incidents at family team meetings and parenting skill sessions, the father's visitation was moved to a public library in the hope the father would control his temper. We upheld the order on appeal. *In re G.S.*, No. 12-1843, 2013 WL 100186, at *2-3 (Iowa Ct. App. Jan. 9, 2013).

A permanency hearing was held in February 2013. The court found the father was "totally unable to demonstrate nurturance," frequently exhibited anger and used an angry tone in discipline of the child, and was unwilling to try to make changes. The child consistently expressed anxiety about visitation for fear of the father's anger and angry tone in discipline. The court directed the county attorney to file a petition to terminate parental rights. The father's appeal from the permanency order was dismissed.

The State petitioned to terminate the parental rights of both parents under Iowa Code section 232.116(1)(a), (d), (f), and (g), and the mother also under (e) and (i). The petition came on for hearing on May 6 and 17. The court terminated

the mother's parental rights under section 232.116(1)(e) and (f) and the father's parental rights under (f). Concerning the father, the court found he had fathered nine children, he had never been a full-time parent to any of them, and his parental rights had previously been terminated to three of them. The court further found the child could not be placed in the father's home without being subject to several adjudicatory harms, including mental injury caused by the father's acts, failure to provide necessary mental health treatment, and lack of proper care due to the father's mental condition. See Iowa Code § 232.2(6)(c)(1), (f), (g), and (h). The court acknowledged the father's "serious attempts" in receiving counseling and parenting support and education but found the father's intellectual and personal deficits were too great to allow safe placement of the child with him. The court also acknowledged the child's objection to termination of his parents' parental rights, noting the child wanted to be placed with his mother and have weekend visitation with his father but found the child's best interests were served by termination and adoption. Both the father and the child appeal.

We review terminations de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We examine both the facts and law, and adjudicate anew those issues properly preserved and presented. *In re L.G.*, 532 N.W.2d 478, 480-81 (Iowa Ct. App. 1995). We accord considerable weight to the findings of the juvenile court, especially concerning the credibility of witnesses, but are not bound by them. *Id.* at 481. Our main concern lies with the child's welfare and best interests. *H.S.*, 805 N.W.2d at 745.

Father.

Statutory Ground and Best Interests. The father contends the State failed to prove the child could not be returned to his care. See Iowa Code § 232.116(f)(4). A child cannot be returned to a parent under section 232.102 if the child would be exposed to any harm amounting to a new child in need of assistance adjudication. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). “The threat of probable harm will justify termination, and the perceived harm need not be the one that supported the child’s initial removal from the home.” *Id.*; see *In re C.M.T.*, 433 N.W.2d 55, 56 (Iowa Ct. App. 1988).

In this case, the court found the child would be subject to three adjudicatory harms if placed with the father at the time of the termination: mental injury caused by the acts of the child’s father, the father’s failure to provide necessary mental health treatment, and lack of proper care due to the father’s mental condition. See Iowa Code § 232.2(6)(c)(1), (f), and (n). Clear and convincing evidence supports all three concerns.

The father argues there is no causal link between his son’s “special needs” and the father’s actions or omissions. The child has been diagnosed with ADHD, oppositional defiant disorder (ODD), conduct disorder, and disruptive behavior disorder. He attends special education classes. The father uses scare tactics and an “angry tone” in discipline and has trouble controlling his anger when the child disobeys. The father’s actions cause the child anxiety and fear in visitation.

Because of his various diagnoses and the trauma in his life, the child attends play therapy and also has been prescribed medication. The father does

not see the need for medication and would not comply with the child's treatment. The father participated for a time in the child's therapy, but was asked to stop because he was causing the child distress and was turning the focus to his own problems. The father would not insure the child received proper mental health care.

The father has a full-scale IQ of sixty-one, was diagnosed with ADHD (combined type), has alcohol and cannabis dependence, and borderline intelligence. He lacks an understanding of child development, has unrealistic expectations of the child, and is non-empathetic. He acknowledges his problems with anger but is unwilling to change. We agree with the court's finding the father's "intellectual and personal deficits remain too great to allow the court to find evidence that the child can safely be placed with him given the child's special needs."

We affirm the statutory ground for terminating the father's parental rights.

The father contends termination is not in the child's best interests. He argues the child's long-term nurturing and growth will be furthered by placing the child with him. In considering the child's best interests, 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." *Id.* § 232.116(2). The father lacks the ability to nurture the child. His intellectual functioning and problems with anger prevent him from meeting the mental and emotional needs of the child, especially considering the child's own special needs.

The father also argues termination is not in the child's best interests because the child objects to the termination and because of the closeness of the parent-child bond. See *id.* § 232.116(3)(b), (c). The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re D.S.*, 806 N.W.2d 458, 474 (Iowa Ct. App. 2011). "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." *Id.*

The court carefully considered each of the applicable section 232.116(3) factors and found neither was sufficient to prevent termination. Although the child objected to the termination, he did not seek to be placed with his father. Instead, he wanted to have continued contact with his father and younger half-siblings. Given the potential harm to the child if placed with the father, we agree this factor does not prevent termination. The child's best interests are served by termination and adoption.

The court noted the strong parent-child bond and the detrimental effects on the child of severing that bond, but determined the child's safety required termination. The detrimental effects "will need to be lessened through counseling and establishment of a permanency adoption family and allowance for sibling contact by the respective adoptive parents." We agree and adopt this finding as our own.

Termination of the father's parental rights serves the best interests of the child and no factor in section 232.116(3) serves to preclude termination. We affirm the termination of the father's parental rights.

Constitutionality of Expedited Terminations. The father contends the expedited appeal process is unconstitutional. See Iowa Rs. App. P. 6.201–.205. The various constitutional issues the father raises have already been rejected. See *In re L.M.*, 654 N.W.2d 502, 505 (Iowa 2002) (reduced filing times); *In re C.M.*, 652 N.W.2d 204, 212 (Iowa 2002) (no due process or equal protection violation); *In re R.K.*, 649 N.W.2d 18, 21-22 (Iowa Ct. App. 2002) (lack of transcript). The father's claim fails.

Child.

Statutory Ground. The child contends the State failed to prove he could not safely be returned to his father's care. See Iowa Code § 232.116(1)(f)(4). This claim relates to the termination of the father's parental rights. The child lacks standing to raise this claim. See *In re K.R.*, 737 N.W.2d 321, 323 (Iowa Ct. App. 2007); *In re D.G.*, 704 N.W.2d 454, 459 (Iowa Ct. App. 2005).

Objection to Termination. The child, who is over ten years of age, objects to the termination. See Iowa Code § 232.116(3)(b). Although the child objects to the termination, he does not seek to be placed with either parent. He "desires to remain in contact with them and would request the entry of a permanency order for another planned living arrangement." See *id.* § 232.104(2)(d)(4). It does not appear the request for another planned permanent living arrangement was raised in or decided by the district court. It is not properly before us. See *In re K.C.*, 660 N.W.2d 29, 33 (Iowa 2003).

Concerning the child's objection to termination generally, we conclude the child's best interests require the safety, security, and permanency achievable only through termination and adoption. See *In re C.K.*, 558 N.W.2d 170, 175

(Iowa 1997) (noting a child should not be forced to suffer in parentless limbo).

This factor does not serve to preclude termination in this case.

AFFIRMED ON BOTH APPEALS.