

**IN THE COURT OF APPEALS OF IOWA**

No. 3-924 / 13-1225  
Filed October 2, 2013

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

**A.M., Father,  
Appellant.**

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

A father appeals the order terminating his parental rights. **AFFIRMED.**

Thomas P. Graves of Graves Law Firm, P.C., Clive, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Wayne M. Reisetter, County Attorney, and Sean P. Wieser,  
Assistant County Attorney, for appellee State.

Kayla Stratton of the Des Moines Juvenile Public Defender's Office, Des  
Moines, attorney and guardian ad litem for minor child.

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

**DOYLE, J.**

A father appeals from the juvenile court's order terminating his parental rights to two-year-old A.M. We affirm.

**I. Background Facts and Proceedings**

This family came to the attention of the Iowa Department of Human Services (DHS) in November 2011, following a domestic altercation between the child's mother and her boyfriend (not the father). The mother consented to the child's removal from her home. The child was adjudicated in need of assistance in February 2012.

The father's paternity to the child was determined, and services to eliminate the need for DHS involvement were initiated. The father began visitations with the child and they developed a relationship.<sup>1</sup> The father is currently diagnosed as being mildly mentally retarded, with antisocial personality disorder, bipolar disorder, and depression.<sup>2</sup> Unfortunately, caseworkers expressed concerns with regard to the father's instability, "inconsistencies in parenting," "struggles with understanding age appropriate child development," and "erratic [and] threatening behavior." In addition, the caseworkers were concerned by the father's "fixation" on the mother, and his comparative inattention to the child. The father's visits with the child were decreased due to "continued reports" of his inability to parent the child safely.

The State filed a petition to terminate parental rights in July 2012. The termination hearing was held over three days in January, March, and April 2013.

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<sup>1</sup> Previously, the father had not known he was the child's father.

<sup>2</sup> The father additionally proffers he "has ADD."

Placement of the child was returned to the mother in April 2013. By that time, the State requested termination of the father's parental rights only and dismissed its petition in regard to termination of the mother's parental rights.<sup>3</sup>

The record before the juvenile court indicated "almost all" of the concerns about the father continued to exist. Specifically, the court was aware of the opinion of the case manager that, "even if [the father] could meet [the child]'s basic physical needs, he does not possess the skills understanding or insight to meet her developmental needs." The court also heard from the DHS worker in charge of supervising visitations between the father and child, who testified that the father got "overwhelmed during visits" and that she had to intervene when the child "acted up" and the father "was not able to deal with it." The court observed another opinion of a service provider that the father was "at high risk for behavior that is consistent with features of denial of critical care and neglect, as well as acting out his anger and frustration physically." All professionals working with the child, including the guardian ad litem, recommended termination of his parental rights.

Following the termination hearing, the court entered its order terminating the father's parental rights pursuant to Iowa Code sections 232.116(1)(d) and (h) (2011). The father appeals.

## ***II. Scope and Standard of Review***

We review proceedings to terminate parental rights de novo. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012). We give weight to the juvenile court's factual

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<sup>3</sup> The mother's parenting status had progressed such that the State recommended a goal of permanency of the child with the mother.

findings, especially when considering the credibility of witnesses, but we are not bound by them. *Id.* We will uphold an order terminating parental rights if there is clear and convincing evidence of grounds for termination under Iowa Code section 232.116. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Evidence is clear and convincing when there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. *Id.*

### **III. Discussion**

#### *A. Grounds for Termination*

At the outset, we must determine whether a ground for termination under section 232.116(1) is established. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The father does not dispute the grounds to terminate his parental rights under section 232.116(1)(d), and we affirm that finding of the juvenile court.<sup>4</sup> Although “[w]e only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm its ruling,” see *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2000), we elect to address the father’s contention that statutory grounds under section 232.116(1)(h) have not been proved by clear and convincing evidence.

Under that section, termination may be ordered when there is clear and convincing evidence a child age three or younger, who has been adjudicated in need of assistance and removed from the parents’ care for six of the last twelve months, cannot be returned to the parents’ custody at the time of the termination hearing. See Iowa Code § 232.116(1)(h). The father concedes the first two

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<sup>4</sup> Under that section, termination may be ordered when a child has been adjudicated in need of assistance for physical or sexual abuse or neglect and the circumstances continue despite receipt of services. See Iowa Code § 232.116(1)(d).

requirements of section 232.116(1)(h) have been proved by clear and convincing evidence—he agrees the child is age three or younger and has been adjudicated in need of assistance. He takes issue with the remaining two requirements, however, claiming they were not proved by clear and convincing evidence “when the child was never removed” from *his* care, and when “the child had been returned to the home of one parent [the mother], the parent from whom she had been removed.”

Section 232.116(1)(h)(3) speaks of a child’s removal from the “physical custody” of the parents. In November 2011, the mother consented to removal and custody of the child was placed with DHS. Placement of the child was returned to the mother in April 2013. Pursuant to the juvenile court orders, since November 2011, A.M. has been continuously removed from the father, having been placed with DHS from November 2011 to April 2013 and then subsequently placed with the mother. We conclude that A.M. has been removed from the physical custody of the father since November 2011, and that the State proved the third element by clear and convincing evidence.

The rights of a noncustodial parent may be terminated when the rights of a custodial parent remain intact. *See, e.g., In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996) (“The Iowa Supreme Court has interpreted the language of Iowa Code section 232.116 to allow the termination of one parent’s rights.” (citing *In re N.M.*, 491 N.W.2d 153, 155 (Iowa 1992))). As in all juvenile proceedings, the fundamental concern is the best interests of the child. *See In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). In consideration of a similar claim, the supreme court has observed:

It is not in the children's best interests to interpret the language of the subsections to prevent termination of the noncustodial parent's rights when the children are placed in the separate home of the other parent. We conceive of situations when a child in the custody of one parent would benefit from the termination of the other parent's rights.

*In re N.M.*, 491 N.W.2d 153, 155 (Iowa 1992). Such is the situation here.

Indeed, the guardian ad litem touched on this issue at the termination hearing. As the guardian ad litem stated, "[C]ertainly we have cases where custody is returned to one parent and it's not necessary to terminate the other parent's rights, [but] I think this case is different." Again, all service providers in this case recommended termination of the father's parental rights; this recommendation was reached despite the fact that the mother's parental rights remained intact. Of specific concern in this case was the father's erratic, threatening, and compulsive behavior in regard to the mother. As the juvenile court observed, "There is also overwhelming evidence of [the father]'s fixation on [the mother] and whatever she is doing or whomever she is seeing. All parties agree that [the father] and [the mother] are unable to co-parent without hostility or worse, from one or both of them."

We agree with these findings. The record clearly supports the father's inability to provide a safe environment for the child, and placing the child in his care is not an option. Under these facts and circumstances, we conclude there is clear and convincing evidence that grounds for termination exist under section 232.116(1)(h).

*B. Factors in Termination*

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interests, this court's primary considerations are "the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." *Id.*

We agree with the juvenile court's finding that termination of the father's parental rights is in the best interests of A.M. and would best provide for the child's long-term nurturing and growth. As the court observed:

[The father]'s attorney argued that it is not necessary to terminate [the father]'s parental rights to [the child], when there is little to no likelihood that [the father] would ever be in a position to have even occasional sole care of [the child], however, that would require continuous supervision from some source that would either require ongoing court and/or DHS supervision, or require [the mother] to find some way to provide it, while [the father] would expect to continue to exercise visitation. The court also must note that, unless [the father]'s rights are terminated, he would stand in the position of becoming a custodial parent should something happen to [the mother], and the court sees no likelihood that would ever be appropriate. It would be far better for [the child] to let her mother decide what, if any, contact she should have with [the father], and that is dependent on [the father]'s efforts and ability to continue and improve with treatment. The Court is aware that [the father] is not at fault for having mental health issues that render him unable to be a safe and effective parent, and it is unfortunate that the circumstances don't allow for cooperation between [the father] and [the mother] that would allow [the father] and [the child] to continue a relationship, but the court must look to [the child]'s best interests first and foremost.

"It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable

home for the child.” *Id.* at 41. Here, the father is unable to assume custody of the child now or at any time in the foreseeable future. There is no reason to delay the child the permanency she needs and deserves.

*C. Factors Against Termination*

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. 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. We have 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.

The father contends termination of her parental rights is not necessary because the child is placed with a relative. See Iowa Code § 232.116(3)(a). As mentioned above, we acknowledge the child’s placement with her mother. However, under the facts and circumstances of this case, we choose not to apply the exception to maintain the father’s relationship with the child where there exists only a mere possibility the father will become a responsible parent sometime in the unknown future. We conclude no exception or factor in section 232.116(3) applies to make termination unnecessary.

**IV. Conclusion**

There is clear and convincing evidence that grounds for termination exist, termination of parental rights is in the child’s best interests, and no consequential



factor weighing against termination requires a different conclusion. Accordingly, we affirm termination of the father's parental rights.

**AFFIRMED.**