

IN THE COURT OF APPEALS OF IOWA

No. 3-988 / 13-1305
Filed November 6, 2013

**IN THE INTEREST OF L.V.A.,
Minor Child,**

**H.V.A., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

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

John C. Heinicke of Kragnes & Associates, P.C., Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Andrea S. Vitzthum,
Assistant County Attorney, for appellee.

Nancy Trotter, Des Moines, for mother.

Paul White of Juvenile Public Defender, Des Moines, attorney and
guardian ad litem for minor child.

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

MULLINS, J.

A father appeals termination of her parental rights to a son, L.V.A., under Iowa Code sections 232.116(1)(d), (g), and (h) (2013). He argues the State failed to show sufficient evidence to terminate and termination was not in the child's best interests because of the bond with the father.

I. Facts and Background Proceedings.

L.V.A. came to the court's attention in December 2012, shortly after he was born. At the time, the mother was contesting a petition to terminate her parental rights to another child, P.I.N., L.V.A.'s toddler half-sister. The Department of Human Services (DHS) got involved with the family in May 2012 when neighbors called police to intervene as the mother and father were fighting in their home. Upon arriving, police officers noticed the mother and father showed physical signs of intoxication and methamphetamine use. The home was in an extremely unsanitary and unsafe state with excess clutter, garbage and rotting food everywhere; many cats were in the house with cat feces present everywhere and a strong smell of cat urine; in a back room officers discovered evidence of methamphetamine and marijuana use. The father was charged with domestic abuse assault on May 28, 2012 and pled guilty to assault.

After P.I.N. was removed, the parents continued to struggle with mental health and substance abuse issues. The mother has a history of methamphetamine addiction and the father of alcohol abuse and addiction. The mother's parental rights to P.I.N. were terminated on January 30, 2013.¹ The

¹ The mother has also had her parental rights terminated to another child, now an adult.

mother told DHS workers that she had consumed alcohol while she was pregnant with L.V.A. and had been hospitalized for consuming poison while pregnant.

After L.V.A. was born in December 2012, DHS petitioned for and the court granted removal when he was just three days old. DHS filed a child in need of assistance petition on December 14, 2012. On January 3, 2013, the juvenile court placed L.V.A. with his paternal aunt and uncle, where he has remained ever since, with no trial periods in his parents' home.

The parents were already participating in a number of services due to DHS's involvement with P.I.N. The parents were both undergoing random drug screening. All screens gave negative results for drug use for both parents. The parents were required to attend therapy for mental health, domestic violence, and substance abuse issues. The father declined to participate in therapy until November 2012 and had attended only five sessions by the time of the adjudication hearing in February 2013. His therapist had recommended weekly sessions. The parents had started couples counseling, but the therapist indicated they struggled to take personal responsibility for their choices and recommended they attend individual counseling until they made progress. The mother completed MECCA substance abuse treatment and attended continuing care. The father was unemployed and dependent upon the mother for housing, which was unstable because of their volatile relationship and bouts of violence. The father got a substance abuse evaluation and attended one parenting class before quitting.

On February 8, 2013, the juvenile court adjudicated L.V.A. a child in need of assistance under Iowa Code sections 232.2(6)(b), (c)(2), and (n).² In its adjudication order, the court found that the condition of the home had improved since the removal of P.I.N. However, the parents still owned thirteen cats and allowed family members and homeless people to reside in the home, creating an inappropriate environment for children. A dispositional order filed April 3, 2013, noted that the father began anger management classes and had completed four of twelve sessions. The parents also began having visitation in their own home. The Family Safety, Risk, and Permanency Services (FSRP) worker reported the home was clean and appropriate for L.V.A. The FSRP worker reported that visits went well with both parents caring for L.V.A. appropriately and providing necessities such as diapers and formula. The DHS worker also reported both parents appeared to be bonded with L.V.A. The father started a job and worked with DHS to schedule visitation around his work hours.

² Iowa Code section 232.2(6) provides:

6. "Child in need of assistance" means an unmarried child:

b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of any of the following:

 (2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

n. Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.

The April 3, 2013 dispositional order also discontinued random drug testing. However, on April 10, 2013, the mother was arrested for operating while intoxicated, public urination, and open container. The DHS worker was particularly concerned that the mother relapsed so soon after random testing stopped. On May 8, 2013, DHS reported the father had stopped attending therapy, couples counseling, and anger management classes. The State filed a petition to terminate both the mother's and father's parental rights on April 30, 2013. The juvenile court held the termination hearing on three days: June 13, July 3, and July 24, 2013. The court took testimony from the mother, the father, the DHS and FSRP workers, and various counselors.

On the first day of the termination hearing the father testified that he had decided in May to focus on caring for L.V.A. himself and ending his volatile relationship with the mother. However, he did not move out until a week before the final day of the termination hearing over a month later. The primary barrier to moving out, the father testified, was financial. He had stopped attending therapy sessions because of conflicts with his work hours and had made no effort to seek counseling outside those hours. He had also been asked to attend anger management classes and acknowledged it was a service he needed; however, he attended only four of twelve classes and had not scheduled the remaining classes. The father was in temporary employment making minimum wage.

Between the first and second days of the termination hearing, the mother went fishing with her adult son. The father had bought several boxes of wine for her to take with her. The father testified he knew, as an addict, she should not

be drinking, but the mother threatened to call the police and have them remove the father from the home unless the father bought her the wine. The father also admitted to drinking alcohol around the same time. The last weekend in June the mother was arrested for public intoxication and going armed. On July 3, the second day of the termination hearing, the mother testified she had asked the father to move out “a couple dozen” times, and the father had not done so. The father also admitted that the fact that L.V.A. was placed with his family caused him not to work as hard with services.

On July 24, the third day of the hearing, the DHS worker testified that the father had moved out of the mother’s home only a week before. The couple got into a heated argument, and the mother called the police to force the father to leave the home. The father moved into a local hotel known to be the residence of multiple registered sex offenders. The father acknowledged it was an inappropriate place for a child. After moving out, however, the father had returned to the mother’s home on at least one occasion and spent the night there. The father continued in temporary employment and did not know when the job would be made permanent. The mother was late to the final hearing date because she was attending an eviction action against her on the same morning. The parents remained consistent with visitation, were prepared with necessities, and cared for L.V.A. appropriately throughout visits. However, visits remained fully supervised and never progressed to overnight or unsupervised visitation. The guardian ad litem also stated, because he had been removed at such a young age and had remained with the paternal aunt and uncle so long,

termination would be in L.V.A.'s best interest. The juvenile court entered an order terminating both parents' rights on August 1, 2013. The father appeals. The mother does not appeal.

II. Standard of Review.

We review a juvenile court order terminating parental rights de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We give weight to the factual determinations of the juvenile court but are not bound by them. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Analysis.

A. Sufficiency of evidence to terminate.

We will uphold termination of parental rights where there is clear and convincing evidence of the statutory grounds for termination. *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.* When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the cited sections to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Here, we focus on the evidence supporting the court's termination of the father's parental rights under Iowa Code section 232.116(1)(h).

To terminate parental rights under Iowa Code section 232.116(1)(h), the State must show by clear and convincing evidence the child is three years or younger, has been adjudicated a child in need of assistance, has been removed

from the parent's care for at least the last six consecutive months, and cannot be returned to the parent's custody at the time of the termination hearing. L.V.A. was born December 2012, removed almost immediately from the parents' care, and adjudicated a child in need of assistance in February 2013. He has never been returned to the parents' care for any trial period. The final termination hearing took place July 2013. He was, therefore, adjudicated in need of assistance, three years or younger, and out of the parents' care for the preceding six consecutive months. The father does not contest these elements. He contends the district court erred in finding there was clear and convincing evidence that L.V.A. could not be returned to his care.

At the time of the termination hearing, the father admitted to continuing to drink. Although he had moved out of the mother's home, he remained in a volatile relationship with her. Their relationship history involved fighting and episodes of violence. The father purchased alcohol for the mother even though he was aware she should not be drinking and had multiple relapses in trying to maintain her sobriety. The father also moved into a residence with multiple registered sex offenders and had a temporary job. The father has not remained in therapy, substance abuse counseling, or anger management classes, as ordered by the court.

L.V.A. has lived with his paternal uncle and aunt virtually since he was born and has never resided with the father. Once the statutory time frames are satisfied, termination must be viewed with a sense of urgency. *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). Beyond those limitations, "patience with parents

can soon translate into intolerable hardship for their children.” *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). The father had already observed termination of the mother’s parental rights as to P.I.N. He had been involved with services since DHS intervened in that case. He recognized that his relationship with the mother and her substance abuse problems made caring for L.V.A. with her impossible but did not move out of her house until one week before the end of the termination hearings. Upon our review of the record, we find the risk of further harm to L.V.A. is too great under these circumstances; he cannot be returned to the father. The statutory grounds for termination under Iowa Code section 232.116(1)(h) are therefore satisfied.

B. Existence of an exception under Iowa Code section 232.116(3).

If a court finds grounds are sufficient to support termination of parental rights, the court next must consider if any statutory exceptions or factors set out in Iowa Code section 232.116(3) weigh against termination of parental rights. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). The court “need not terminate the relationship between the parent and child if the court finds . . . [t]here is clear and convincing evidence that 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) and (3)(c). The father contends termination would be detrimental to L.V.A. due to the closeness of the parent-child relationship. *Id.*

The facts do not support the father’s argument. L.V.A. has never lived with his father. He has lived with and been cared for full time by his paternal uncle and aunt. The father has had, at most, ninety-minute visitation, three times

a week. Visitation has always been fully supervised and has never progressed to overnight or trial stays in the father's home. The father has been consistent in attending visitation and has been prepared with necessities and cared for L.V.A. appropriately. L.V.A. appears to recognize the father and responds to him. Nonetheless, given the length of time L.V.A. has been out of the father's care and the continuing risk that he will be harmed by the father's environment and his failure to address the substance abuse, violence, and anger management issues that led to L.V.A.'s removal, we find the evidence is not clear and convincing that termination would be detrimental to L.V.A..

IV. Conclusion

We find there is clear and convincing evidence to terminate the father's parental rights under Iowa Code section 232.116(1)(h). Termination is not prevented by the application of an exception under Iowa Code section 232.116(3). Therefore, we affirm termination of the father's parental rights.

AFFIRMED.