

IN THE COURT OF APPEALS OF IOWA

No. 7-009 / 06-1970
Filed January 31, 2007

**IN THE INTEREST OF H.S.,
Minor child,**

**B.E.S., Father,
Appellant.**

Appeal from the Iowa District Court for Clinton County, Arlen J. Van Zee,
District Associate Judge.

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

Robert J. McGee of Robert J. McGee, P.C., Clinton, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael L. Wolf, County Attorney, and Joel Walker, Assistant
County Attorney, for appellee State.

J. David Zimmerman, Clinton, guardian ad litem for minor child.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VOGEL, P.J.

Billy and Stephanie are the parents of Harlie, who was born in February of 2003. Harlie was removed from the custody of her parents on April 13, 2005, after both parents tested positive for cocaine and a hair-stat test indicated Harlie had been exposed to the drug. On May 23, 2005, Harlie's parents consented to her adjudication as a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and (o) (2005), and a dispositional order was subsequently entered granting custody to the Iowa Department of Human Services (DHS) for purposes of placing Harlie in foster care. In July of 2006, the State filed a petition seeking to terminate the parental rights of both Billy and Stephanie. Following a hearing on that petition, the court terminated Billy's rights under section 232.116(1)(h), but refused to terminate Stephanie's rights due to the "significant bond between mother and child." Billy appeals from this ruling.

We review termination orders de novo. *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Our primary concern is the best interests of the child. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). The grounds for termination must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000).

On appeal, Billy's sole contention is that the court "erred in terminating [his parental rights] because the child has been in placement with a relative [maternal aunt] and it is not in the best interests of the child" that his rights be terminated. He adds that it is not fair to terminate his parental rights but not the rights of Stephanie.

Iowa Code section 232.116(3)(a) provides that the court need not terminate a parent's rights if "[a] relative has legal custody of the child."

Application of section 232.116(3) is permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). It is within the discretion of the juvenile court, based on the circumstances before it and the best interests of the child, whether to apply the section. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

Upon our de novo review of the record, we conclude that termination was appropriate and in Harlie's best interests. Billy has proven to be a poor influence on the life of his daughter, from such activities as drug use, criminal activity, and domestic abuse. Moreover, he continues to make choices and display behaviors that would put Harlie's safety in danger.

When Harlie was removed from her parents' care, authorities discovered marijuana in Billy's living room and bedroom, evidence of methamphetamine manufacturing, and a glass marijuana pipe in Harlie's bed. This troubling evidence of drug use, coupled with the fact that Harlie was exposed to cocaine as evidenced by her hair-stat test, indicated to DHS and the juvenile court that Billy needed to address his drug issues before any reunification could occur. Despite this clear understanding, Billy was not cooperative with DHS throughout this case, and DHS had no indication he had completed any drug treatment at the time of the termination hearing.

In addition to his drug use, Billy has a serious criminal background that makes him an unsuitable parent. In 2003, he was charged with aggravated assault with a deadly weapon and based on the incident that led to the removal of Harlie, he was charged with drug offenses. Between December of 2005 and June of 2006, he was on in-home detention status in Illinois. After violating his

probation in June of 2006, he was sent to prison and at that time of trial he did not expect to be released until October 26, 2007. Consequently, he has had little contact with Harlie during this time frame.

Billy has been given more than sufficient time to address the concerns that lead to Harlie's removal. He has largely failed to take advantage of services offered to him and has been absent for much of Harlie's life due to his criminal activity and incarceration. In its consideration of Harlie's best interests, the juvenile court appropriately noted Billy's influence on Harlie's life has largely been "destructive." Harlie is thriving in the care of her aunt, with whom she has lived since early 2006. Harlie deserves a level of permanency and stability that would not be fostered by allowing Billy to remain in her life. We therefore affirm the termination of Billy's parental rights.

AFFIRMED.