

IN THE COURT OF APPEALS OF IOWA

No. 7-303 / 07-0480

Filed May 23, 2007

**IN THE INTEREST OF C.A.J.,
Minor Child,**

**H.O.J.-C., Father,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Dewey Sloan Jr., LeMars, for appellant.

Martha McMinn, Sioux City, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and David Dawson, Assistant County Attorney, for appellee State.

Patrick Parry of Forker & Parry, Sioux City, for minor child.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

MAHAN, P.J.**I. Background Facts and Proceedings**

Christopher was born in March 2006 to Talia. Christopher is eligible to be an enrolled member of the Ponca Tribe of Nebraska. Talia has lived, at various times, with Christopher's putative father, Hector. Hector's paternity has never been established through testing, but he has signed an affidavit indicating he is Christopher's legal father.

Hector and Talia have a history of domestic violence. On April 2, 2006, the police became involved when Talia reported an assault. Talia told officers an argument about the proper temperature of Christopher's baby bottle led to a physical altercation. Hector pushed her to the ground, and she allegedly threatened him with a large kitchen knife. After interviewing both Talia and Hector, the officers concluded Talia was the primary aggressor, so she was arrested on domestic abuse charges. The court issued a no-contact order, but both parties continued to associate and occasionally live with each other. Two weeks later, Hector got into a shoving match outside the family residence with Talia's new boyfriend.

On April 18, 2006, police came to the home to investigate a claim that Talia had assaulted her mother. Once they discovered every adult in the house was intoxicated¹ and unable to care for Christopher, they removed Christopher and arrested Talia for child endangerment. A hair stat test performed on Christopher tested positive for cocaine. He was adjudicated a child in need of

¹ Hector was not present at the time of the removal.

assistance (CINA) on May 26, 2006, pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2005).

During the ensuing months, Talia continued to have violent physical altercations with numerous individuals, including Hector. Most of these instances were related to alcohol or substance abuse. During one incident, she made an unfounded accusation that Hector was dealing drugs. The police were repeatedly called to investigate claims of violence related to their ongoing relationship.

The Iowa Department of Human Services (DHS) caseworker recommended Hector disassociate with Talia and establish his own living environment. Hector reported that he would have no contact with Talia if that was necessary to have Christopher returned to his care. Hector initially cooperated with offered services and made strides towards reunification. He had supervised visitations with Christopher twice per week, but his requests for unsupervised visitations were denied because providers believed he was still living with Talia. Hector complied with an initial drug screen, but ignored further requests for random screenings.

In September Talia told providers she was living with Hector. She also accused him of further domestic violence. Hector's visitations were suspended due to his dishonesty and the reported violence.

At the termination hearing, Hector admitted he was once again living with Talia. Talia also testified at the hearing. She indicated she was pregnant, but she did not know whether Hector was the father of the unborn child. Talia also admitted abusing alcohol and methamphetamine one week before the

termination hearing. Hector claims he did not know she was using methamphetamine. Following the presentation of evidence, both the guardian ad litem and the qualified expert witness for the Ponca Tribe of Nebraska joined in the State's request for termination.

Hector's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d), (e), (h), and (i). Talia's parental rights were also terminated, but she is not a party to this appeal.

II. Standard of Review

We review termination proceedings de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). Although we give weight to the juvenile court's factual findings, we are not bound by them. *Id.* The State must prove the grounds for termination by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the child. *Id.*

III. Merits

On appeal, Hector does not specifically challenge any of the statutory grounds for termination. Instead, he makes the vague argument that his status as an illegal alien should not have been considered in the termination proceeding.² We therefore proceed to analyze whether sufficient grounds for termination exist, without any consideration of his immigration status, under at least one of the sections cited by the juvenile court. *See id.* ("When the juvenile court terminates parental rights on more than one statutory ground, we need only

² Hector is a native of Guatemala. He has been residing in the United States illegally for the past nine years.

find grounds to terminate under one of the sections cited by the juvenile court to affirm.”).

Under section 232.116(1)(h), a parent's rights may be terminated if the court finds by clear and convincing evidence (1) the child is three or younger, (2) the child has been adjudicated in need of assistance, (3) the child has been removed from the home for six of the last twelve months, and (4) the child cannot be returned home at the present time. There are no disputes concerning the first three elements: Christopher was less than one year old at the time of the termination proceeding, he was adjudicated CINA pursuant to multiple sections of the Iowa Code, and he had been removed from his parents' care for more than nine consecutive months. While the fourth element was not directly challenged on appeal, we agree Christopher could not be returned to Hector's care at the time of the termination hearing.

Talia has a significant substance abuse problem, which Hector minimizes or ignores. Also, Hector continues to reside with Talia, even though they have an abusive relationship. Hector does not comprehend how the domestic violence and Talia's substance abuse negatively impact Christopher's welfare. It is vital in a juvenile matter that a parent recognizes when a child has been victimized so meaningful change can occur to protect the child in the future. *In re L.B.*, 530 N.W.2d 465, 468 (Iowa Ct. App. 1995); *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988). “A parent's failure to address his or her role in the abuse may hurt the parents' chances of regaining custody and care of their children.” *In re C.H.*, 652 N.W.2d 144, 150 (Iowa 2002).

We conclude, as the juvenile court did, that Christopher cannot be returned to Hector without being placed in an unsafe environment. Our conclusion is not based on Hector's immigration status, but instead based on the history of domestic violence in the home, drug abuse in the home, and Hector's unwillingness to either address these issues or end his relationship with Talia.

Beyond the statutory grounds for termination, we also find it is in Christopher's best interests to terminate Hector's parental rights. Christopher is doing well in his current placement, and the Ponca Tribe of Nebraska is working with DHS to locate an adoptive placement. As recently noted by our supreme court, a child's safety and his need for a permanent home are the defining elements in a child's best interests. *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Christopher has waited nine months for Hector to establish a safe environment. He should not be forced to wait any longer. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems."); *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997) ("When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued."). We find it is in Christopher's best interests to terminate Hector's parental rights so that Christopher can have permanency and the chance to grow in a stable and secure environment. Therefore, we affirm the termination of Hector's parental rights.

AFFIRMED.