

**IN THE COURT OF APPEALS OF IOWA**

No. 7-387 / 07-0647  
Filed June 13, 2007

**IN THE INTEREST OF E.B.,  
Minor Child,**

**M.E.B., Father,  
Appellant.**

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Appeal from the Iowa District Court for Johnson County, Stephen Gerard II, District Associate Judge.

A father appeals from a juvenile court order terminating his parental rights to one child. **AFFIRMED.**

Brian Johnson of Hallberg, Jacobsen, Johnson & Viner, P.L.C., Cedar Rapids, for appellant father.

Christine Boyer, Iowa City, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Janet Lyness, County Attorney, and Kristin Parks, Assistant County Attorney, for appellee State.

Mark Thompson, Iowa City, guardian ad litem for minor child.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

**MILLER, J.**

Matthew is the father of Emma, who was thirteen months of age at the time of a termination of parental rights hearing. Matthew appeals from an April 2007 juvenile court order terminating his parental rights to Emma. The order also terminated the parental rights of Emma's mother, and she has not appealed. We affirm.

Emma was born in December 2005. In February 2006 she was taken to the hospital, her third trip to the hospital in the first two months of her life. Diagnostic impressions included "probable physical abuse." Attending physicians stated that "[t]here may even be Munchausen syndrome by proxy dynamics in effect . . . ." Emma was removed, with consent of her parents, from their physical custody. She has since late February 2006 remained in the legal custody of the Iowa Department of Human Services (DHS) and in foster family home placement.

In April and May 2006 Emma was adjudicated a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2005). In late October 2006 the State filed a petition to terminate parental rights. Following a late January 2007 hearing the juvenile court ordered Matthew's parental rights terminated pursuant to Iowa Code section 232.116(1)(h) (2007) (child three or younger, adjudicated CINA, removed at least six of last twelve months, cannot be returned to parents at present). Matthew appeals.

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State

must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

*In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Matthew claims (1) there is not clear and convincing evidence that Emma cannot be returned to his custody at the present time, and (2) the juvenile court erred when it found that he was unable to care for Emma. Both claims implicate the fourth element of section 232.116(1)(h), whether Emma could be returned to Matthew at the time of the termination hearing. This element is proved when the evidence shows the child cannot be returned to the parents without remaining a CINA. *In R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supported the child's initial removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

Numerous and varied services, including supervised visitation, were offered to Matthew and to Emma's mother following Emma's removal. Initially Emma's parents visited her twice weekly. Later they separated and for a period of time thereafter each had separate visits once per week. By mid-summer or early fall Emma's mother had apparently decided to forego reunification efforts, she stopped visiting, and for a time Matthew had visits once a week for about an hour and a half. He appeared to lose interest after no more than an hour, however, so the length of his visits was shortened to an hour or a little longer. Matthew has never requested more frequent or longer visits. His visits have never progressed to semi-supervised.

Matthew has taken certain positive steps toward reunification. He has changed his work hours to better accommodate Emma if placed in his care, child-proofed his apartment, and made some tentative day care arrangements. The overall picture, however, is one of a lack of focus, effort, and progress on his part toward reunification.

Matthew was responsible for Emma's care during his visits. Despite repeated reminders and admonitions to bring formula and supplies, he frequently forgot to bring many necessary items. He was frequently substantially lacking in personal hygiene when he appeared for visitations.

On several occasions Matthew slept through appointments with service providers and Emma's appointments with physicians. Despite the attempt of service providers to teach parenting skills, he appears to lack fundamental understanding regarding both the nutritional needs of a small child and age-appropriate discipline of a small child. During even the one-hour visitations Matthew is unable or unwilling to stay focused on Emma and her needs.

Matthew suffers from attention deficit/hyperactivity disorder, but does not take the medication that has been prescribed for his condition. He delayed somewhat in arranging for a psychological examination, missed appointments for the evaluation, cheated on a test that was part of the evaluation, and in providing background information for the evaluation failed to mention that he was the father of a five-year-old child he had never seen. Matthew has not followed through with further assessment and therapy recommended as a result of his evaluation.

From the evidence contained in the record it appears that Matthew has the ability to acquire the skills to parent Emma but lacks the necessary commitment

and follow-through. In the opinion of the parenting counselor/service provider responsible for supervising visitations and teaching parenting skills, as well as the opinion of the DHS service worker assigned to Emma's case, Matthew is easily distracted and unable to focus on Emma's needs. He appears to be a playmate to Emma rather than a parental figure, and Emma seems to view him as such rather than as a caregiver.

Both the parenting counselor/service provider and the DHS service worker testified that after almost eleven months of services Matthew has made no progress in his parenting skills, his distraction and inability to focus on Emma and her needs has in fact worsened as her needs and demands have increased, and additional time would not help. Neither believes there is a substantial bond between Emma and Matthew. Both recommend termination of Matthew's parental rights. Emma's attorney and guardian ad litem essentially agrees with their evaluation and also recommends termination.

Matthew is unable to focus on Emma and her needs and care on any sustained basis, and the evidence shows that he is highly unlikely to be able to do so within the reasonably foreseeable future. Emma is young, has been out of the legal and physical custody of her parents for almost a year, and needs permanency. We conclude, as the juvenile court did, that Emma cannot be returned to Matthew at the present time without remaining a CINA. We therefore affirm the termination of Matthew's parental rights to Emma.

**AFFIRMED.**