

IN THE COURT OF APPEALS OF IOWA

No. 7-524 / 07-0967
Filed August 8, 2007

**IN THE INTEREST OF N.G.,
Minor Child,**

T.K., 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 a
daughter. **AFFIRMED.**

Marsha Arnold, Davenport, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Mike Wolf, County Attorney, and Cheryl Newport, Assistant
County Attorney, for appellee State.

Neill Kroeger, Davenport, guardian ad litem for minor child.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

BAKER, J.

Timothy appeals from the termination of his parental rights to his daughter, Natalie, who was born in February 2006. Upon our de novo review, *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991), we affirm.

On May 8, 2006, the State filed an application for Natalie's temporary removal from her parents' care. This application followed a series of troubling incidents, such as the improper use of a sleep apnea monitor, physical abuse of Natalie, and Timothy's domestic abuse of Natalie's mother Amanda. After one incident, the Iowa Department of Human Services (DHS) drew up a family safety plan; however, Timothy was resistant and refused to sign it. In addition, while both parents were asked to submit urinalyses, both refused to give samples and Timothy exhibited bizarre behavior at the scheduled drug testing. Based on these incidents, the court granted the State's application and placed Natalie with her maternal aunt, Jennifer.

Following an adjudicatory hearing on August 15, 2006, the juvenile court adjudicated Natalie to be a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(b) (2005). Finding that Timothy's behavior was not sufficiently modified and that reunification was not warranted, the State filed a petition seeking to terminate his parental rights. The court subsequently granted this request and terminated Timothy's parental rights under section 232.116(1)(h) (2007) (child three or younger, removed six months, and cannot be returned without risk of adjudicatory harm).

On appeal, Timothy first argues the State did not present clear and convincing evidence sufficient to support the termination under section

232.116(1)(h). Upon our de novo review of the record, we concur in the judgment of the juvenile court that termination is appropriate.

While we agree with Timothy that he largely complied with the case plan, we find that compliance has not alleviated the adjudicatory concerns that precipitated this case. At the time of the termination hearing, Natalie had been out of the home for all but eighty-three days of her life, and Timothy has not progressed beyond supervised visitation with her. Social worker Sarah Vicevich opined that it would not be safe to return Natalie to Timothy's care, citing concerns about his inability to abstain from illegal drug use, his continuing irrational thinking, and his living and employment uncertainties. DHS social worker Kayla Fuegen cited Timothy's continuing mental health issues, failure to make a reasonable effort toward reunification, and chronic substance abuse in supporting her position that Timothy is unable to safely parent Natalie. We find these sentiments persuasive, and conclude the adjudicatory harm and concerns that initiated this case still remain.

We also find evidence that Timothy has been less than forthcoming with the court and with service providers. When asked about the reasons for a March 2007 positive test for the presence of marijuana, Timothy offered that it was perhaps caused by his recent ingestion of ibuprofen for a migraine headache or because he eats lots of sandwiches with poppy seeds. Moreover, when questioned about statements attributed to him by a doctor during a psychological evaluation, Timothy denied having made all statements, and claimed simply that the doctor was mistaken. Furthermore, we are also unconvinced that Timothy's mental status is sufficiently stabilized to warrant Natalie's return.

Timothy next maintains termination of his parental rights is not in Natalie's best interests. In particular, he noted that (1) his visits with Natalie had been consistent, (2) he met all requirements of the case plan, and (3) Natalie is strongly bonded with him. Of course, our primary concern in termination proceedings is the best interests of the child. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

While we must acknowledge and commend the progress and effort that Timothy has apparently made of late, we find it to be insufficient. At the time of the termination hearing, Natalie had been out of Timothy's care for just less than one year. At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Our legislature has made the determination that point is reached when the statutory time for patience with a parent has passed. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). Natalie is bonded with her current foster family. Because Timothy is unable to provide stability or safety to Natalie, we affirm the termination of his parental rights. *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) (stating children's safety and their need for a permanent home are the defining elements in a child's best interests).

AFFIRMED.