

IN THE COURT OF APPEALS OF IOWA

No. 9-953 / 09-1432
Filed November 25, 2009

**IN THE INTEREST OF S.W., T.W., and S.W.,
Minor Children,**

**J.W., Father,
Appellant.**

Appeal from the Iowa District Court for Scott County, John G. Mullen,
District Associate Judge.

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

Barbara E. Maness, Davenport, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Michael Walton, County Attorney, and Gerda C. Lane,
Assistant County Attorney, for appellee.

Timothy Tupper, Davenport, for mother.

Christine Frederick of Zamora, Taylor, Woods & Frederick, attorney and
guardian ad litem for minor children.

Considered by Vogel, P.J., Mansfield, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MILLER, S.J.

The appellant is the father of three-year-old, two-year-old, and one-year-old daughters. He appeals from a September 2009 juvenile court order terminating his parental rights to these children. (The order also terminated the parental rights of the children's mother, who has not appealed.) We affirm.

The juvenile court terminated the father's parental rights pursuant to Iowa Code sections 232.116(1)(h) (2009) (child three or younger, adjudicated a child in need of assistance (CINA), removed from parents for last six consecutive months, cannot be returned to parents at present time), (k) (child adjudicated CINA and custody transferred for placement; parent has chronic mental illness, has been repeatedly institutionalized, and presents danger to self or others; parent's prognosis indicates child cannot be returned within a reasonable time), and (l) (child adjudicated CINA and custody transferred for placement; parent has severe, chronic substance abuse problem, and presents danger to self or others; parent's prognosis indicates child cannot be returned within a reasonable time). The father claims the State did not prove by clear and convincing evidence the statutory grounds for termination relied on by the juvenile court.

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).

The youngest of the three children was born with cocaine in her system in June 2008. The children were then removed from the physical custody of their parents and placed in the temporary legal custody of the Iowa Department of Human Services (DHS). Following a removal hearing the children were placed in the legal custody of the DHS for placement in foster care. They have thereafter remained in DHS custody, placed in foster care.

The children were adjudicated CINA in August 2008 pursuant to Iowa Code sections 232.2(6)(c)(2) (2007) (child who has suffered, or is imminently likely to suffer, harm as result of failure of parent to supervise), (n) (child whose parent's mental condition, imprisonment, or drug or alcohol abuse results in child not receiving adequate care), and (o) (child with illegal drug in body because of parent's acts or omissions). The State filed petitions for termination of parental rights in late June 2009. Following a hearing, the juvenile court filed its order terminating parental rights in September 2009.

The father has a lengthy history of anger problems, domestic violence, and child abuse and neglect. Prior to his marriage to the mother of the children who are the subject of these proceedings, the father's parental rights to two sons were terminated. He had engaged in domestic abuse of the boys' mother. He had also engaged in domestic abuse of a previous wife. In 2001 a report of child abuse by the father was confirmed. In 2002 a report of child abuse and a separate later report of child neglect were founded as to him. In 2006 a report of his neglect of the oldest of the three children involved in this case was founded. As a result of the neglect and his marijuana use the family received services

through the DHS in 2006. The father's anger problems had not been adequately dealt with by the time of the termination proceedings, as demonstrated by his continuing displays of anger toward service providers.

The father has a lengthy history of criminal acts. From 2001 through 2005 he engaged in possession of drug paraphernalia, disturbing the peace, disorderly conduct, two instances of interference with official acts, three episodes of public intoxication, operating while intoxicated, two assaults, and three domestic abuse assaults. At the start of these proceedings he was in jail, charged with domestic abuse assault of the children's mother. This charge was later dropped when he was transferred to another county facing proceedings for failing to pay a fine on an OWI conviction.

More important than the foregoing, however, is the father's history of substance abuse and ongoing substance abuse. He has for years used and abused alcohol and illegal controlled substances such as marijuana and cocaine. He has on several occasions received substance abuse treatment, only to later begin using again. He completed substance abuse treatment in July 2007, but thereafter continued drinking alcohol.

During these CINA and termination proceedings, in November 2008 the father was ordered to participate in drug court. He did so, at times responsibly but at other times resistively. The father completed both an inpatient and an intensive outpatient substance abuse treatment program. However, he relapsed and used cocaine in March 2009. By mid-May 2009 the father was missing random drug tests, was not attending group counseling sessions, was not

attending AA meetings, and was missing drug court sessions. He tested positive for cocaine twice just after mid-May. By the end of May the father was suspended from drug court.

The father had earlier expressed an understanding of how his substance abuse had caused him to lose employment, housing, and relationships. Nevertheless, despite his long-standing substance abuse problem and numerous relapses, in June 2009 he asked to be dismissed from the drug court. He expressed the opinion that he can deal with his substance abuse problem on his own. Following dismissal from the drug court program, and while the petitions to terminate parental rights were pending, the father again relapsed.

In the opinion of service providers, as reflected in a June 4, 2009 juvenile court order, the father “has not internalized his sobriety and committed to a sober life.” The court found in that same order that the father “has clearly returned to usage, tried to avoid detection, and minimized his usage.”

The first three elements of section 232.116(1)(h) (2009) were clearly proved, and the father’s claim of absence of clear and convincing evidence implicates only the fourth element of that section. That element is proved when the evidence shows the children cannot be returned to the parent without remaining CINA. *In re 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 children’s removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

The father has previously had parental rights terminated. Despite a long-standing and serious substance abuse problem, he has failed or refused to take advantage of offered and available assistance, and has continued to relapse, even under the impending threat of loss of parental rights. He has, either knowingly or by default, placed a higher priority on his use of chemical substances than on his relationship with his children.

Parents who have severe, chronic substance abuse problems clearly present a danger to their children. *State v. Petithory*, 702 N.W.2d 854, 858-59 (Iowa 2005); *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993). We conclude clear and convincing evidence shows that the children could not be returned to their father at the time of the termination hearing without being subject to such imminent threat of abuse or neglect as would cause them to remain CINA. We thus further conclude that the State proved all elements for termination of the father's parental rights required by section 232.116(1)(h).

In order to affirm termination of parental rights when the juvenile court terminates on more than one statutory ground, we need only find grounds to terminate under one of the grounds relied on by the juvenile court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Having concluded that the State proved the grounds for termination under section 232.116(1)(h), we need not and do not address the other provisions relied on by the juvenile court.

AFFIRMED.