

IN THE COURT OF APPEALS OF IOWA

No. 9-993 / 09-1544
Filed January 22, 2010

**IN THE INTEREST OF L.R.,
Minor Child,**

**B.C.R., Father,
Appellant.**

Appeal from the Iowa District Court for Tama County, Angeline M. Wilson,
District Associate Judge.

A father appeals from the order terminating his parental rights.

REVERSED.

John S. Livingston, Gladbrook, for appellant father.

Randal Giannetto, Marshalltown, for appellee mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Brent D. Heeren, County Attorney, and Michael Marquess,
Assistant County Attorney, for appellee State.

Jennifer L. Steffens of Bennett, Steffens & Grife, P.C., Marshalltown, for
minor child.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

A father appeals from the order terminating his parental rights. Upon our de novo review, we reverse.

I. Background Facts and Proceedings.

B.R. is the father and B.S. is mother of L.R., born April 2008.¹ The mother's parental rights to another child were terminated in October 2007, due the mother's substance abuse addiction.² At that time, the parents had been together for approximately a year and a half and were living together. The couple had a very chaotic relationship, mostly relating to the mother's substance abuse and mental health issues. The father admitted he had abused illegal substances in the past and had had a problem with alcohol. There were several incidents of domestic violence during the course of their relationship.

After L.R.'s birth, the Iowa Department of Human Services (Department) completed an assessment to determine L.R.'s welfare. Although the child was born without substances in the child's system, the Department was unable to verify that the mother had remained clean for an extended period of time prior to L.R.'s birth. The Department requested and the mother refused a hair stat test. On May 29, 2008, the State filed its petition asserting that L.R. was a child in need of assistance (CINA). Thereafter, the mother and father completed hair stat tests that were negative for all drugs. At that time, the mother and father's relationship appeared to be more stable. The mother was also attending classes

¹ This appeal concerns only the father's parental rights. The child's mother has not appealed from the termination of her parental rights.

² B.R. is not the father of that child, and the mother's rights to this child are not at issue in this appeal.

and seemed to be getting her life in order. For these reasons, the parties agreed to continue the CINA adjudication for six months. The court continued drug testing for the mother and in-home services for the family.

In late September 2008, it was reported to the Department that the mother was using methamphetamine and was planning to continue using through the evening. It was further reported that the mother had L.R. with her and was looking for someone to care for him so she could continue using drugs. The Department opened an investigation and attempted to reach the family to assure the safety of the child. Although the Department's worker was able to reach the father by phone, the father was unwilling to meet with the investigator. The parents continued to be uncooperative with the Department and lied to the Department's workers about the mother's whereabouts. When the workers eventually made contact with the parents, the mother admitted she had used meth and that she and the father had gone to a hotel to hide from the workers. The mother stated that the father had not used and that both parents knew L.R. was safe with relatives. The Department then sought emergency removal of L.R. from the parents' care, and on October 3, 2008, the juvenile court temporarily removed L.R. from the parents' care and placed the child with L.R.'s grandparents. L.R. has not been returned to either of the parents' care since.

On October 22, 2008, a hearing was held on the State's CINA petition and for review of the temporary removal of the child. The parties agreed to continue custody of the child with the Department for purposes of relative placement, and the parties stipulated that the child was in need of assistance as set forth in the State's petition. The court then adjudicated L.R. a CINA and ordered that a

social history report, along with a case permanency plan, be prepared. The case permanency plan recommended, among other things, that the father have a substance abuse evaluation and follow the recommendations made. Following a hearing, the juvenile court on November 19, 2008, entered its dispositional order adopting the case permanency plan and ordering that the parents provide urine samples for testing.

Due to health reasons, L.R.'s grandparents were unable to continue to care for L.R. L.R. was then placed with relatives of the father. The father visited L.R. during November and December, but did not take advantage of seeing L.R. as often as he could.

The father, who is fifty-three years old, had an alcohol abuse evaluation in December 2008. The evaluator found that a substance abuse problem existed. The evaluator found that the father appeared to have the recognition and understanding of his alcohol abuse disorder, but that the father did not believe he had a problem with drinking. The evaluator found that the father met the criteria for alcohol abuse, based upon the father's self-report, and that the father had a low probability of a substance dependence disorder. The report noted that the father scored a high defense score that might indicate a situational issue or that the father was not being honest in the evaluation session. The evaluator recommended that the father attend individual therapy sessions.

The father completed out-patient treatment successfully and began attending A.A. meetings. The father continued to provide samples for urinalysis that were not positive for alcohol or illegal substances. However, the father and the mother admitted that the father continued to consume alcoholic beverages

and the father quit attending A.A. meetings. The mother implied that the father knew to avoid consuming alcoholic beverages in advance of urinalysis, but would consume them once again following each test.

Visitations with L.R. went well. However, in March and April 2009, there were more reports of disputes between the parents. One incident on March 13, 2009, apparently escalated to the level of domestic violence, although it was not reported to the police.³ The mother continued to abuse alcohol and drugs, and she continued to have mental health issues. The father continued to consume alcoholic beverages. The couple's rocky relationship continued until May, when the couple finally separated after the mother moved to Alabama to seek intensive mental health treatment. The parents had previously indicated to the service provider that they thought if the mother left town for awhile, the father could regain custody and then the mother could rejoin the family.

After the mother left in May, the father showed improvement and attended more visits with L.R. The father was permitted to transport L.R. to and from visits. The father admitted he continued to consume alcoholic beverages and failed to contact the service provider several times. Additionally, the mother occasionally contacted the father. There is no indication that the father behaved inappropriately during any of his visits with L.R. Witnesses agreed there was a bond between L.R. and the father. The father also provided some clothes and diapers for L.R. In addition, the father provided money to the relatives L.R. was placed with for L.R.'s care.

³ The father denies that he ever struck the mother. There was evidence that the incidents tended to occur when the father tried to leave and the mother tried to prevent him from doing so.

On May 21, 2009, the State filed its petition for the termination of the parents' parental rights. A contested hearing was held on August 26, 2009. The service provider testified the parents had failed to put the child first in the case, and neither parent stopped his or her behaviors so that L.R. could be returned to their care. The provider acknowledged that the father had made improvements in the case after the mother left, but the late improvement was not enough at that time to return the child to his care in her opinion. The provider testified that the father and child are bonded, but that the child is also bonded to the father's relatives with whom he was placed. The provider testified that the father was always appropriate with the child during the visits and appeared to be sober during the times he visited with the child.⁴

A report from the clinical psychologist, who completed a parenting evaluation of the father on August 14, 2009, found the father's relationship to the child was a positive one, in the sense that their interactions are rewarding for both of them. However, the psychologist suggested the father stop drinking altogether.

The Department's caseworker testified that after a domestic violence incident in November, she explained to the parents what they needed to do to

⁴ The provider testified as follows:

Q. Would you describe how [the father and L.R.] interact?

A. They interacted well. [L.R.]'s pretty active, so [the father] chases him down most of the time.

Q. Is the relationship that you observed between [L.R.] and [the father] healthy and normal? A. Yes.

Q. Does he appear to be a kind and loving parent? A. Yes.

Q. Do you see a bond between [L.R.] and [the father]? A. Yes.

Q. Do you see [L.R.] express affection towards [the father]?

A. Yes.

have L.R. returned to their care, including that the father should abstain from drinking, as it was in L.R.'s best interests given the father's problems with alcohol. The worker testified that she believed termination of the parents' rights was in L.R.'s best interests. The worker testified that L.R. was doing well placed in the relatives' care and the relatives were willing to adopt L.R.

The father acknowledged he had been told by numerous people that drinking could harm his ability to keep his parental rights, but testified he continued to consume alcoholic beverages anyway. Both parents testified that they continued to have feelings for each other. The father testified, however, that he had no intention of reconciling with the mother.

There is no dispute that the father, who is fifty-three years old, has suitable employment and a suitable home where, potentially, L.R. could live with him.

On October 5, 2009, the juvenile court entered an order terminating the father's parental rights to the child pursuant to Iowa Code section 232.116(1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home) and (l) (child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time) (2009). The father now appeals.

II. Scope and Standards of Review.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). The grounds for termination must be supported by clear and convincing

evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Evidence is clear and convincing when it leaves “no serious or substantial doubt about the correctness of the conclusion drawn from it.” *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). Our primary concern in termination cases is the best interests of the child. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

III. Discussion.

On appeal, the father claims the State failed to establish by clear and convincing evidence grounds for termination and that termination was not in the best interests of the child. We address his arguments in turn.

A. Grounds for Termination.

The juvenile court determined that termination was appropriate under sections 232.116(1)(h) and (l). If a parent fails to challenge termination of his or her parental rights pursuant to one the grounds found by juvenile court, we may affirm on the ground not challenged. See Iowa R. App. P. 6.903(2)(g)(3) (2009) (“Failure to cite authority in support of an issue may be deemed waiver of that issue.”); *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (“When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.”).

On appeal, the father sets forth four arguments concerning the grounds for termination: (1) Does the father have a severe, chronic substance abuse problem; (2) Does the father present a danger to himself or others; (3) Can the child be returned within a reasonable time; (4) Would definitional grounds of CINA still exist if the child were returned to the father’s home? It is clear that his

first three arguments address elements of ground (l) and thus specifically challenge the juvenile court's ruling on that ground. Although the father's fourth argument is not set forth with the utmost clarity and the father does not specifically reference subsection (h), it appears that the father's fourth argument refers to subsection (h). We note that State does not argue that the father failed to challenge termination of his or her parental rights pursuant to subsection (h). We therefore proceed to the merits under both subsections.

Termination may be granted under section 232.116(1)(h) where:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Termination may be granted under section 232.116(1)(l) where all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.
- (2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.
- (3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

Although the child has been removed from the father's care for the applicable statutory period, we find, upon our de novo review, there is not clear

and convincing evidence that L.R. cannot be returned to the father's custody at the present time or within a reasonable period of time. Throughout the pendency of this case, the Department's concerns have been the father's relationship with the mother and his consumption of alcoholic beverages. At the termination hearing, the Department's caseworker testified that her concerns were, if things were to continue without termination, that

[a]lthough . . . there's been some improvement with [the father], the long-term is going to be, . . . [the parents] verbalize this plan for the two of them to reunite, and that would not be safe for [L.R.], along with continued drinking. I mean, there is some concern with [the father's] drinking, although he doesn't admit to drinking to intoxication.

Here, the mother's parental rights have been terminated, and she has not appealed. The parents have separated, and the father testified that he has no desire to rekindle that relationship. At the time of trial, the father testified he had not had any contact with the mother for two months, and the mother testified she had tried to contact the father and the father would not answer her calls. The mother testified that she has no intentions of returning to Iowa, and she did not believe the father would restart a relationship with her. The service provider testified that the father had made improvements since the mother has left, and she acknowledged she had no way of knowing whether or not the father had severed his relationship with the mother. While it would have been prudent to end the relationship earlier, by all accounts, it appears the relationship has ended and that concern has been addressed.

The remaining concern of the Department was the father's continued consumption of alcoholic beverages. Although there is evidence in the record

that the father continues to consume alcohol, there is not clear and convincing evidence that the father's recent alcohol consumption habits have adversely affected the child or that the father currently has a severe, chronic alcohol abuse problem. For example, the Department's caseworker testified as follows:

Q. Has [the father] had significant and meaningful contact with [L.R.] during these last six months? A. Yes.

Q. What harm do you think would come to [L.R.] if he were returned to [the father's] custody and [the mother] were out of state? A. Well, with his drinking in caring for [L.R.] inhibits his ability to make appropriate decisions.

Q. Since December of 2008 can you recall a time when [B.R.'s] consumption of alcohol caused a problem? A. Caused a problem with?

Q. With anything. A. He was also drinking during instances that we have.

Q. Pick one out. A. Okay. I don't recall a specific incidence, I guess.

. . . .

Q. Between December of '08 and now can you tell me a time? A. No.

Q. [The father] has a pretty good support system, doesn't he? A. Yes.

Here, the father was allowed to transport the child to and from visitation, and the case workers and the relatives with whom L.R. was placed had no concerns that the father would drive intoxicated with L.R.⁵ Indeed, all indications were that the father was always appropriate with the child during visitations. The father maintained his employment⁶ and his home throughout the case. The father completed the educational classes recommended following his substance abuse evaluation. Although the father attended A.A. off and on, there was no indication

⁵ A provider testified:

Q. When [the father] picks up [L.R.], he's driving a car, and it's just [the father] and [L.R.]; is that correct? A. Yes.

Q. Do you have concerns about [the father] driving under the influence of alcohol with [L.R.] present? A. No.

⁶ The father has been involved in the construction business for seventeen years.

in this record that it was recommended that the father even attend A.A. Some evidence indicated that the father does not have an “addictive personality” but rather his alcohol consumption is a matter of choice. While we agree with the juvenile court that this is a close case, we find the record here is insufficient to conclude that the father’s alcohol consumption is such that it has adversely affected the child or that father currently has a severe, chronic alcohol abuse problem.

There is no dispute that the father failed to comply with the Department’s request that he totally eliminate alcohol consumption from his life. However, it is one thing to reach that conclusion. It is another to conclude that the father could not properly care for and raise L.R. We find that conclusion to be unproven. Thus, we find clear and convincing evidence lacking that L.R. could not be returned to the father’s care at the present time or within a reasonable time in the future. Accordingly, we find that the grounds for termination were not met in this case under the record presented.

B. Best Interests.

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must be in the child’s best interests. *A.S.*, 743 N.W.2d at 867; *see also In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In Iowa, there is a rebuttable presumption the best interests of a child are served when custody remains with the natural parents. *See Iowa Code* § 232.1; *In re S.J.*, 451 N.W.2d 827, 830 (Iowa 1990); *In re Chad*, 318 N.W.2d 213, 218 (Iowa 1982). “A child’s safety and the need for a permanent home are now the primary concerns when determining a child’s best interests.” *In re J.E.*, 723 N.W.2d 793,

801 (Iowa 2006) (Cady, J., concurring specially). Those best interests are to be determined by looking at the children's long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the child if the child is returned to their parents. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parents' past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

As the juvenile court noted, the father has made progress during the course of these proceedings. He has strong support from his family. From our review of the record, it appears that a toxic relationship between the father and the mother, and the mother's mental health issues including suicide attempts, have been the primary obstacles to reunification with the child. Assuming the mother to be out of the picture, we are not convinced the father would be unable to provide a caring and nurturing home for the child. Although the child is doing very well in the care of the relatives, the evidence at trial was that the father and child are bonded. The clinical psychologist found, following her parenting evaluation of the father, the father's relationship to the child was a positive one, in the sense that their interactions were rewarding for both of them and that those kinds of interactions indicated that the father could be a valuable part of L.R.'s life.

L.R. has a father who clearly cares about him, who interacts appropriately with him, who offers regular employment, a suitable home, and a track record of

providing some financial support. While the father's alcohol issues are clearly legitimate grounds for concern, we are unable to find at this time that eliminating the possibility of L.R. being raised by his father is in L.R.'s best interests.

The termination of parental rights is generally final and irrevocable. See *Santosky v. Kramer*, 455 U.S. 745, 753-54, 102 S. Ct. 1388, 1394-95, 71 L. Ed. 2d 599, 606 (1982) (stating that parents are not given second chances after parental rights have been terminated absent some type of judicial relief). L.R. is placed with the father's family and will likely continue to have contact with the father. Although a close case, we find that the bond between the father and the child, the child's placement with relatives, and the father's progress evidences that termination of all parental rights is not in the child's best interests at this time. This finding, of course, does not preclude a subsequent termination petition should events demonstrate that the child cannot remain in the father's custody.

IV. Conclusion.

Because we find the grounds for termination were not met and that termination was not in the child's best interests, we conclude the district court erred in terminating the father's parental rights. Accordingly, we reverse the decision of the juvenile court.

REVERSED.

Mansfield, J., concurs; Vogel, P.J., dissents.

VOGEL, P.J. (dissenting)

I respectfully dissent, and would defer to the district court, which after considering all the evidence and observing the witnesses as they testified found,

B.R. either has a very severe alcohol problem which prevents him from being able to stay sober or he completely lacks insight into the effects his alcohol use has on his ability to effectively parent a toddler. Either way, [L.R.] cannot safely be returned to B.R. at this time.

This finding by the district court is in reference to Iowa Code section 232.116(1)(h)(4) (“There is clear and convincing evidence that the child cannot be returned to the custody of the child’s parents as provided in section 232.102 *at the present time.*”) (emphasis added). Although the majority divines from B.R.’s petition on appeal that this issue was raised, I do not find that he has either raised or argued that he is capable of having L.R. returned to his care at the present time under Iowa Code section 232.116(1)(h)(4). Even the more informal rules of appellate procedure for termination of parental rights and child-in-need-of-assistance cases, require compliance. See Iowa R. App. P. 6.201(1)(d) and rule 6.1401, form 5. *In re D.G.*, 704 N.W.2d 454, 457 (Iowa Ct. App. 2005) (dismissing that portion of a parent’s appeal that did not comply with the rules of appellate procedure). Moreover, the State is not required to file a responsive brief, to point out any shortcomings in the petitioner’s appeal. Rule 6.202(1) “A response to the petition on appeal is optional unless the appellee has filed a notice of cross-appeal.” Therefore, to reach the merits of this appeal, under 232.116(1)(h), we would have to infer B.R. raised and argued an issue he clearly did not do. This is contrary to our role as appellate judges. See *Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W.2d 239, 240 Iowa 1974 (“To reach the merits

of this case would require us to assume a partisan role and undertake the appellant's research and advocacy.”).

Therefore, the termination of B.R.'s parental rights should be affirmed for two reasons. First and foremost, B.R.'s failure to appeal from the determination under Iowa Code section 232.116(1)(h)(4) waived any claim he may have that L.R. could be returned to him “at the present time.” Iowa R. App. P. 6.201(d) (directing contents of petition on appeal to comply substantially with form 5 in rule 6.1401 to “[s]tate the legal issues presented for appeal, including a statement of how the issues arose and how they were preserved for appeal.”); *In re C.M.*, 652 N.W.2d 204, 207 (Iowa 2002) (“Having failed to include her [] claims in her petition, those issues are not preserved for review.”). Second, when the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999); *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App. 1996). Therefore, by not raising Iowa Code section 232.116(1)(h)(4) on appeal, that L.R. could return to B.R.'s care “at the present time,” the decision of the district court should be affirmed.

I would also conclude there was clear and convincing evidence that B.R. has a severe, chronic substance abuse problem such that L.R. cannot be returned to his care “within a reasonable period of time.” This is under section 232.116(1)(l) and is a more discretionary time frame than under section 232.116(1)(h). The evidence is replete with advice, and warnings B.R. received in relation to his drinking, and its adverse effects on L.R., all of which B.R. failed to heed. In December 2008, a substance abuse evaluator found B.R. had an

alcohol abuse disorder. At trial, a Department caseworker testified that in order for L.R. to be placed in his custody, B.R. should abstain from drinking. A clinical psychologist who completed a parenting evaluation suggested to B.R. that he stop drinking altogether. At trial, a Department social worker testified B.R. had failed to put L.R. first, and did not stop his destructive behaviors so that L.R. could be returned to his care. B.R. himself acknowledged he had been instructed that drinking could harm his ability to retain his parental rights of L.R., but testified that he continued to drink anyway.

While B.R. admittedly still drinks, he does not think he has an alcohol problem, and he does not think he should be required to stop drinking. Moreover as the district court found, B.R. has learned how to avoid a positive alcohol test result, thus giving a false indication of his actual alcohol consumption. B.R. has no insight as to how his drinking affects his ability to parent a toddler. He has no insight as to how his actions led to removal of L.R. in the first place. *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995) (“When parent is incapable of changing to allow children to return home, termination of parental rights is necessary; parent must be able to meet present needs of children as well as have capacity to adapt to their future needs.”).

Another factor supporting termination was the Department’s concerns of B.R.’s toxic relationship with L.R.’s mother. Although B.R. testified that he has no desire to rekindle that relationship prior to termination, both parents indicated to the Department social worker that they thought if the mother left town for awhile, the father could regain custody of L.R. and the mother could then rejoin the family. The mother is a harmful influence on B.R., and while she is currently

living in a different state, she continues to communicate with him, and based on the history of their relationship, no convincing evidence demonstrates B.R. will not let her continue to be a part of his and L.R.'s life.

L.R. was born in April 2008 and has been removed from B.R.'s care since October 2008; over twice the amount of time statutorily given prior to termination of parental rights. Iowa Code § 232.116(1)(h)(1), (3) (child who is three or younger is removed from home for six of last twelve months). The Department's actions and testimony made clear its safety concerns of placing L.R. in B.R.'s care outweighed reunification. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000) ("The focus of reunification is on the health and safety of the child, and mandates a permanent home for a child as early as possible."). We should not put L.R. at risk in an untested environment, on B.R.'s promise to abstain from drinking when L.R. is in his care. He has done nothing to instill any confidence that he would provide a safe environment for L.R. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) ("Insight for the determination of the child's long-range best interests can be gleaned from evidence of the parent's past performance for that performance may be indicative of the quality of the future care that parent is capable of providing.").

Our primary concern is the best interests of L.R. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). A child's best interests are to be determined by looking at the children's long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). L.R. has been living with family members in a safe and stable home since November 2008, well beyond the statutory time for B.R. to demonstrate his ability to safely parent L.R. Iowa Code

§ 232.116(1)(h)(1), (3). He is very bonded with his relative caregivers and they are willing to adopt him. He is happy, healthy, and doing well. The majority opinion finds that “[A]lthough the child is doing very well in the care of the relatives, the evidence at trial was that the father and child are bonded.” My reading of the evidence is that this father-child bond is minimal compared with the strong bond L.R. has developed with his relative caregivers. While a “strong” bond between parent and child is a special circumstance that mitigates against termination when the statutory grounds have been satisfied, it is merely a factor to consider, not an overriding consideration. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998).

B.R. has not put L.R. first in his life. He has ignored the advice from the Department on efforts needed in order to regain custody of L.R., and continues to drink. B.R. has failed to demonstrate any level of sobriety such that L.R. would be safe in his care. *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially) (stating a child’s safety and need for a permanent home are the defining elements in a child’s best interests); 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.”) B.R. has not utilized visitation to its fullest, nor consistently been in contact with the service providers. The evidence supports that it would be detrimental to remove L.R. from his current placement and it is in his best interests to terminate B.R.’s parental rights. Iowa Code § 232.116(2) (2009) (“In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child’s safety, to the best placement for furthering the long-

term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.”). *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993) (“We are to consider what the future likely holds for the children if the children are returned to their parents.”).

I would affirm the district court’s termination of B.R.’s parental rights under Iowa Code section 232.116(1)(h), as the termination under this subsection was not appealed. I would also affirm the termination under 232.116(1)(l) as there was clear and convincing evidence that L.R. could not be returned to B.R. within a reasonable time.