

IN THE COURT OF APPEALS OF IOWA

No. 1-511 / 11-0753
Filed July 13, 2011

**IN THE INTEREST OF J.A.-H. and F.A.-H.,
Minor Children,**

**J.A., Father,
Appellant.**

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

A father appeals the juvenile court order terminating his parental rights to his two minor children. **AFFIRMED.**

Daniel Vakulskas, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and Dewey P. Sloan, Assistant County Attorney, for appellee.

Marchelle Denker, Sioux City, for mother.

Matthew Metzgar, Sioux City, attorney and guardian ad litem for minor children.

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

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.**I. Background Facts & Proceedings**

Jesus and Erika are the parents of two children. The parents were themselves still children at the time their children were born. Erika had been adjudicated a child in need of assistance (CINA), and was living in foster care. The father was living with his parents. After J.A.-H. was born in October 2008, he was adjudicated as a CINA under Iowa Code sections 232.2(6)(b) and (c)(2) (2007). J.A.-H. was placed in the foster home with Erika, and she was primarily responsible for his care. F.A.-H. was born in September 2009. He was adjudicated as a CINA under the same code sections. F.A.-H. was placed in the foster home with Erika and J.A.-H. The father had unsupervised visitation with the children.

On January 21, 2010, the juvenile court returned J.A.-H. to the care of his mother. The father had a drug test that was positive for marijuana use in March. In April 2010 he was charged in Nebraska with robbery, tampering with a witness, and conspiracy. In a separate case he was charged with conspiracy to deliver marijuana. The father was placed in a juvenile detention facility. J.A.-H. was removed from Erika's care in May 2010.¹ The children were placed in a different foster home than the one where Erika was living. They have been removed from the physical custody of their parents since J.A.-H.'s removal in May 2010.

¹ Erika had a drug test that was positive for marijuana. She was charged with disorderly conduct for fighting with another student at school. There were also continuing concerns that Erika skipped school.

After the father was released from detention he began to participate in Erika's unsupervised visitation with the children. On July 24, 2010, Jesus, Erika, and the two children drove to Erika's mother's house and Erika went in to get some money from her mother. The victim in the father's prior robbery case came up, got into an argument with the father, and stabbed him, all in the presence of the children. The father received medical treatment for his injuries. Because of the danger to the children during this visit, the Iowa Department of Human Services determined visitation should be supervised in the future.

On August 20, 2010, the State filed a petition for termination of parental rights. In September 2010 the father obtained employment. He moved out of his parents' home and into a two-bedroom home. He missed some appointments and visitation. Service providers offered to change the time of visitation, but the parents declined.

The termination hearing was held on December 21, 2010. The only witness who testified at the hearing was Heather Taylor, a case manager with the Department. She testified she believed the children could not be returned to the parents' care without suffering harm. Taylor testified the parents lacked parenting skills during visits. She also expressed concern that the parents were not following through with meeting the medical needs of F.A.-H., who had allergies and eczema.

The juvenile court entered an order on February 22, 2011, terminating the parents' rights under sections 232.116(1)(d), (e), and (h) (2009). The court found the parents had "not progressed in their abilities to care and parent these

children.” The court determined termination was in the children’s best interests, finding “[t]hese two children should not be required to wait until their parents grow up and are able to provide the stable home they need now.” The father appeals the juvenile court order terminating his parental rights.²

II. Standard of Review

The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Clear and convincing evidence is needed to establish the grounds for termination. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Where there is clear and convincing evidence there is no serious or substantial doubt about the correctness of the conclusion drawn from the evidence. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002).

III. Sufficiency of the Evidence

The father contends there is insufficient evidence in the record to support the termination of his parental rights. He points out that he is living in his own residence and is gainfully employed. He also states that although he previously engaged in criminal behavior, he has turned a corner and is presently complying with the requirements of his probation.

When the juvenile court terminates on more than one statutory ground, we may affirm on only one of these grounds. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). We conclude the termination of the father’s parental rights may be affirmed under section 232.116(1)(h), which includes as a fourth element the requirement that there is clear and convincing evidence the child cannot be

² The mother has not appealed.

returned to the custody of the parents at the present time. This element is the only element of section 232.116(1)(h) that the father challenges on appeal. It is proved when the evidence shows the child cannot be returned to the parent without remaining a CINA. *In re R.R.K.*, 554 N.W.2d 274, 277 (Iowa Ct. App. 1995). The threat of probable harm will justify termination, and it need not be the threat that supported removal. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

The children were placed in danger when the father was stabbed in their presence. Also, the father has not consistently engaged in services and has not improved his inadequate parenting skills. Taylor, the parents' case manager with the Department, testified she believed the children could not be returned to the parents' care without suffering harm. We determine there is clear and convincing evidence the children could not be safely returned to the father's care.

IV. Best Interests

The father claims termination of his parental rights was not in the best interests of the children. He asks us to take note of the nature and extent of the relationship between the father and the children, as well as the relationship between the father and the mother.

Rather than using an unstructured best-interest test, we apply the statutory factors found in section 232.116(2). See *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). We consider the child's safety, the long-term nurturing and growth of the children, and the physical, mental, and emotional condition and needs of the children. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37. As noted by the juvenile court, the parents were "offered more in the way of structured support

including services and financial support than other older parents.” The children need stability and a permanent home; the father cannot presently provide them; and the foster family, into which the children have become integrated, is willing to adopt them. After considering the statutory factors, we determine termination of the father’s parental rights is in the children’s best interests under section 232.116(2).

The father also claims the juvenile court should not have terminated his parental rights due to the closeness of the parent-child bond. See Iowa Code § 232.116(3)(c). A “court need not terminate a parent’s parental rights if any of the circumstances contained in section 232.116(3) exist.” *P.L.*, 778 N.W.2d at 37. The record in this case does not indicate there is such a close parent-child bond between the father and the children that the court should not terminate his parental rights. The children have never lived with the father. Furthermore, by the time of the termination hearing he was having only supervised visitation due to the danger to the children which had arisen during unsupervised visitation. The father has not shown termination should be avoided based on the exception found in section 232.116(3)(c).

We affirm the decision of the juvenile court terminating the father’s parental rights to J.A.-H. and F.A.-H.

AFFIRMED.