

IN THE COURT OF APPEALS OF IOWA

No. 1-729 / 11-1019
Filed November 9, 2011

**IN THE INTEREST OF S.P.,
Minor Child,**

**D.A.M. JR., Father,
Appellant.**

Appeal from the Iowa District Court for Dickinson County, David C. Larson, District Associate Judge.

A father appeals from the juvenile court order terminating his parental rights. **AFFIRMED.**

Michael H. Johnson of Johnson Law Firm, Spirit Lake, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Jason T. Carlstrom, County Attorney, for appellee.

Shannon Sandy of Sandy Law Firm, Spirit Lake, attorney and guardian ad litem for minor child.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

MULLINS, J.

Daniel appeals the termination of his parental rights to his daughter, S.P., under Iowa Code sections 232.116(1)(d) and (h) (2011).¹ He argues: (1) the State failed to prove the statutory grounds by clear and convincing evidence, (2) termination is not in the child's best interests, and (3) termination is detrimental to the child due to the closeness of the parent-child relationship. We affirm.

I. Background Facts and Proceedings.

S.P. was born in September 2007. Following her birth, S.P. suffered from seizures and was placed on an apnea monitor and medication. In October 2007, the Iowa Department of Human Services (DHS) initiated a child protective assessment after it was reported that S.P. was being left at home unattended. The report was determined to be founded.

On November 19, 2007, DHS filed a petition alleging S.P. to be a child in need of assistance (CINA). On February 22, 2008, a hearing was held on the petition. The parties reached an agreement whereby S.P. was adjudicated CINA under Iowa Code sections 232.2(6)(c)(2) and (n), but remained in the mother's custody subject to protective supervision from DHS.

Following adjudication, Daniel was either uncooperative or only made minimal efforts to work with service providers. Daniel and S.P.'s mother had an on-again, off-again relationship, and Daniel seemed content with minimal involvement as long as the mother maintained custody. Daniel did not follow through with a substance abuse evaluation and treatment, was inconsistent in his

¹ The juvenile court also terminated the parental rights of the mother. She did not appeal.

attendance to visits, left many visits early, had inconsistent housing and employment, and did not have a driver's license due to outstanding fines. When Daniel attended visits, he used offensive language in front of the child and made rude or inappropriate comments to providers. For instance, during one visit Daniel told a supervisor while holding S.P. in his arms that if had he known the mother's new boyfriend was going to be attending the visits with the mother, he "would have brought a knife and cut his f---ing throat."

After nearly two years with only slight progress, the State sought and received an ex parte emergency removal order in October 2009. However, following a removal hearing, the juvenile court denied the State's request to modify custody and returned S.P. to the mother's care.

The parents continued to struggle to make any improvements, and by June 2010, the State again sought an ex parte emergency removal order. On June 28, 2010, the parents stipulated to S.P.'s removal and placement into family foster care. At this time, S.P. was found to have significant behavioral issues, including hoarding food, insomnia, night terrors, self-harming, swearing, and being physically aggressive to other children, daycare providers, and the foster mother. These behaviors increased around scheduled visits, especially when visits were missed by the parents. As a result, in February 2011, S.P.'s therapist recommended visitation be discontinued unless performed at her office so interaction could be observed. S.P. has also been diagnosed with attention deficient hyperactivity disorder, and has the mental development of a twenty month old child (approximately half her age).

On January 25, 2011, the State filed a petition for the termination of parental rights. Following the filing of the petition, Daniel became more serious about participating in services. Daniel underwent a substance abuse evaluation that recommended extended outpatient treatment, but Daniel has not completed any treatment sessions. Daniel also began attending parent child interaction therapy, and became more consistent in his participation in family safety, risk, and permanency services with Hope Haven.

The petition came to hearings on April 22 and 29, 2011. On June 14, 2011, the juvenile court entered an order terminating Daniel's parental rights under Iowa Code sections 232.116(1)(d) and (h). Daniel appeals.

II. Standard of Review.

We review termination of parental rights *de novo*. *In re H.S.*, ___ N.W.2d ___, ___ (Iowa 2011). We give weight to the factual determinations of the juvenile court, but are not bound by them. *Id.*

III. Analysis.

A. Statutory Grounds. Daniel challenges both of the statutory grounds for termination. However, when the juvenile court terminates parental rights on more than one statutory ground, we need only find one of the grounds to be proper to affirm. *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010). We find clear and convincing evidence supports termination under section 232.116(1)(h). The sole issue under this subsection is whether the State proved by clear and convincing evidence that, at the time of termination, S.P. could not be returned to Daniel's custody. See Iowa Code § 232.116(1)(h)(4).

At the time of the termination hearing, Daniel had received services for nearly three and a half years. However, it was not until the termination petition was filed that Daniel began to make any progress toward having S.P. returned to his care. *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (“Time is a critical element. A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting.”). Daniel’s efforts are too little and too late. Daniel has not progressed past supervised visitations, and at the time of the termination hearing, visits had to be supervised by S.P.’s therapist. Daniel’s testimony also reveals a complete lack of insight into S.P.’s significant behavioral issues and her need for continued treatment. Furthermore, concerns remain regarding Daniel’s temperament, housing, employment, substance abuse, and whether he has the parental skills necessary to meet S.P.’s needs. Upon our review, we find that the State has shown clear and convincing evidence that S.P. cannot presently be returned to Daniel’s care.

B. Best Interests of the Child. Daniel also challenges whether termination was in the child’s best interests. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). In making this determination, we 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.” *Id.* (quoting Iowa Code § 232.116(2)).

The evidence shows that S.P. has significant behavioral issues, and that Daniel will not be able to meet these needs. Daniel’s testimony not only

minimizes S.P.'s issues, but reveals that he does not even think her therapy is necessary. In addition, Daniel has received services for almost three and a half years, but he was inconsistent or uncooperative, and thus has not shown that he has developed the parenting skills necessary to meet S.P.'s basic needs. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re D.A.*, 506 N.W.2d 478, 479 (Iowa Ct. App. 1993). "Children simply cannot wait for responsible parenting." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). 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). We find termination was in S.P.'s best interests.

C. Parent-Child Bond. Daniel further argues termination should not occur because of the closeness of the parent-child bond. See Iowa Code § 232.116(3)(c); *P.L.*, 778 N.W.2d at 41. In analyzing this exception, "our consideration must center on whether the child will be disadvantaged by termination, and whether the disadvantage overcomes [the parent's] inability to provide for [the child's] developing needs." *D.W.*, 791 N.W.2d at 709. Although we recognize the parent-child bond, the evidence shows Daniel's inability to meet S.P.'s needs is not overcome by the disadvantage that may result from termination.

IV. Conclusion.

For the foregoing reasons, we affirm the order of the juvenile court terminating Daniel's parental rights to S.P.

AFFIRMED.