

**IN THE COURT OF APPEALS OF IOWA**

No. 1-886 / 11-1507  
Filed November 23, 2011

**IN THE INTEREST OF B.A.,  
Minor Child,**

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

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Appeal from the Iowa District Court for Scott County, Christine Dalton,  
District Associate Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

Patricia Zamora of Zamora, Taylor, Woods & Frederick, Davenport, for  
appellant father.

Neill H. Kroeger, LeClaire, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Michael J. Walton, County Attorney, and Julie A. Walton,  
Assistant County Attorney, for appellee State.

Lucy Valainis, Davenport, for minor child.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

**DANILSON, P.J.**

A father appeals the September 6, 2011 termination of his parental rights to his son, B.A., born in September 2010.<sup>1</sup> Upon our de novo review, and in light of father's recent criminal drug conviction, his impending incarceration for probation violation, and his acknowledged inability to care for his son presently, we affirm the termination of parental rights.

**I. Background Facts and Proceedings.**

The father and the mother of B.A. had their parental rights to an older daughter terminated on July 30, 2010. The girl had been adjudicated a child in need of assistance (CINA), and services were provided but were unsuccessful in correcting chronic homelessness, unemployment, inadequate parenting skills, domestic violence, and substance abuse issues.

B.A. was born in September 2010 and left the hospital with the mother, who was then residing in a homeless shelter. Due to lingering concerns about the mother's ability to care for the infant, within two weeks of the child's birth, the Iowa Department of Human Services (DHS) removed the child from the mother's custody and placed him in the sibling's preadoptive foster home.

B.A. was adjudicated CINA in an uncontested hearing on November 30, 2010. A dispositional hearing was held February 8, 2011. Evidence was presented showing the father was living with a girlfriend and her three children in a two-bedroom apartment. The father was attending some visits and parenting classes. Yet, he was unemployed. He was not consistently attending mental

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<sup>1</sup> The mother consented to the termination of her parental rights, and she does not appeal.

health appointments, was not attending a program designed to address domestic violence, and had not followed through with substance abuse treatment. In addition, he had recently pled guilty to possession with intent to deliver marijuana, and because he was on probation, incarceration was anticipated. The juvenile court ordered B.A. remain in foster care.

A permanency hearing was held April 8, 2011. While the district court observed in its permanency order of April 22, 2011, that the father was making progress and “has tried very hard,”

[h]e has not progressed beyond supervised visitation. He has missed visitations and submitted nonhuman urine for his last UA in March 2011. Despite knowing about his obligation to complete BEP since December 2010, he had not yet to attend one session. Domestic violence issues have not been resolved. Treatment progress is in question due to the altered UA, and he has no visible means of reliably supporting himself let alone himself and a toddler. His credibility on the stand was questionable in that he exaggerated some facts. He has misled providers at times.

The court changed the permanency goal from reunification to termination and adoption.

On August 19, 2011, a termination hearing was held at which the father stated he was not then able to care for his son. The father had been found to have violated the terms of his probation incarceration and was to begin serving a term of incarceration or treatment in a matter of days. He told the court he needed only two more months to stabilize his situation and could resume full-time care of his child.<sup>2</sup> The court observed, however, that the father had been

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<sup>2</sup> The father contends he was to report to the jail to complete a sixty-day substance abuse treatment program and attend BEP. The social worker testified the parole officer told her the father received a sentence of “120 days contempt BEP and CADS jail-based treatment program” and he was to report on August 29, 2011.

sentenced to 120 days and was at a “high risk of probation violation in the future.” The father’s parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d) and (h) (2011).<sup>3</sup>

The father now appeals. He contends there is no proof the child cannot be returned home and the grounds for termination have not been met.

## II. Standard of Review.

We conduct a de novo review of termination of parental rights proceedings. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although we are not bound by the juvenile court’s findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and

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<sup>3</sup> Section 232.116(1) provides “the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds”:

. . . .  
d. The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after the finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

. . . .  
h. The court finds all of the following have occurred:

(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.

convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered “clear and convincing” when there are no “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

### **III. Analysis.**

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in a termination of parental rights. *Id.* If the statutory best-interest framework supports termination of parental rights, the court must finally consider if any statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

#### **A. Grounds for Termination.**

Section 232.116(1)(h) provides that termination may be ordered when there is clear and convincing evidence a child under the age of three who has been adjudicated a CINA and removed from the parent’s care for at least the last six consecutive months cannot be returned to the parent’s custody at the time of the termination hearing. Iowa Code § 232.116(1)(h). B.A. was only a few days old when he was removed from his mother’s care and placed in foster care. The child has never been in the father’s care and custody, and the father has not progressed beyond supervised visits. Significantly, the father acknowledged at trial he could not care for the child at the time of the termination hearing.

Although the father did display some improvement in the months leading up to the termination hearing, his progress was not sufficient to show more than a mere hope that he might eventually be able to parent the child safely and consistently. This lack of progress is exemplified by the father's completion of substance abuse treatment in March 2011, followed by being terminated from an aftercare program three weeks later, admittance into an inpatient program another month later only to leave the program after eight days, and now he faces a contempt disposition of 60 to 120 days of incarceration or treatment. All of these events arose six months or more after services were first offered. The father acknowledged he has a problem with marijuana, and the district court concluded the father has "been unable to sustain sobriety for more than a few months at a time." He also discontinued attending parenting classes in June 2011 and has not consistently attended his mental health appointments.

Our legislature has carefully constructed a time frame to provide a balance between the parent's efforts and the child's long-term best interests. *In re D.W.*, 791 N.W.2d at 707. "We do not gamble with the children's future by asking them to continuously wait for a stable biological parent, particularly at such tender ages." *Id.* (quoting *In re D.W.*, 385 N.W.2d 570, 578 (Iowa 1986) (internal quotations omitted); see also *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990) ("Children simply cannot wait for responsible parenting. Parenting . . . must be constant, responsible, and reliable.")). We find clear and convincing evidence that grounds for termination exist under Iowa Code section 232.116(1)(h).

### **B. Factors in Termination.**

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interests, this court's primary considerations are "the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child." *Id.* Taking these factors into account, we conclude the child's best interests require termination of the father's parental rights. As the juvenile court observed:

[B.A.] has been placed in the same foster care home that adopted his older sibling. He has lived there since shortly after his birth. He has received excellent care in that home. He is clearly a member of their family and has bonded to the foster care family as closely as he is bonded to his father and mother. This home will provide a normal sibling relationship. He is fully integrated into this family and appears comfortable and successful in this placement.

The history of this case clearly demonstrates that reasonable efforts were undertaken to prevent or eliminate the need for removal of the child from the parental home, that reasonable efforts have been made to reunify the child with either parent, and that failure to terminate the parental rights would be contrary to the welfare of the child as the termination of parental rights is the only reasonable means to establish permanency for [B.A.]

### **C. Exceptions or Factors against Termination.**

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the factors in this section to save the parent-child

relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993). Under these circumstances, we cannot maintain a relationship where there exists only a possibility the father will become a responsible parent sometime in the unknown future.

#### **IV. Conclusion.**

There is clear and convincing evidence that grounds for termination exist under section 232.116(1), termination of parental rights is in the child's best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm termination of the father's parental rights.

**AFFIRMED.**