

IN THE COURT OF APPEALS OF IOWA

No. 3-1077 / 13-1580
Filed November 20, 2013

**IN THE INTEREST OF K.C.,
Minor Child,**

**T.C., Father,
Appellant.**

Appeal from the Iowa District Court for Benton County, Jane F. Spande,
District Associate Judge.

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

Christopher J. Foster of Foster Law Office, Iowa City, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, David Thompson, County Attorney, and Jo Nelson, Assistant
County Attorney, for appellee State.

Troy Powell of the Powell Law Firm, Cedar Rapids, attorney and guardian
ad litem for minor child.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

DOYLE, P.J.

The father appeals the termination of his parental rights to his child, K.C. He contends the State did not meet its burden to prove the ground for termination, and he argues the child's best interests weigh against termination. He also asserts Iowa Code section 232.116(3)(a) (2013) applied to avoid termination of his parental rights. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

Both parents have a history of involvement with illegal drugs and substance abuse. The parents are not married but lived together for a short period of time after K.C. was born in September 2011. After an incident between the parents in March 2012 involving domestic violence, the father moved out, returning to Indiana to live with his mother.

In August 2012, it was reported to the Iowa Department of Human Services (DHS) the mother was using methamphetamine and synthetic marijuana, and the child was removed from her care and placed with the child's maternal grandmother. The father was contacted in Indiana thereafter by DHS, and he expressed an interest in caring for the child to the DHS worker. However, the worker had concerns about placing the child in the father's care because she had learned the father had pending criminal charges against him, both in Indiana—a felony theft charge in June 2012 involving precursors to the manufacturer of methamphetamine—and in Iowa—a domestic-abuse-assault charge from the March 2012 incident between the parents.

The child was subsequently adjudicated a child in need of assistance (CINA), to which the parents both stipulated. Among other things, the juvenile court ordered a home study of the father's residence in Indiana.

The case goal was reunification of the child with the parents. Services were offered to that end to both parents, with the father having scheduled visits with the child when the father could return to Iowa. At those visits, the father also provided urine samples for scheduled drug testing, all of which were negative.

The Indiana home study was completed in January 2013, and the report did not recommend placement of the child with the father. It noted the father had been arrested in Indiana approximately nine times, and several of the arrests concerned possession of items used in the manufacture of methamphetamine. In 2004, the father was convicted of illegal possession of anhydrous ammonia, and in 2008, he was found guilty of purchasing more than three grams of a precursor to manufacture methamphetamine. Several of his arrests resulted in felony convictions. The report noted the father's most recent arrest in June 2012 was for theft of lithium batteries, another item known for use in manufacturing methamphetamine. Although the report noted the father "obviously cares very much for his daughter and . . . is very distressed not to be with her," the report found his request for placement could not be supported because "[h]is criminal history would lead a reasonable person to believe that his behaviors could pose a significant safety risk to a child."

The mother's progress was generally up and down throughout the case. The father continued having visits with the child until March 2013. At that time, he was in jail for the June 2012 theft incident and for new charges including

possession of methamphetamine, possession of precursors with intent to manufacture methamphetamine, and dealing in methamphetamine, among other things. The father did not have any further visits with the child.

In April 2013, the State filed its petition to terminate both parents' parental rights. Following a trial on the petition, the juvenile court entered its order terminating both parents' parental rights.

The father now appeals, challenging the ground for termination, the best-interests finding, and the juvenile court's declination to invoke a statutory exception to save the parent-child relationship. We review his claims de novo. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012).

II. Discussion.

A. Grounds for Termination.

The father first contends the State failed to prove the ground for termination by clear and convincing evidence. Under Iowa Code section 232.116(1) paragraph (h), parental rights may be terminated if the court finds by clear and convincing evidence that the child is three years of age or younger, has been adjudicated a CINA, has been removed from the physical custody of her parents for at least six months of the last twelve months, and there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents at the present time. The father concedes the first three elements were proved; it is the last element the father challenges here. Upon our de novo review, we find the State has met its burden.

While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into

the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). Our supreme court has stated that “the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights.” *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code section 232.116(1)(e)). The public policy of the state having been legislatively set, we are obligated to heed the statutory time periods for reunification.

On appeal, the father claims the juvenile court gave him “relatively little consideration,” and he asserts he believed he would be released from jail in the near future and could be a father to the child. The problem here is that children are not equipped with pause buttons. “The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. Children simply cannot wait for responsible parenting.” *In re C.H.*, 652 N.W.2d 144, 151 (Iowa 2002) (internal quotation marks and citations omitted). “We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children.” *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997) (affirming termination based on the lack of “significant and meaningful contact” while father was in prison).

Although it appears the father loves the child, he was unable to distance himself from criminal activity to act as her father. The father has a significant history with methamphetamine, and though he denies using the drug, he admitted he sold precursors to manufacturers of the illegal drug. We must agree with the Indiana home study’s finding that the father’s extensive criminal history

“would lead a reasonable person to believe that his behaviors could pose a significant safety risk to a child.” Further, given the father was in jail at the time of the termination trial, there was no evidence the child could be returned to his care at that time. Permanency for this child should not be deferred until the father reestablishes himself as a law-abiding citizen. Under the circumstances presented, we find the State proved by clear and convincing evidence the child could not be safely returned to the father’s care at the time of the termination hearing. We therefore agree with the juvenile court that termination of the father’s parental rights was proper under Iowa Code section 232.116(1)(h).

B. Best Interests.

For the reasons stated above in finding the child could not be returned to the father’s care at the time of the termination hearing, we find the best interests framework in Iowa Code section 232.116(2) supports termination of his parental rights. In that section, the legislature highlighted 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 as primary considerations. *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010); *see also* Iowa Code § 232.116(2). “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 child’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 her 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 parent's 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).

As noted above, the father has almost ten years of involvement with the manufacturing of methamphetamine. Even with the knowledge he could lose his parental rights if he did not cease his criminal activity and establish he has the ability to meet the ongoing needs of the child, he was unable to refrain from his criminal activities. At the time of the termination hearing, K.C. was a month short of her second birthday, and the father was again in jail. The child could not be returned to his care at the time of the hearing, and she cannot now or in the future be safely returned to his care. Upon our de novo review of the record, we agree with the juvenile court that termination of the father's parental rights was in the child's best interests as set forth under the factors in section 232.116(2).

C. Section 232.116(3)(a) Consideration.

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), *overruled on other grounds by P.L.*, 778 N.W.2d at 39. "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 D.S.*, 806 N.W.2d 458, 475 (Iowa Ct. App. 2011).

The father contends termination of his parental rights is not necessary because the child is placed with a relative. See Iowa Code § 232.116(3)(a). As

mentioned above, we acknowledge the child's placement with her maternal grandmother. However, under the facts and circumstances of this case, we cannot maintain the father's relationship with the child where there exists only a mere possibility the father will become a responsible parent sometime in the unknown future. Termination will accordingly provide the child with the safety, security, and permanency she deserves. See, e.g., *D.S.*, 806 N.W.2d at 475 (finding termination would "provide the best opportunity for the security and permanence [the] child so desperately needs.") We therefore agree with the juvenile court's declination to invoke section 232.116(3)(a) in this case.

III. Conclusion.

For the foregoing reasons, we affirm the juvenile court's termination of the father's parental rights.

AFFIRMED.