

IN THE COURT OF APPEALS OF IOWA

No. 3-117 / 12-2219
Filed February 27, 2013

**IN THE INTEREST OF R.P. Jr.,
Minor Child,**

S.T., Mother,
Appellant,

R.P. Sr., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

A mother and father appeal separately from the order terminating their parental rights. **AFFIRMED.**

Tod J. Beavers of Tod J. Beavers, P.C., Des Moines, for appellant mother.

Laura J. Lockwood of Pargulski, Hauser & Clarke, P.L.C., Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee State.

Jason Rieper, Des Moines, for intervenor grandmother.

ConGarry D. Williams, Juvenile Public Defender's Office, Des Moines, for minor child.

Considered by Vogel, P.J., Potterfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

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

Richard and Stacy are the parents of R.P., who was born in August 2011. Both parents have long histories of substance abuse and criminal conduct.¹ The child was removed from the mother's care shortly after birth and placed in foster care. After leaving the hospital the mother was required to return to jail, where she was serving time due to a parole violation. The child was adjudicated to be in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2011).

Richard had a hair test that was positive for methamphetamine. He admitted he had been using methamphetamine daily until the child was born. In October 2011, Richard was charged with first-degree murder, and he spent much of the duration of the juvenile court proceedings in jail awaiting trial on that charge. Stacy was released in the fall of 2011. Stacy participated in supervised visits with the child. She did not make any progress in services. She continued her relationship with Richard through telephone calls and text messages.

In January 2012, the parents separately filed motions for a hearing on reasonable efforts. Richard argued the Iowa Department of Human Services should have done more to place the child in the care of the paternal grandmother in Nebraska. Stacy raised the same issue and also requested increased visitation with the child. After a hearing, the juvenile court denied the motions. The court found the amount of visitation provided to the mother was reasonable

¹ Stacy's parental rights to three other children have been terminated in previous proceedings.

based on her locale, recent release, parole status, and continuing relationship with Richard. Also, the Department was proceeding with an Interstate Compact to determine if the child could be placed with the paternal grandmother.

On March 30, 2012, the State filed a petition seeking to terminate the parents' rights. Richard filed a motion to continue based on his pending criminal charge. The juvenile court continued the matter from May 2012 until July 2012. The paternal grandmother's motion to intervene was granted. A home study completed in May 2012 showed the child could be placed with the paternal grandmother. At that time the Department was still attempting to reunite the child with the mother, so the child was not moved.

Richard was acquitted of the murder charge in July 2012. Richard and Stacy immediately reunited after he was released from jail. A few days later, however, they got into an argument while they were driving down the freeway, and Richard forcibly made Stacy get out of the car, leaving her stranded beside the freeway in the dark. At the termination hearing held on July 31, 2012, however, they presented themselves as a couple and asked to have the child placed in their care. The hearing was not completed and was continued to a later date.

In October 2012, Richard pleaded guilty in Nebraska to a drug charge and was placed on probation. He moved to Nebraska. Also, in October 2012, Stacy returned to jail for parole violations, including a positive drug test. The termination hearing was completed on November 16, 2012. Stacy remained in custody at that time. During his testimony Richard bragged that he had never lost a fistfight and stated, "I'm about as tough as they get," and "I've fought tons

of people.” Also, when asked if he was ready to have the child placed in his care, Richard replied, “Kind of,” and explained that he was just starting a job and needed to save money. At the end of the hearing, the court placed the child in the care of the paternal grandmother.

The juvenile court entered an order on November 30, 2012, terminating the parents’ rights. The court terminated Richard’s parental rights pursuant to section 232.116(1)(h). Stacy’s parental rights were terminated pursuant to sections 232.116(1)(d), (g), and (h). The court noted Stacy was unable to stay out of prison and she was unable to meet the child’s needs. The court also found the child could not be safely placed in Richard’s care and he was unable to meet the child’s needs. Richard and Stacy have separately appealed the juvenile court order terminating their parental rights.

II. Standard of Review.

The scope of review in termination cases is de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). 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). “The paramount concern in termination proceedings is the best interest of the child.” *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011).

III. Father.

A. Richard first claims there is insufficient evidence in the record to support termination of his parental rights. He asserts the child could be returned

to his care. He states he has been sober for fourteen months, has an adequate home, and had worked on establishing a bond with the child.

We conclude there is clear and convincing evidence in the record to show the child could not be safely placed in Richard's care at the time of the termination hearing. Richard admitted he was only "[k]ind of" ready to take care of the child. Furthermore, we agree with the juvenile court that Richard had not adequately addressed his anger management and substance abuse problems. We conclude Richard's parental rights were properly terminated under section 232.116(1)(h).

B. Richard claims termination of his parental rights was not in the child's best interests. In considering the best interests of children, 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." Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Generally, it is not in a child's best interests to make the child wait for permanency. See *In re A.B.*, 815 N.W.2d 764, 777 (Iowa 2012) (noting children "simply cannot wait for responsible parenting").

We determine termination of Richard's parental rights was in the child's best interests. We agree with the juvenile court's statements, "The Father has need for extensive drug treatment and other extensive therapeutic engagement to address his admitted propensity for altercations. The Child needs permanency and cannot wait for the Father to really institute the necessary changes." We conclude Richard does not have the ability to provide for the long-term nurturing and growth of the child.

C. Richard claims the juvenile court should have decided not to terminate his parental rights. He contends the court could decide not to terminate because a relative has care of the child and due to the closeness of the parent-child relationship. See Iowa Code § 232.116(3)(a), (c).

The juvenile court only addressed whether Richard's parental rights should be terminated because a relative had custody of the child. The court determined this factor was not sufficient to override the conclusion that termination was in the child's best interests, and we agree. Because the court did not discuss the closeness issue under section 232.116(3)(c), we conclude Richard has not preserved this issue for our review. See *In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa Ct. App. 1997) (noting issues may not be raised for the first time on appeal). Furthermore, even if the issue had been preserved for our review, we find nothing in the record that supports the father's assertion of a close bond with this young child who has never been in his care.

D. Finally, Richard asserts the juvenile court should have granted him an additional six months for work on reunification because the Department had not made reasonable efforts to reunite him with the child. In particular, Richard claims the Department should have done more to place the child in the care of the paternal grandmother.

Even though the child could have been placed with the paternal grandmother earlier, the Department acted reasonably by not moving him because it was working on reuniting the child with the mother. That issue, however, really has no bearing on whether this case should have been extended for another six months. This matter was continued several times during the

course of the proceedings, and we do not believe it would have been in the child's best interests to extend it any longer.

We conclude the juvenile court properly terminated Richard's parental rights to his minor child.

IV. Mother.

A. Stacy claims there is insufficient evidence in the record to support termination of her parental rights under any of the three grounds cited by the juvenile court. We conclude Stacy's parental rights were properly terminated under section 232.116(1)(h).² By the time the termination hearing concluded, Stacy was in the women's correctional facility for a parole violation, and she was not available to care for her child. Additionally, as her recent relapse showed, she was still in the process of addressing her substance abuse problems. There is clear and convincing evidence the child could not be returned to Stacy's care.

B. Stacy asserts termination of her parental rights is not in the best interests of the child. She states she has a strong bond with the child and termination would be detrimental to the child. See Iowa Code § 232.116(3)(c).

Again, this issue was not raised before the juvenile court, and we question whether it was preserved for our review. See *N.W.E.*, 564 N.W.2d at 455. Even if the issue were preserved, however, we do not believe the closeness of the parent-child bond in this case is outweighed by the child's need for permanency and stability. Due to Stacy's continuing criminal and substance abuse problems,

² When parental rights have been terminated on more than one ground, we may affirm on any one of the sections cited by the juvenile court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). By focusing on one section, we are not finding in this case that there was insufficient evidence to support the other sections.

she is not able to meet the child's needs. We conclude termination of Stacy's parental rights is in the best interests of the child.

C. Stacy contends the court should have granted her an additional six months to work on reunification because the Department had not engaged in reasonable efforts to reunite her with her child. She claims the Department should have granted her unsupervised visits because she did not pose any threat and had the skills to care for the child. The concept of reasonable efforts includes visitation designed to facilitate reunification while protecting the child. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

The issue of whether Stacy should have had additional visitation was addressed in the juvenile court's ruling in February 2012 on her motion for a hearing on reasonable efforts. The court found the amount of visitation provided to Stacy was reasonable based on her locale, recent release, parole status, and continuing relationship with Richard. Under the facts of this case, the court acted reasonably in limiting Stacy to supervised visitation. The mother's continuing substance abuse provides ample reason for the court's conclusion.

We affirm the decision of the juvenile court terminating Stacy's parental rights to the minor child.

AFFIRMED.