

**IN THE COURT OF APPEALS OF IOWA**

No. 3-119 / 12-2259  
Filed February 27, 2013

**IN THE INTEREST OF H.D.,  
Minor Child,**

**D.E.D., Father,  
Appellant.**

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Appeal from the Iowa District Court for Sioux County, Brian L. Michaelson,  
Associate Juvenile Judge.

A father appeals the termination of his parental rights to his daughter.

**AFFIRMED.**

Brian K. Van Engen of Oostra, Bierma & Van Engen, P.L.C., Sioux  
Center, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, and Coleman J. McAllister, County Attorney, for appellee.

Debra S. De Jong of Klay, Veldhuizen, Bindner, De Jong, De Jong,  
Halverson & Winterfeld, P.L.C., Orange City, attorney and guardian ad litem for  
minor child.

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

**TABOR, J.**

H.D. was eighteen-months old at the time of the hearing on the State's petition to terminate parental rights. The juvenile court severed the child's legal ties with both her father and mother. Her father, David, appeals. David claims the court erred in finding statutory grounds for termination and argues the decision is not in H.D.'s best interest because of their father-daughter bond.

We review parental termination decisions de novo. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012). While we are not bound by them, we give deference to the juvenile court's credibility determinations, as well as other factual findings. *Id.*

**I. Background Facts and Proceedings**

Tasha and David met in May 2010. Tasha was twenty-two and David was thirty-eight years old. Each had a child from another relationship. Tasha's three-year-old son was adjudicated as a child in need of assistance (CINA) when they were living with David. Before she moved to Iowa with her son, the South Dakota Department of Human Services recommended Tasha undergo a substance abuse evaluation and complete treatment. That department also determined that Tasha's use of methamphetamine while caring for her son amounted to "substantiated neglect."

The juvenile court found David did not support Tasha's efforts to achieve sobriety. David also abused alcohol and controlled substances on a daily basis.<sup>1</sup>

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<sup>1</sup> The record shows David had two convictions for driving under the influence (DUI) in South Dakota in 1998. A third charge of DUI in South Dakota in 2009 was reduced to reckless driving.

His alcohol consumption fueled fights with Tasha, who relocated several times during the fall of 2010—including a stay at a domestic abuse shelter.

Their child in common, H.D., was born in April 2011. Both parents continued to abuse alcohol and fight with one another. In September 2011, the family's troubles came to a head. An investigation by Child Protective Services (CPS) revealed that Tasha punched David in the mouth while he was holding H.D. Tasha was hospitalized for attempting a drug overdose when David told her their relationship was over; she was diagnosed with bipolar disorder and depression. CPS also determined that David denied critical care to H.D. because he consumed methamphetamine and marijuana while she was in his care. The Iowa Department of Human Services (DHS) placed H.D. in foster care on September 21, 2011—where she has remained since that date.<sup>2</sup>

In a December 7, 2011 placement order, the juvenile court found David had admitted past and present use of marijuana and methamphetamine. The court also noted a domestic violence protective order prevented contact between David and Tasha. At David's request, the court cancelled the protective order on January 3, 2012. Also in early January, David tested positive for the synthetic drug known as K-2 spice and stopped working with his Alcoholics Anonymous (AA) sponsor. In a February 2012 order, the juvenile court found the parents' relationship remained chaotic and dysfunctional. Because David admitted using illicit drugs, his visits with H.D. were changed from semi-supervised to fully supervised. In April 2012, the police charged both parents with disorderly

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<sup>2</sup> The DHS moved H.D. to a pre-adoptive placement on August 31, 2012.

conduct. In a May 2012 order, the juvenile court noted David was attending substance abuse treatment, but missed the last three sessions and continued to drink alcohol. He also continued contact with Tasha.

Following an August 31, 2012 review hearing, the juvenile court determined H.D. could not be returned to either parent. David did not follow the DHS recommendation that he undergo intensive outpatient treatment, and he did not regularly attend AA meetings. The court found David failed to appreciate his alcohol-abuse problem. In addition, the relationship between David and Tasha remained unstable.

On September 19, 2012, the Sioux County Attorney filed a petition seeking termination of the parental rights of both Tasha and David. The juvenile court heard testimony regarding the petition on October 19 and October 26, 2012. In a December 7, 2012 order, the court concluded David's rights to H.D. should be terminated pursuant to Iowa Code sections 232.116(1)(d), (h), and (l) (2011).<sup>3</sup> The court concluded David could not now provide a safe, secure, or permanent home for H.D. because he "either cannot or will not put his desire to continue to consume alcohol and desire to continue to be involved in a dysfunctional relationship with Tasha over the needs of [H.D.]." David appeals. The child's guardian ad litem joins the State in seeking to uphold the termination.

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<sup>3</sup> The court also terminated Tasha's rights to her daughter, but that termination is not challenged in this appeal.

## II. Analysis

### A. Statutory ground for termination

We turn first to David's claim that the juvenile court erred in finding a statutory basis for termination. The court relied on three provisions as grounds for termination: section 232.116(1)(d) (child or sibling previously adjudicated as CINA and circumstances continue despite offer or receipt of services by parent); section 232.116(1)(h) (child is three or younger, has been adjudicated as CINA, parent has not had custody for at least six months, and clear and convincing evidence exists that child cannot be returned home at present time); and section 232.116(1)(l) (child has been adjudicated CINA; parent has severe substance-related disorder and presents a danger to self or others; and clear and convincing evidence exists that parent's prognosis prevents child from returning home in reasonable period of time). David argues, contrary to the juvenile court's finding, that he is currently able to provide a safe home for H.D. He contends the juvenile court's conclusions that he continues to consume alcohol and engage in an unhealthy relationship with Tasha are not supported by the record.

Although the juvenile court cited three subsections as alternative reasons for terminating parental rights, we need only find termination is appropriate on one ground to affirm. *In re J.A.D.-F.*, 776 N.W.2d 879, 884 (Iowa Ct. App. 2009). We find clear and convincing evidence supports termination under subsection (l). Our independent review of the record confirms the juvenile court's determination that David suffers from a severe substance-related disorder and poses a danger

to himself and others as shown by his prior acts. We likewise conclude his prognosis indicates H.D. cannot be returned to his care within a reasonable period of time considering her age and need for permanence.

The DHS case worker testified that David did not follow through with recommendations for substance abuse treatment. He continued to use alcohol through the duration of the CINA case. The worker expressed concern that on various occasions David had positive urinalysis (UA) or avoided testing. The district court offered this fact finding:

David has failed to provide a UA sample for alcohol testing and had an unexplained positive UA for Buprenorphine, a semi-synthetic opioid drug which is commonly used recreationally. There are concerns that David may be abusing prescription drugs and may be taking Niacin supplements in an attempt to avoid positive drug screens.

David has a long history of substance abuse, which has resulted in criminal convictions and domestic strife. He has not complied with recommendations for treatment or abstinence. He has not been truthful about his drug and alcohol abuse and has expressed sentiments that he does not believe his drinking is a major concern. Given his level of denial, we find his prospects for parenting free from alcohol and substance abuse are poor. The juvenile court properly terminated his parental rights under section 232.116(1)(l). See *A.B.*, 815 N.W.2d at 776 (reiterating that an unresolved substance problem can render a parent unfit to raise a child).

#### **B. Best interests of the child**

In his second assignment of error, David contends termination is not in H.D.'s best interests. He asserts: "[T]he record is full of references to the fact

that David is bonded to the minor child.” David insists H.D. is happy to see him when he comes to visit and enjoys spending time with him.

The record supports David’s assertion that H.D. was comfortable with him. But the witnesses also testified that she was integrated into her foster family and visits with her father caused her anxiety. One of the social workers testified that she was “bonded to numerous people” and was “a very confused little girl.”

In evaluating what is in a child’s best interest, we give primary consideration to her safety, to the best placement for furthering her long-term nurturing and growth, and to her physical, mental, and emotional condition and needs. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (citing Iowa Code § 232.116(2)); see also *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially) (stating that a child’s safety and the child’s need for a permanent home are the “defining elements” in determining a child’s best interests). A juvenile court may also deny the petition if there is clear and convincing evidence that termination would be detrimental to the child due to the closeness of the parent-child relationship. Iowa Code § 232.116(3)(c).

While David initially made progress in his visitations with H.D., his admitted drug use compelled the DHS to restrict him to supervised visits since February 2012. By the time of the termination hearing, H.D. had been out of her father’s custody for more than one year. The record indicated H.D. was “thriving in her current foster home placement” and her foster family was able and willing to adopt her. The record shows that interacting with David takes an emotional toll on H.D. The juvenile court found: “The lack of permanency in [H.D.’s] life has

created some attachment issues as well as confusion for [H.D.].” That finding is supported by the record. We see no clear and convincing proof that termination would be damaging to H.D.’s well-being. Notwithstanding the bond with her father, H.D.’s long-term nurturing and growth would be better served by severing his legal rights and allowing her to move toward adoption.

**AFFIRMED.**