

IN THE COURT OF APPEALS OF IOWA

No. 3-662 / 13-0784

Filed July 24, 2013

**IN THE INTEREST OF S.M., D.M.,
and B.M.,
Minor Children,**

**B.M., Father,
Appellant.**

Appeal from the Iowa District Court for Story County, Stephen A. Owen,
District Associate Judge.

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

AFFIRMED.

Bart K. Klaver of Thornton, Coy & Huss, P.L.L.C., Ames, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Stephen Holmes, County Attorney, and Thomas Kunstle,
Assistant County Attorney, for appellee.

Gerald Moothart of Moothart Law Office, Ames, for mother.

Daniela Matasovic, Ames, attorney and guardian ad litem for minor
children.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

BOWER, J.

A father appeals the termination of his parental rights to his three children. He contends the State failed to prove the grounds for termination by clear and convincing evidence. He also contends his parental rights should not be terminated because the children are in their mother's care.

Because clear and convincing evidence establishes the father has abandoned his children, the grounds for termination have been proved. We also find termination is in the children's best interests. Accordingly, we affirm.

I. Background Facts and Proceedings.

The children at issue ranged in age from twelve-years-old to five-years-old at the time of the termination hearing. They were removed from the father's care in December 2011 due to the father's methamphetamine use, some of which allegedly occurred in front of the children. The father refused to submit to drug testing at that time, and the children were placed in their mother's care.

The father has failed to participate in the services offered to him. Following the children's removal, he submitted to one drug test, which showed marijuana and methamphetamine use. The father then failed to participate in drug testing thirty-one times. The father participated in some supervised visits offered to him, although the juvenile court termed this participation to be "dismal at best" with the father frequently calling to cancel with little advance notice, often arriving late, and shortening the visits. His last visit with the children was on April 19, 2012; the father shortened the visit from two hours to one hour after arriving fifteen minutes late.

Since the April 19, 2012 visit, the father has had no contact with the children. He failed to appear at the August 2012 review hearing, the January 2013 dispositional hearing, the March 2013 permanency hearing, or the April 2013 termination hearing. Although he contacted the Department of Human Services in January 2013 to inquire about re-engaging in services, he failed to attend or reschedule the meeting he requested. His whereabouts were unknown at the time of termination.

On February 1, 2013, the State filed a petition to terminate the father's parental rights. Following the hearing, the juvenile court entered an order terminating the father's parental rights pursuant to Iowa Code sections 232.116(1)(b) and (f) (2013).

II. Scope and Standard of Review.

We review termination proceedings de novo. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012). We are not bound by the juvenile court's fact-findings, although we do give them weight—especially when assessing witness credibility. *Id.*

III. Analysis.

Termination of parental rights under Iowa Code chapter 232 follows a three-step analysis. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The first step is to determine whether a ground for termination under section 232.116(1) is established. *Id.* If so, the court then applies the best-interest framework set out in section 232.116(2) to determine 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 of

the factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

We will uphold a termination order if clear and convincing evidence supports the grounds for termination under section 232.116. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). Evidence is “clear and convincing” where there are no “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

The father first contends the grounds for termination have not been established. Although the juvenile court found termination was proper on two of the grounds specified in section 232.116(1), we need only find sufficient evidence exists to terminate on one of these grounds to affirm. *See In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999).

Termination is appropriate under section 232.116(1)(b) where “there is clear and convincing evidence that the child has been abandoned or deserted.” Iowa Code § 232.116(1)(b). Abandonment requires proof of two elements: (1) the conduct of giving up parental rights and responsibilities and (2) the accompanying state of mind. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996). Parental responsibilities include more than subjectively maintaining an interest in a child. *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994). A parent demonstrates responsibility by showing “affirmative parenting to the extent it is practical and feasible in the circumstances.” *In re D.J.R.*, 454 N.W.2d 838, 842 (Iowa 1990). “The affirmative duty requires a continuing interest in the child and

a genuine effort to maintain communication and association with the child.” *In re S.K.C.*, 435 N.W.2d 403, 404 (Iowa Ct. App. 1988).

We find clear and convincing evidence shows the father has abandoned the children. The father’s participation in the supervised visits he was offered was, as the juvenile court found, “dismal at best.” He participated in visitation for approximately four months, although he often did not take full advantage of the time offered him. The father failed to visit with the children in the year preceding termination, and has had no other contact with them. He also did not participate in other services offered him. Nor did he attend various juvenile court hearings, including the termination hearing. Finally, the father has failed to provide any financial or emotional support to the children. The father’s conduct shows he has given up his parental rights and responsibilities. Because the father has abandoned the children, we find the grounds for termination under section 232.116(1)(b) have been proved.

The father also contends that his parental rights should not be terminated because the children are in the custody of a relative, as set forth in Iowa Code section 232.116(3)(a). That section states that where a relative has legal custody of a child, the court “need not terminate the relationship between the parent and child.” Iowa Code § 232.116(3)(a). The factors under section 232.116(3) have been interpreted by the courts as being permissive, not mandatory. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993) *overruled on other grounds by P.L.*, 778 N.W.2d at 39-40. The court has discretion, based on the unique circumstances of each case and the best interests of the children, in

deciding whether to apply the factors in this section to save the parent-child relationship. *Id.*

Although the children are in the mother's custody, we find termination of the father's parental rights serves their best interests. The father has abandoned the children, a fact that they are all too aware of, given their ages. As the juvenile court noted, the father's actions have caused "significant emotional dismay" for the children, causing one of the children to act out on the mother. The mother sought counseling for the child, who has since learned to express negative emotions toward the father in a more appropriate way.

The children are bonded to their mother, who married shortly before the termination hearing. The children are establishing bonds with her husband, who has been providing for the children's financial, physical, and emotional support for nearly two years. He wishes to adopt the children.

Given the children's need for permanency, we decline to apply the provisions of section 232.116(3)(a). Accordingly, we affirm the termination of the father's parental rights.

AFFIRMED.