

IN THE COURT OF APPEALS OF IOWA

No. 3-735 / 13-0973
Filed August 7, 2013

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

**D.P., Father,
Appellant.**

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A father appeals the juvenile court's termination of parental rights with respect to his daughter, T.C. **AFFIRMED.**

Brian Metcalf, Muscatine, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Alan Ostergren, County Attorney, and Oubonh White, Assistant County Attorney, for appellee State.

Mark Neary, Muscatine, for mother.

Joan Black, Iowa City, attorney and guardian ad litem for minor child.

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

VOGEL, P.J.

This appeal concerns T.C., born September 2009. She was first removed from the home in October 2010, due to an incident of domestic violence between the appellant father, D.P., and the mother.¹ On December 10, 2010, T.C. was adjudicated a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2011). The bases on which the juvenile court relied in this child-in-need-of assistance case (CINA) were the parents' failure to provide appropriate supervision due to domestic violence, prescription drug abuse, unstable housing, and the fact the father was incarcerated at the time.

After two dispositional review hearings, a permanency hearing was held on October 20, 2011. The father was no longer in jail and had completed a substance abuse evaluation as well as participated in the recommended treatment. As such, T.C. was placed in her father's custody. However, by January 2012, the Iowa Department of Human Services ("DHS") began to have concerns the father had relapsed in his substance abuse. A hearing was held on March 22, 2012, in which DHS requested T.C. be removed from her father's custody. While the juvenile court denied the request, it nonetheless noted there was cause for concern. Specifically, it found credible the information the father had relapsed, given he refused random drug testing, kept abnormal hours, and was communicating with other known drug users. In August and September of 2012, the substance K2, that is, synthetic cannabis, was found in the father's home in areas accessible to T.C., in addition to alcohol. The father was not

¹ The mother was incarcerated in March 2011, and later stipulated to the termination of her parental rights, from which she does not appeal.

participating in scheduled appointments with DHS or substance abuse treatment. As such, on September 21, 2012, T.C. was again removed from the father's home. On January 10, 2013, a permanency review hearing was held, and a termination hearing was held on May 22, 2013.

The following facts were established during the termination hearing. T.C. has only been in the father's care for eleven months out of the two years and seven months since removal was originally ordered. The father has consistently suffered from substance abuse issues since he was sixteen years old, issues which have never been adequately addressed. He admitted he has used most drugs, including methamphetamine in 2006, cocaine, and pills. He also admitted to using K2 on a daily basis almost the entire time in which T.C. was in his custody, and advised DHS he now abuses alcohol. While he has participated in some substance abuse treatment, he has never fully addressed these issues, and there is no evidence he has ever remained sober for more than a few weeks at a time. For example, he was released from inpatient treatment on November 5, 2012, but failed to appear for outpatient treatment and was unsuccessfully discharged on December 5, 2012. On March 14, 2013, he was admitted to another treatment center, from which he was successfully discharged on April 15. From there he was incarcerated until the end of April. He then maintained sobriety until May 22, 2013, the date of the termination hearing. As his counselor noted in a letter to the juvenile court: "After his stay at the Mental Health Institute, he appears to have developed substantial insight into the relationship between his mental health and substance use. He has been attending his scheduled appointments and progressing on his treatment plan goals and objectives."

However, during the time T.C. was not in his custody, the father did not significantly participate in visitation or parenting sessions. From the October 2012 removal to mid-March 2013, though he was offered forty-one supervised visits, he only attended fourteen. On two occasions he admitted to using K2 prior to the visit.

In an order dated May 31, 2013, the juvenile court terminated parental rights as to the father pursuant to Iowa Code section 232.1116(1)(h). The court found that, while T.C. is bonded to the father and he in turn loves her, he is not capable of properly caring for T.C. The father now appeals, claiming there was not clear and convincing evidence T.C. could not be returned to his custody. He relies on his assertion that he has not abused any illegal substances since February 2013, he is engaged in therapeutic services, and he has resumed work as a roof contractor. The father further asserts he and T.C. are closely bonded, such that termination was not in T.C.'s best interest.

We review the termination of parental rights proceedings de novo. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The grounds for termination must be proven by clear and convincing evidence. *Id.* Our primary concern is the child's best interest. *Id.*

Here, we are satisfied the State proved by clear and convincing evidence T.C. could not be returned to the father's care at the time of the termination proceedings. During the termination hearing, the father requested more time in which to correct his mental health and substance abuse issues. However, since October of 2010, he has been given many opportunities in which to address his

issues, including inpatient and outpatient services, but has continually failed to maintain sobriety for any significant length of time. As the district court found:

His substance abuse issues are longstanding and he has never demonstrated an ability to conquer his substance abuse for the long term. [The father] requests more time however, he has had since October of 2010 to meaningfully address his substance [abuse] and other issues. A few weeks of sobriety outside of jail or an inpatient facility is simply too little too late.

It is particularly concerning he used K2 every day while T.C. was in his care, and even did so after she was removed, before visitation. Therefore, it is clear more time would not correct the father's long struggle to maintain sobriety. See *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (“[I]n considering the impact of a drug addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future.”).

While there is a bond between T.C. and the father, which he claims weighs against termination under Iowa Code section 232.116(3), his cycle of drug abuse, treatment, sobriety and relapse, with a request for even more time to address his issues, do not serve T.C.'s best interest. Rather, it is within her best interest to have certainty, finality, and stability in her life, and this should be taken into account when deciding whether to terminate parental rights. See Iowa Code § 232.116(2); *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000) (mother's inability to promptly resolve her significant drug abuse issues required termination, as it was within child's best interest to achieve security and stability). As the State proved T.C. could not be returned to her father's care, and that T.C. is under stress due to the uncertainty of her placement, it is within her best interest to terminate the

father's rights. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997) ("When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued."). Therefore, the juvenile court was correct in terminating the father's parental rights.

AFFIRMED.