

IN THE COURT OF APPEALS OF IOWA

No. 3-811 / 13-1091
Filed September 5, 2013

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

**D.N., Father,
Appellant.**

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

The father appeals from the juvenile court's termination of his parental rights pursuant to Iowa Code section 232.116(1)(b). **AFFIRMED.**

Leslie D. Lamping of Lamping, Schlegel & Salazar, L.L.P., Washington, for appellant father.

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

Sara Strain Linder of Tindal Law Office, Washington, for appellee mother.

Lori Kieffer-Garrison, Davenport, attorney and guardian ad litem for minor child.

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

VOGEL, P.J.

This appeal concerns the termination of the father's parental rights to D.B., a child born in September 2009. D.B. first came to the attention of the Iowa Department of Human Services (DHS) in April 2010, after the mother overdosed on prescription medication while caring for D.B. Services were provided, though the father elected not to participate.

In early 2011, two incidents of domestic violence occurred between D.B.'s parents, and both times the father was arrested and served time in jail. The father testified the last time he saw D.B. was in April 2011. He then moved to Indiana in late 2011. On April 3, 2012, D.B. was adjudicated a child in need of assistance, and was subsequently removed from the mother's home and placed in foster care. From a Facebook contact, the father learned D.B. was no longer living with the mother.

In April 2012, the father telephoned DHS and stated he would like D.B. to be placed in his custody. DHS advised him a home study would need to be conducted, and he stated he would let DHS know at a later date when to perform the home study. However, the telephone number he left with DHS was no longer in service, and he made no further contact with DHS. He was arrested shortly after phoning DHS, and at the time of the termination hearing was still incarcerated in Indiana, with a possible release date of October 2013.

A termination hearing with respect to the father's parental rights was held on April 29, 2013.¹ The court issued an order on June 7, 2013, denying the

¹ The mother does not appeal her voluntary consent to the termination of her parental rights.

petition for termination. The court stated termination was inappropriate under Iowa Code sections 232.116(e) and (h) (2011), given the father had not been properly served with notice of the underlying child in need of assistance case. However, a second petition was filed on April 30, 2013, which came on for hearing on June 27, 2013. In an order dated July 3, 2013, the court terminated the father's parental rights pursuant to Iowa Code section 232.116(1)(b). The court noted this section does not require notice of the child in need of assistance case. The father now appeals the decision, stating the court did not properly follow the three-step analysis required by Iowa Code section 232.116 prior to termination. See *In re P.L.*, 778 N.W.2d 33 (Iowa 2010) (restating the analytical framework to follow in considering whether to terminate parental rights). He also asserts there was no evidence he intended to abandon D.B.

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 proved by clear and convincing evidence. *Id.* Our primary concern is the child's best interest. *Id.*

With respect to the father's first claim stating the court did not follow the requisite three-step analysis of Iowa Code section 232.116, he has failed to preserve error. To preserve an issue for appeal properly, the party must bring the issue to the attention of the lower court, and it must be evident the court considered the party's claim. *Lamasters v. State*, 821 N.W.2d 856, 863 (Iowa 2012). The father neither raised this issue before the juvenile court, nor did he file a motion to amend or enlarge so the court could address this omission. Moreover, the father does not allege which factor under Iowa Code section

232.116(3) would apply to this case. Therefore, although the juvenile court did not specifically address this issue, on our de novo review, we find nothing in this record which would militate against termination under Iowa Code section 232.116(3).

As to the father's claim that he never intended to abandon D.B., we agree with the juvenile court the State proved abandonment by clear and convincing evidence. Parental rights may be terminated if "there is clear and convincing evidence that the child has been abandoned or deserted." Iowa Code § 232.116(1)(b). Abandonment occurs when the parent gives up rights and responsibilities toward the child, in addition to having the intent to forego these responsibilities. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996). "The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances." *Id.*

Here, the father has had no contact with D.B. since April 2011, including no visits or phone calls, and he has failed to provide any monetary or emotional support for the child. Though in April 2012 he advised DHS he would like D.B. to be placed in his custody, he made absolutely no effort to follow through with his request. Despite the father's claim he did not intend to abandon D.B., the fact he had no contact with his child for over two years prior to the termination hearing, or shown any interest in D.B. since a brief inquiry in April 2012, demonstrates he did in fact abandon D.B. Therefore, we find by the father's conduct he both abandoned and intended to abandon D.B. We also agree with the juvenile court

that termination is in D.B's best interest. Therefore, we affirm the juvenile court's termination of parental rights.

AFFIRMED.