

IN THE COURT OF APPEALS OF IOWA

No. 2-725 / 12-1061
Filed September 6, 2012

**IN THE INTEREST OF K.R.W., J.D.W.,
and B.W.W.,
Minor Children,**

J.W., Father
Appellant.

Appeal from the Iowa District Court for Clarke County, Monty W. Franklin,
District Associate Judge.

A father appeals permanency and termination-of-parental-rights orders.

AFFIRMED.

Diana L. Rolands of Rolands Law Office, Osceola, for appellant, father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Lisa Hynden Jeanes, County Attorney, for appellee.

Kristian Lehmkuhl, Osceola, for mother.

Dustria Relph, Corydon, attorney and guardian ad litem for minor children.

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

DANILSON, J.

A father appeals from permanency and termination-of-parental-rights orders.¹ He contends the court erred by ordering a parenting assessment at the close of evidence of the permanency hearing and by ordering termination because the State did not make reasonable efforts for reunification and there was insufficient evidence to support termination. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

K.W., born March 22, 2007, J.W., born February 3, 2006, and B.W., born December 26, 2004, were adjudicated children in need of assistance (CINA) on February 24, 2010.² The children were removed from their mother's care and placed with their father.

However, the children were removed from their father's home due to safety and abuse concerns on April 1, 2010. The father received almost a year of services before the children were returned to the father's custody in March 2011. However, the children's negative behaviors increased while in their father's care. During this period the court observed that the father

was regularly in contact with the DHS case manager and the assigned in-home worker complaining that the children were supposed to be "fixed" before they were returned home, why weren't they fixed before returning them home to him, that the children needed to be fixed by DHS, or that a cap with wires needed to be put on their heads to find out what is wrong with their brains to make them act the way that they do.

¹ The mother consented to termination and does not participate in this appeal.

² DHS had been involved with the family since September 2007, and provided continuous services from May 26, 2009 forward. The children were adjudicated CINA pursuant to Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(n).

In his frequent calls to DHS, the father made threats and called the children names. On July 21, 2011, after the father placed J.W. in a physical restraint in front of a DHS provider, the children were once again removed due to safety concerns and the father's inability to manage the children's behaviors appropriately.³ The father did not resist removal.

The father maintained supervised visitation with the children and utilized every type of service recommended by DHS during the pendency of the matter, including individual therapy, anger management, and parenting classes. However, the court noted that despite almost three years of services, he was "unable to internalize, apply, or utilize the information and techniques provided by such services."

The children's DHS social worker recommended termination at the December 6, 2011, permanency hearing.⁴ She provided "extensive" instruction on parenting skills after the second removal, but saw no improvement.⁵ The

³ The father utilized physical restraint on J.W. despite the fact the children were originally removed from his care after he disciplined K.W. with physical restraint. The court noted

[a]fter the visit the worker talked with [the father] about the incident and suggested options which might have avoided the physical conflict. [The father] replied that he had heard it all before. His actions clearly indicated that he was not able to implement any option except a time out and physical restraint even though he knew the earlier physical restraint had resulted in the children being removed from his custody.

⁴ The social worker testified that although the original goal was reunification, when that was attempted the children's negative behaviors increased and the father's ability to manage those behaviors decreased. Her recommendation for termination was based on the father's inability to implement the anger management and parenting techniques he has been asked to learn. Though the father had a new paramour, the social worker did not believe it was reasonable to rely on that individual to provide a stable source of child care.

⁵ No interaction between the father and children was observed during drop-in supervision of their visits.

father listened cooperatively, but rejected the techniques offered and stated that he would raise his children the way he was raised.

The children's worker from Mid-Iowa Family Therapy Clinic testified that B.W. was scared of his father. B.W. and J.W. expressed interest in seeing their father, but wanted reassurance they would not have to stay with him and could return to the foster home. All three children expressed a desire to be adopted by the foster family.

At the close of evidence in the December 6, 2011, hearing, the court continued the permanency hearing, requested that DHS complete a parenting assessment and current letters regarding the children's therapeutic treatment be provided to the court, stating "all that information is essential to the Court in order to make an informed decision regarding an appropriate permanency decision for these children." The father made no objection to the continuance or gathering the information sought by the juvenile court, at that time.

When the hearing reconvened on March 9, 2012, the father requested that the court rule based on the evidence submitted at the hearing on December 6, 2011, claiming that receiving any new evidence was not "within the court's parameters." The objection was overruled and new evidence was admitted.⁶ The DHS worker and guardian ad litem continued to recommend termination.⁷

⁶ The father's parenting assessment reiterated previously existing concerns about his inability to implement parenting techniques. It discussed some of his history, expressed concerns about the lack of a bond between him and the children and his inability to manage his anger. The most recent letters available from the children's therapist, written December 20, 2011 and December 28, 2011, were also provided to the court.

⁷ The DHS worker noted that the father was previously unable to handle the children. While the father had not demonstrated improved skills since that time, the children's

The court ordered the State to file a petition for termination. After this final permanency hearing, the father requested supervised visitation of all children weekly, which was provided for him.

A termination hearing was held April 30, 2012. The testimony echoed that of the permanency hearings; the State and guardian ad litem continued to recommend termination to enable the children to achieve permanency and stability. The juvenile court terminated parental rights on May 25, 2012.

II. Standard of Review.

We conduct a de novo review of termination of parental rights proceedings. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). Although we are not bound by the juvenile court's findings of fact, we do give them weight, especially in assessing the credibility of witnesses. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

III. Analysis.

A. *Admission of additional evidence after continuance of permanency hearing.*

challenging behaviors had increased. Though the father did not seek a six-month extension, the worker specifically stated she also did not believe reunification would be possible in another six months.

The father raises the following issue on appeal: “The Court inappropriately ordered a continuance of the permanency hearing and failed to rule at close of evidence on December 6, 2011, and allowed new evidence obtained and entered at the March 9, 2012 hearing.”

The father suggests the court was making its own evidence by ordering a parenting assessment at the close of the evidence of the permanency hearing, and continuing the hearing to allow time for the report to be prepared. The juvenile court indicated it simply wanted to “make an informed decision regarding an appropriate permanency decision for these children.” The father attempts to support this claim on due process grounds. However, the due process argument was never raised before the juvenile court. Thus, we conclude error premised upon due process grounds, if any, was not preserved for our review. *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) (“Even issues implicating constitutional rights must be presented to and ruled upon by the [juvenile] court in order to preserve error for appeal.”).

We also observe that there is no allegation the court knew or could predict the results of the assessment it ordered. The report could have been beneficial to the father. No objection was lodged by the father to the court’s request for the report or the continuance. Rather, the father objected after the report was completed and offered as evidence, three months later. We conclude the objection was untimely. “Objections should be raised at the earliest time at which error became apparent in order to properly preserve error.” *State v. Steltzer*, 288 N.W.2d 557, 559 (Iowa 1980).

Moreover, no authority has been cited in support of the father's contention he was somehow prejudiced by these proceedings. He simply claims that without the report there was insufficient evidence to support entry of the permanency order. Because the court ordered the State to file a petition to terminate the parent-child relationship, the custody terms in the permanency order were temporary, pending the termination hearing. *In re T.R.*, 705 N.W.2d 6, 11 (Iowa 2005) (concluding the custody portion of a permanency order that orders the State to pursue termination is "temporary in nature" and will be "subsumed in the final termination order in the termination proceeding"). Here, the father's parental rights were ultimately terminated. Although we believe the juvenile court had the inherent authority to order the parental assessment report, even without such authority, we cannot turn the clock back and grant the father temporary custody.⁸ Here, the father had the benefit of a fully litigated termination hearing, and his parental rights were permanently terminated. We conclude he suffered no prejudice.

B. Reasonable efforts.

Next, the father alleges the court should have granted him more of an opportunity to demonstrate his ability to provide a safe home for the children, citing his participation in all of the services offered to him. The father claims he

⁸ Our supreme court has stated that, "under the doctrine of *parens patriae*, the juvenile court has a concomitant obligation to act in the best interest of the child," and has broad inherent power to discharge its responsibilities. *In re K.C. and S.C.*, 660 N.W.2d 29, 34-35 (Iowa 2003).

was not given time to implement suggestions on behavior modification, which he believes would have required reunification or unsupervised visitation.⁹

At the close of the March 9, 2012 hearing the father requested the court “grant him the time within which to have the children transitioned back into his home to care for them.” The father had two years from the children’s first removal from his care to achieve reunification. Despite attending therapy and parenting classes, he failed to demonstrate progress.

The father was given a year of services after the initial removal from his care. He was then given a second opportunity to demonstrate he was capable of providing a safe, stable home when the children were returned to his care, on March 28, 2011. However, he was still unable to control his anger and manage the children’s behaviors appropriately; thus, the children were removed a second time in July 2011. Between the second removal and the December 2011 review hearing, the father was given “extensive” parenting education with the in-home worker. He demonstrated no improvement. More time cannot be taken from the children. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (“Once the limitation period lapses, termination proceedings must be viewed with a sense of urgency.”).

We adopt the juvenile court’s findings that an extension of time to demonstrate compliance is not warranted here.

To return the children to [their father] at this time would expose and subject them to the continued risk of physical and

⁹ However, he admits he did not ask the court to order additional or unsupervised visitation until after the final permanency hearing, when the permanency goal of termination was announced.

emotional harm and as years of services have not eliminated these continuing concerns, it is not feasible to believe that additional time and services would enable [the father] to make the changes necessary to allow the children to be returned to his custody.

C. *Clear and convincing evidence in support of termination.*

Iowa Code chapter 232 governing termination of parental rights follows a three-step analysis. See *P.L.*, 778 N.W.2d at 39. The court must initially determine whether a ground for termination under section 232.116(1) is established. *Id.* If a ground for termination is established, the court must next apply the best-interest framework set out in section 232.116(2) to decide 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 statutory exceptions or factors set out in section 232.116(3) weigh against termination of parental rights. *Id.*

1. *Grounds for Termination.*

The juvenile court found the State established by clear and convincing evidence that termination of parental rights was warranted pursuant to Iowa Code section 232.116(1)(f).¹⁰ We agree. At the time of the termination hearing, the children were ages five, six, and seven. They were first removed from their father's care on April 1, 2010. By the termination hearing in April 2012, they had been returned to their father's care for less than four months out of the twenty-

¹⁰ Section 232.116(1)(f) provides termination may be ordered when there is clear and convincing evidence a child four years of age or older who has been adjudicated a CINA and removed from the parent's care for at least twelve of the last eighteen months cannot be returned to the parent's custody at the time of the termination hearing.

four months since the initial removal. The children could not be safely returned to the father's care at the time of the termination hearing.

The court noted that none of the four in-home workers working with the family believed the children could safely return to their father's custody.

[The father's] actions have led to acting out behaviors by the children, the children's conduct disorders, and difficulties with attachment by the children [T]he children's problem behaviors are related to [their father's] parenting style [R]eturning the children to [the father] would subject them to both physical and emotional harm. . . . [The father] lacks age appropriate parenting abilities and age appropriate expectations for the children . . . his continuous and primary focus on the children's negative behaviors has a negative impact on the children resulting in more negative behaviors by the children, acting out by the children and in the children having low self esteem. . . . [The father] isn't able to implement and utilize the parenting skills and techniques he has been taught and there are no additional services left to offer to him and, therefore, the children cannot be safely returned to [his] custody.

The father concedes that he failed to implement the parenting skills he was asked to use.¹¹ He also admitted in his psychosocial assessment that he was unable to utilize the positive parenting and disciplinary techniques that had been demonstrated and stated he believed himself to be 75% responsible for the issues the family was experiencing. The court acknowledged a report by the children's therapist outlining the negative influence of the father's behavior on the children:

¹¹ He purchased a program for special needs children to which he believes the children will respond to more favorably; however, DHS does not recommend the parenting style endorsed by the program. He attempted to apply the techniques he learned from that program with no success during supervised visitation. While he was offered additional parenting classes, he refused to work with the facilitator because she had previously provided him individual counseling and he found her "very rude and belittling." Other classes were available in Des Moines, but he declined to attend those classes due to the cost of transportation.

This is reinforced by the report from Ken Hayes of Crossroads Mental Health Center who states “. . . it is clear that he (B.W.) has learned and developed a style of behavior based on the way that adult male role models have shown him that one can win by violent behavior and intimidation. . . . B.W. . . . appears to believe that only to gain attention, or get his way is act out in a violent manner.” (sic)

[The father] appears to lack empathy with or an emotional connection with the children. He focuses on their negative behaviors but doesn’t seem to understand or appreciate the impact his actions, attitude and disciplinary techniques have on the children. . . .

We conclude sufficient evidence establishes that the statutory grounds for termination have been met.

2. *Factors in Termination.*

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interests, this court’s primary considerations are “the child’s safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child.” *Id.*

The father contends termination is not in the best interests of his children because he cooperated with all of the services DHS provided. However, despite his participation, he failed to manage his anger and provide a safe home for the children. Evidence of a parent’s past performance may be indicative of the quality of future care. *In re A.B.*, 815 N.W.2d 764, 778 (Iowa 2012).

The children had been removed from the parental home for the nine months preceding the termination hearing and all but about four months of the preceding two years. They need permanency, and deserve stable parents who

have the skills and resources to provide for their needs and manage their difficult behaviors in an appropriate and caring manner. Their father does not have the ability to do so and has not been able to develop it after years of services. The foster parents provide a safe, stable, structured, and loving environment for the children. The children have become integrated into the foster family, and have expressed their desire to remain in the foster home. The foster parents are willing to integrate the children permanently into their family.

We conclude the children's best interests require termination of the father's parental rights. We agree with the juvenile court's conclusions that it is not safe for the children, either physically or emotionally, to be returned to the father's custody.

3. *Exceptions or Factors against Termination.*

Finally, we give consideration to whether any exception or factor in section 232.116(3) applies to make termination unnecessary. A court may opt not to terminate parental rights if "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c).

The juvenile court considered the bond between the children and their father in its analysis of the applicability of exceptions found in Iowa Code section 232.116(3).¹²

¹² While B.W. was in an institution for care at the time of the termination hearing, his treatment was expected to come to an end within approximately four to seven months, at which point continuation of the parent-child relationship would have prevented permanent placement with B.W.'s siblings.

The [children's] father has had mostly supervised visitation with the child since the child was removed from [the father's] custody in July of 2011 and fully supervised visitations only for several months. [The father's] psychosocial assessment indicates that [he] may not feel a sense of emotional closeness to his children. [The children have] expressed that although [they] love [their father], [they] want to live with the foster parents and not [their father] as [they] feel safe and secure with the foster parents. Accordingly, the bond between [the children] and [their father] is also not strong.

Upon our de novo review, we find no reason to disturb the juvenile court's ruling.

IV. Conclusion.

Error premised on due process grounds, if any, was not preserved for our review. The father failed to establish that he was prejudiced in any way by the permanency review hearings. The State made reasonable efforts to support reunification; an extension of time for the father to establish reunification was not warranted. Finally, there is clear and convincing evidence that grounds for termination exist under section 232.116(1), termination of parental rights is in the children's best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm termination of the father's parental rights.

AFFIRMED.