

**IN THE COURT OF APPEALS OF IOWA**

No. 3-327 / 13-0338  
Filed April 24, 2013

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

**J.K., Father,  
Appellant.**

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Appeal from the Iowa District Court for Scott County, Christine Dalton,  
District Associate Judge.

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

**AFFIRMED.**

Brenda Drew-Peebles of Drew-Peebles Law Firm, Davenport, for  
appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant  
Attorney General, Michael J. Walton, County Attorney, and Julie A. Walton,  
Assistant County Attorney, for appellee.

Jean Capdevilla, Davenport, for mother.

Charles F. Elles, Bettendorf, attorney and guardian ad litem for minor  
child.

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

**BOWER, J.**

A father appeals the termination of his parental rights to his child. He contends the State failed to prove the grounds for termination by clear and convincing evidence. Finding the State met its burden in proving the grounds for termination under Iowa Code section 232.116(1)(h) (2011), we affirm.

***I. Background Facts and Proceedings.***

The child, born in November 2011, was adjudicated to be a child in need of assistance (CINA) in March 2012. The reasons leading to the CINA adjudication included domestic violence, sexual abuse of the mother's older child by the father, and the mother's medical condition, which caused her difficulty in caring for a baby. The mother voluntarily placed the child with a maternal aunt in February 2012. The child has remained in that placement since.

The father has an extensive criminal history, which includes domestic violence and drug convictions. He tested positive for marijuana use in April 2012 and has admitted to ongoing, daily use. A substance abuse evaluation diagnosed the father with marijuana dependence and recommended intensive outpatient treatment. The father was also diagnosed with bipolar disorder, schizophrenia, ADHD, personality disorder, and antisocial personality. Although the father initially complied with treatment recommendations for both his substance abuse and mental health, these efforts were short lived. The father also failed to complete a sex offender evaluation because he denied any sexual abuse.

The State filed a petition seeking to terminate the father's parental rights in September 2012. The termination hearing was held on January 23 and 24 of 2013. On February 15, 2013, the juvenile court entered its order terminating the father's parental rights. He filed a notice of appeal on February 26, 2013.

**II. Scope and Standard of Review.**

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

We will uphold 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.*

**III. Analysis.**

The father first contends the State failed to prove the grounds for termination by clear and convincing evidence. The juvenile court terminated his rights pursuant to Iowa Code sections 232.116(1)(d), (h), and (i). We need only find grounds to terminate under one of these sections to affirm. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa 1999).

Termination is appropriate under section 232.116(1)(h) where the State proves the following:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Iowa Code § 232.116(1)(h). The father does not dispute the first three elements have been proved. Instead, he argues there is not clear and convincing evidence that the child cannot be returned to his care.

We find clear and convincing evidence supports termination under section 232.116(1)(h). Although services had been offered to the father to address his substance abuse and mental health issues, he failed to take advantage of them. He has failed to complete substance abuse treatment and was not complying with the recommended mental health treatment. The father also failed to get a sex offender evaluation.

While the father argues the State failed to randomly test him for drugs, the evidence shows the father admitted to using marijuana daily. The father was also arrested for public intoxication on October 22, 2012. The father also complains the State did not contact his mental health provider to confirm his participation in therapy. However, the father testified that he had not been to his mental health provider in the six months leading up to the termination hearing. The father never progressed beyond supervised visitation with the child. We find

the evidence shows the child cannot be safely returned to the father's care.

Accordingly, we affirm.

**AFFIRMED.**