

IN THE COURT OF APPEALS OF IOWA

No. 3-598 / 13-0614

Filed June 26, 2013

**IN THE INTEREST OF M.O.,
Minor Child,**

**M.O., Father,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Christopher M. Nydle of Nydle & Forcier, P.L.L.C., Waterloo, for appellant-father.

Kelly Smith, Waterloo, for appellant-mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kathleen Hahn, Assistant County Attorney, for appellee.

Michael Bandy, Waterloo, attorney and guardian ad litem for minor child.

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

DANILSON, J.

A father appeals the termination of his parental rights to his son, M.O.¹ M.O. was born drug affected. M.O.'s father has not actively participated in services and has only shown recent interest in the child. The father's interest has been too little and too late. Moreover, the father is not able to meet the demands of M.O.'s specialized needs. We affirm.

I. Background Facts and Proceedings.

M.O. was born in July 2012. During the pregnancy his mother was addicted to prescription medication, which resulted in his exposure in utero. He was born premature at thirty-one weeks and was drug affected by opiates. Shortly after birth, he was placed on a morphine drip because he was suffering from opiate withdrawals. M.O. has numerous health issues, including retinopathy of prematurity (ROP), a potentially blinding disease, ongoing respiratory issues, and immune deficiency. Because of these health issues, he requires special care and attention. Namely, M.O.'s nasal passageway must be suctioned out between six and twenty times per day in order to help him breathe.

Upon his discharge from the hospital in August 2012, M.O. was removed from his parents' custody and placed in foster care. The parents had not visited regularly while M.O. was in the hospital and doctors at the University of Iowa Hospitals and Clinics expressed concern about the lack of bonding between M.O. and his parents. The doctors also expressed concerned about the parents' ability to adequately care for their son.

¹ The mother's parental rights were also terminated. She does not appeal.

On October 11, 2012, M.O. was adjudicated a child in need of assistance. Neither parent was present for the hearing. The court noted that neither parent had suitable housing or employment, nor had participated in regular visitation with M.O.

On October 19, 2012, the Iowa Department of Human Services (DHS) learned the parents had moved to Missouri. Four days later an arrest warrant was issued for the mother for probation violation. She was arrested in Missouri on or about November 6 and was returned to county jail in Iowa on November 15. At that time the mother reported to DHS that the father was now employed in Missouri and intended to stay there. During the parents' absence, M.O. had been re-admitted to the hospital and had undergone several procedures. DHS had to obtain a court order so doctors could treat M.O. as the parents failed to answer their phones and did not notify anyone they had left the area. The DHS case manager reported to the court that she believed the parents had "minimal insight into the seriousness of [M.O.'s] medical condition and [the mother's] ongoing substance abuse issues."

Neither parent appeared at the dispositional hearing on December 6, 2012. The court found:

The parents have not had regular contact with the child while being hospitalized or in family foster care. The parents are currently without suitable residence and have not followed through with services since the adjudicatory hearing. Neither parent has demonstrated an ability to provide the necessary care required for the child's individual health needs.

The court ordered the mother to complete an outpatient substance abuse evaluation and to comply with any recommendations for outpatient substance

abuse treatment. Both parents were ordered to attend M.O.'s medical meetings and to demonstrate an understanding of his health needs.

In her January 2013 report to the court, the DHS case manager reported neither parent had been in contact with M.O. since October 1, 2012. The case manager had no communication with the father, even by telephone, during that time period. M.O. was reported to have bonded with his foster parents and was thriving in their home. He was developmentally on target for his "corrected age" of four months. Termination of parental rights was recommended.

A petition to terminate parental rights was filed on February 8, 2013, and the termination hearing was held on March 25, 2013. At the hearing the court found:

[M.O.'s father] has not actively participated in services or regularly attended visitations with his son. [He] has not developed a significant and meaningful relationship with his son. . . . [He] has been unable to demonstrate a basic understanding of the child's health needs or demonstrate a satisfactory ability to meet the basic day to day needs of the child."

For those reasons the court determined that M.O. could not be returned to his father's custody at that time. His parental rights were then terminated pursuant to Iowa Code sections 232.116(1)(e) and 232.116(1)(h). The father appeals.

II. Standard of Review.

Our review of termination decisions is *de novo*. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the juvenile court's findings, especially assessing witness credibility, although we are not bound by them. *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 “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. Discussion.

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. *P.L.*, 778 N.W.2d at 39. The court must first determine whether a ground for termination under section 232.116(1) has been established. *Id.* If a ground for termination has been established, the court must apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in termination of parental rights. *Id.* Finally, if the statutory best-interest framework supports termination of parental rights, the court must consider if any of the statutory exceptions set out in section 232.116(3) weight against the termination of parental rights. *Id.*

A. Grounds for Termination.

When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the order on any ground we find supported by the record. *D.W.*, 791 N.W.2d at 707. Iowa Code section 232.116(1)(h) provides that termination may be ordered when there is clear and convincing evidence the child is three years or age or younger, has been adjudicated a child in need of assistance, has been removed from the physical custody of the parent for at least six of the last twelve months, and cannot be returned to the parent’s custody at the time of the termination hearing.

In this case M.O.'s father only disputes the court's determination that M.O. could not be returned to his custody at the time of the termination hearing. He contends that he had established a safe and stable environment in which to raise the child, had become gainfully employed in Missouri, and had received education as to his son's medical needs. He also claims he had been exercising "regular visitation with the child to strengthen the already existing bond."

Even though M.O.'s father has been able to obtain steady employment and housing, other issues still preclude M.O. from returning to his father's custody at this time. Although the father had recently begun visiting M.O. on a weekly basis, he did not show any interest in being a part of his son's life from October 2012 till the permanency hearing on February 13, 2013. During the time in between, the father did not visit his son, did not contact the social worker in charge of the case, and missed two hearings regarding custody of their son. There is no evidence the father sought any updates regarding M.O.'s health or ongoing medical treatment during this time period.

Because of his ongoing medical concerns M.O. needs specialized care and extra attention. His father has not shown that he can meet those demands. He has not attended the various doctor appointments as ordered by the court. The parents have not availed themselves of the services offered to them to meet M.O.'s needs. As the care coordinator testified at trial, the parents still needed prompting at each visitation in order to properly feed and care for their son.

Even though the father has addressed some of the State's concern by obtaining full-time employment and steady housing, there is still clear and

convincing evidence that M.O. cannot be returned to his father's custody at this time.

B. Best Interest of the Child.

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 interest of the child, we give primary consideration to “the child’s safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional conditions and needs of the child.” See Iowa Code § 232.116(2).

We agree with the juvenile court’s finding that termination of the father’s parental rights would best provide for M.O.’s long-term nurturing and growth.

The court observed:

Because of the child’s age and length of placement outside the care of a parent, that permanency through adoptive placement is the most permanent and appropriate long-term placement option. The child’s safety can best be ensured by a termination of parental rights. The best placement for furthering the long-term nurturing and growth of the child is through adoption, because of the parents’ history of substance abuse, denial of critical care, lack of availability and limited parenting skills. The physical, mental, emotional needs of the child can also best be met by adoption.

M.O. has been living in the home of his current foster parents since November 2012. At trial the DHS case manager testified that M.O. has bonded with his foster parents. Both parents are aware of his medical needs and are able to provide him with the necessary care. They have expressed desire for M.O. to be placed with them permanently. The father claims that reunification is possible with additional time for visitation and parent education. These options have long

been available, and M.O. should not have to suffer further instability because his father delayed in taking advantage of the options provided to him. “A parent cannot wait until the eve of termination . . . to begin to express an interest in parenting.” *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). We agree with the district court that it is in M.O.’s best interest to terminate the father’s parental rights.

C. Exceptions or Factors against Termination.

Finally, we consider whether any exception or factor in section 232.116(3) weighs against termination of parental rights. *P.L.*, 778 N.W.2d at 39. The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the facts in the section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

The father contends termination of his parental rights is not necessary because of the closeness of the parent-child relationship between M.O. and himself. See § 232.116(3)(c). The facts do not support this assertion. At the time of termination M.O. was only eight months old. He had spent much of the first two months of his life in the hospital with his father visiting only sporadically. During the next four months of his life, his father lived in Missouri and did not visit a single time. Although the father had recently begun visiting M.O. weekly, neither the case manager nor the care coordinator could testify that M.O. was

bonded to his father. We conclude no exception or factor in section 232.116(3) applies to make termination unnecessary.

IV. Conclusion

There is clear and convincing evidence that grounds for termination exist under section 232.116(1)(h), termination of parental rights in is the child'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. Accordingly, we affirm termination of the father's parental rights.

AFFIRMED.