

IN THE COURT OF APPEALS OF IOWA

No. 3-629 / 13-0734
Filed July 10, 2013

**IN THE INTEREST OF M.C. Jr.,
Minor Child,**

**M.C., Sr., Father,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Andrew Abbott of Abbott Law Office, P.C., Waterloo, for appellant father.

Kelly Smith, Waterloo, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven Halbach, Waterloo, for appellee State.

Linnea Nicol of the Juvenile Public Defender's Office, Waterloo, for minor child.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

EISENHAUER, C.J.

A father appeals from the order terminating his parental rights to his child. He contends the State did not prove the statutory grounds for termination, termination was not in the child's best interests, and the court erred in not finding any exceptions to termination. We affirm.

The child, born in 2011, was removed from the parents' care at birth based on the child testing positive for marijuana and methamphetamine. He was returned home for a trial placement in late May 2012 but was removed again in late August after the mother had a positive drug test. He has remained in foster care since.

The father has significant mental health issues, being diagnosed with depression, anxiety, mood disorder, ADHD, and schizoaffective disorder. Between the child's removal in August 2012 and the termination hearing in February 2013, the father missed seven mental health appointments, and at the time of the termination hearing, had no future appointments scheduled. The father has a substance abuse problem and was arrested in September 2012 for operating while intoxicated. He missed twenty-five of twenty-eight scheduled drug tests. He missed two substance abuse treatment appointments in 2013 before the termination hearing and, at the time of the termination hearing, had no future appointments scheduled. The father and mother have a "volatile" relationship. At least one visitation with the child ended early when the father became physically aggressive toward the mother. All visitation since the child's removal in August 2012 has been supervised.

After a hearing in late February 2013, the court issued its order in May, terminating both parents' parental rights under Iowa Code section 232.116(1)(h) and (l) (2013). In considering the child's best interests, the court noted the child was in a "home where he is loved, nurtured, and his safety is not in question." The foster parents want to adopt the child. The court concluded "[a]nything short of adoption would be contrary to the best interests of the child." The court also determined none of the exceptions to termination in section 232.116(3) applied. The father appeals.

We review terminations de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We examine both the facts and law, and adjudicate anew those issues properly preserved and presented. *In re L.G.*, 532 N.W.2d 478, 480-81 (Iowa Ct. App. 1995). We accord considerable weight to the findings of the juvenile court, especially concerning the credibility of witnesses, but are not bound by them. *Id.* at 481.

The father contends the State did not prove the statutory grounds for termination. He specifically argues the evidence did not show the child will not be able to be returned to the custody of the parent within a reasonable period of time. See Iowa Code § 232.116(1)(l)(3). He argues the court should have deferred permanency because additional time would correct the situation and with the father receiving additional treatment and assistance, the child could be returned home within a reasonable amount of time. See *id.* § 232.104(2)(b) (allowing the court to defer permanency for six months).

The court terminated the father's parental rights under section 232.116(1)(h) and section 232.116(1)(l). When the court terminates parental

rights on more than one statutory ground, we only need to find the evidence supports termination on one of the grounds cited to affirm. See *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). There is no question the first three elements of section 232.116(1)(h) are satisfied. The fourth element requires proof the child cannot safely be returned to a parent's care "at the present time." At the time of the termination hearing, the father had not addressed his mental health or substance abuse issues. The child could not safely be returned to his care at the time of the termination hearing. Accordingly, we conclude the State proved a statutory ground for termination.

The father contends termination was not in the child's best interests. He argues he is best suited to meet the child's needs, he and the child share a strong bond, and he could regain custody of the child if given additional time "to continue substance treatment, drug screens, and maintaining his mental health and medication management."

The father has significant mental health and substance abuse issues he has not addressed. Between the child's removal in August 2012 and the termination hearing in February 2013, the father missed seven mental health appointments. At the time of the termination hearing, he had no future appointments scheduled. He missed twenty-five of twenty-eight scheduled drug tests. He missed two substance abuse treatment appointments in 2013 before the termination hearing. At the time of the termination hearing, he had no future appointments scheduled.

In order to defer permanency as provided in section 232.104(2)(b) the court must set forth "the specific factors, conditions, or expected behavioral

changes” that are the basis for the court’s determination the need for removal will no longer exist after the additional time. The father has not made changes since the child was removed. We agree with and adopt the juvenile court’s determination, “Additional time will serve no meaningful purpose as [the mother and father] have demonstrated no reasonable prospects that they will rehabilitate their lives and care for their child.”

After considering the best-interests factors in section 232.116(2), the length of time the child has been removed, the recommendation of the child’s guardian ad litem, and the likelihood the foster family will adopt the child, we conclude termination of the father’s parental rights are in the child’s best interests.

The father contends the court should not have terminated his parental rights because of the strong parent-child bond. Section 232.116(3)(c) allows the court to avoid termination if it finds “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.” The court considered “exceptions to termination” and found none of the exceptions in section 232.116(3)(c) were applicable here.

There is some evidence of a bond, but we do not find clear and convincing evidence termination would be detrimental to the child at the time due to the closeness of the parent-child relationship. The father points to no such evidence; he merely states “that due to the obvious parent-child bond that termination of this relationship would be detrimental to the child.” A bare assertion is not sufficient. We agree with the juvenile court this exception to termination does not apply.

Having determined a statutory ground for termination exists, termination is in the child's best interests, and no exception to termination applies, we affirm. See *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (setting forth a three-step analysis in termination proceedings).

AFFIRMED.