

IN THE COURT OF APPEALS OF IOWA

No. 7-521 / 06-1653

Filed August 8, 2007

**IN THE INTEREST OF
Q.S., Z.S., M.A.B., and J.K.,
Minor Children,**

**A.L.S., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Louise Jacobs,
District Associate Judge.

A father appeals from a juvenile court order terminating his parental rights
to three children. **AFFIRMED.**

Jeffrey Mains, Des Moines, for appellant-father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Jennifer Galloway,
Assistant County Attorney, for appellee.

Bryan Tingle, Indianola, for mother.

Kayla Stratton, Des Moines, guardian ad litem for minor children.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

Anthony is the father of Joshua, Zoe, and Quentin (“the children”), who were eleven, six, and four years of age respectively at the time of a termination of parental rights hearing. In an October 2006 order the juvenile court terminated Anthony’s parental rights to the children pursuant to Iowa Code sections 232.116(1)(b) (abandonment, and desertion), (d) (child a child in need of assistance (CINA) for physical or sexual abuse (or neglect), circumstances continue despite receipt of services), (f) (child four or older, adjudicated CINA, removed from home twelve of last eighteen months, cannot be returned home), and (g) (child adjudicated CINA, parents’ rights to another child were terminated, parent lacks ability or willingness to respond to services, additional period of rehabilitation would not correct situation) (2005). Anthony appeals.¹

We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court’s findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Anthony claims the juvenile court erred by finding the State proved the statutory elements of the provisions pursuant to which the court terminated his parental rights. We find the State proved by clear and convincing evidence the elements of at least three of the four provisions relied on by the juvenile court.

¹ The juvenile court’s order also terminated the parental rights of the children’s mother, Katherina, to the children and to her ten-year-old daughter, Maryanna, and Katherina has not appealed. In addition, the order declined to terminate the parental rights of Maryanna’s father, and the State has not appealed from that part of the order.

This case involves a long and sad history. One or more of the children were previously adjudicated CINA in March 1998, in a case later closed in October 2000, and again in January 2001, in a case later closed in August 2002. Anthony and Katherina have been offered, and to the limited extent they have been willing have received, services since 1997. In April 2006 their parental rights were terminated to a child born in August 2004 and removed from their custody in August 2005.

The CINA case that led to this termination proceeding was filed in December 2003, and the children and Maryanna were adjudicated CINA pursuant to Iowa Code section 232.116(2)(c)(2) (2003) in February 2004. Involved persons had to that time believed that Anthony was the father of Maryanna, Zoe, and Quentin, and not the father of Joshua. During the case it was determined that Anthony was Joshua's father, but was not Maryanna's father.

The children were initially left in the custody of their parents, but in August 2004 were removed and placed in the custody of the Iowa Department of Human Services (DHS) for placement in foster care. Joshua was placed in foster care, then hospitalized for psychiatric problems resulting from long-term abuse and neglect, next returned to foster care, then again hospitalized, and in November 2004 was placed in a psychiatric medical institution for children, where he remained until again placed in foster care shortly before the late August 2006 termination of parental rights hearing. Zoe and Quentin were placed in foster care, returned to Katherina and Anthony in February 2005, and then were again

removed and placed in foster care in mid-August 2005, where they remained at the time of the late August 2006 termination hearing.

Since January 1998 one or more of the children have been the victims of fourteen "founded" incidents of child abuse or neglect, in seven of which Anthony has been the perpetrator.

In March 2004 Anthony was ordered to submit urine samples for testing for suspected drug abuse. He submitted to testing in February 2005, when he tested negative, and in May of 2005, when he tested positive for marijuana use. During the one and one-half years immediately prior to the termination hearing he otherwise failed or refused to be tested on thirty-two occasions.

During the CINA proceeding Joshua had reported that his parents used drugs. At the termination hearing Katherina acknowledged her use of marijuana and methamphetamine, and testified that Anthony used as well. At the time of the termination hearing Anthony was facing a recent felony forgery charge. When arrested on that charge he stated he had committed the crime in order to get caught so he could get treatment for his drug addiction. Despite all this overwhelming evidence of his drug abuse, Anthony throughout these juvenile proceedings has refused to provide ordered drug screens, obtain a substance abuse evaluation, and follow any recommended treatment.

Anthony has throughout these proceedings failed or refused to follow through with required mental health evaluation and treatment. A lack of adequate and appropriate housing has for years been a problem for Anthony and Katherina, and during the periods of time leading up to the termination hearing

they were either homeless or dependent upon a barely-known acquaintance for shelter.

In her report to the juvenile court shortly before the termination hearing, the DHS case worker reported, in part:

Anthony [] and Katherina [] had been offered numerous services by the [DHS] over a period of off and on greater than ten years. There does not appear to be a service available by the [DHS] that has not been offered to the parents. Additionally [Anthony] and [Katherina] have continually either failed to comply with services, as evident throughout the most recent case, or successfully completed them only to re-enter the system a short time later with the same issues.

We fully agree with this statement. Based on the evidence in the record we find the State proved by clear and convincing evidence the statutory grounds for termination of Anthony's parental rights to the children pursuant to Iowa Code sections 232.116(1)(d), (f), and (g) (2005). We need not decide whether the State also proved section 232.116(1)(b) abandonment, desertion, or both. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.").

Anthony claims termination of his parental rights is not in the best interests of the children. Even if statutory grounds for termination are met, the decision to terminate must still be in the best interest of a child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

When the statutory grounds for termination of parental rights exist, the needs of the children are generally promoted by termination. *In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa 1992). "A child's safety and the need for a permanent

home are now the primary concerns when determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially).

Anthony has unaddressed histories of child abuse and neglect, drug abuse, mental problems, unemployment, and lack of stable housing. Because of his inability or unwillingness to address the many issues that prevent him from appropriate parenting, the children cannot be returned to him at the present time or within the reasonably foreseeable future and it is unlikely they could ever be returned to him. All three children have suffered from abuse or neglect and from resulting psychiatric or behavioral disorders. All three need permanency in a safe, secure, stable home, and need it now. We conclude that termination of Anthony's parental rights is in the children's best interest.

AFFIRMED.