

IN THE COURT OF APPEALS OF IOWA

No. 7-806 / 07-1646
Filed November 29, 2007

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

**K.C.C., Father,
Appellant.**

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,
District Associate Judge.

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

H. Nick Gloe of Gloe & Quint, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, Rebecca Belcher, Assistant
County Attorney, for appellee.

Natalie Cronk, Iowa City, for mother.

Charles Hallberg of Hallberg, Jacobson, Johnson & Viner, P.L.C., Cedar
Rapids, guardian ad litem for minor child.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

MILLER, J.

Kevin appeals from a mid-September 2007 juvenile court order terminating his parental rights to his son, Jacob. The order also terminated the parental rights of Jacob's mother, and she has not appealed. Kevin's sole claim on appeal is that the State failed to prove by clear and convincing evidence any one or more of the three statutory grounds upon which the court ordered his parental rights terminated. For the reasons that follow, we affirm the juvenile court.

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).

"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." *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). The juvenile court terminated Kevin's parental rights pursuant to Iowa Code sections 232.116(1)(e), (f), and (h) (2007). We choose to focus on section 232.116(1)(f). Termination is appropriate under that provision where:

- (1) The child is four years of age or older.
- (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 twelve of the last eighteen months, or for the last twelve 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(f).

Jacob was born in February 2003 and was four years old at the time of the September 2007 termination hearing. His parents placed him in voluntary foster care in May 2006, and he has not subsequently been returned to the care of either parent or had any trial period at home. The juvenile court adjudicated Jacob to be a child in need of assistance (CINA) in June 2006, and in August 2006 placed him in the temporary legal custody of the Iowa Department of Human Services (DHS) in whose legal custody he has thereafter remained. Since August 2006 Jacob has by court order remained in the physical custody of persons other than his parents.

The first three elements of section 232.116(1)(f) are clearly satisfied, and Kevin's claim of lack of proof apparently relates to the fourth element, whether there is clear and convincing evidence that at the time of the termination hearing Jacob could not be returned to him. This element is proven when the evidence shows the child cannot be returned to the parent without remaining a child in need of assistance. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supported the child's initial removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

Jacob, then three years of age, and his parents came to the attention of the DHS in about May 2006, based on allegations of the parents' drug use in Jacob's presence. Jacob tested positive for cocaine at a level indicating he had

ingested it, and both parents admitted to drug use. An investigation resulted in a “founded” report of child abuse/neglect for denial of critical care and lack of supervision, with Jacob as the victim and his parents as the perpetrators.

Kevin has a history of substance abuse. He tested positive for cocaine use in late October 2006. He obtained a substance abuse evaluation, twice began recommended treatment in the latter part of 2006, and both times was unsuccessfully discharged. Between late October 2006 and the April 2007 filing of the petition to terminate parental rights, Kevin was scheduled to submit to drug testing on twenty-four occasions. He failed or refused to do so on all of those occasions. In May 2007 Kevin tested positive for cocaine, and in late June 2007 he tested positive for cocaine and tetrahydrocannabinol.

Kevin received a mental health evaluation in late 2006. As found by the juvenile court, “[h]e was diagnosed with adjustment disorder, with mixed anxiety and depressed mood, cocaine and cannabis abuse, nicotine dependence and a deferred diagnosis of antisocial and narcissistic features noted.” Kevin has an anger management problem and a history of domestic abuse. During visitation with Jacob he has threatened Jacob’s mother and has threatened service providers. Such incidents occurred as recently as one month before the termination hearing. During those visitations that he did attend Kevin had minimal interaction with Jacob. Kevin was required to complete a batterer’s education program, but has failed or refused to do so.

Kevin’s visitation with Jacob has at all times during the CINA and termination proceedings been restricted to supervised visitation because of Kevin’s mental health issues, threats, and lack of participation in and cooperation

with ordered and offered services. His visitation was sporadic and infrequent until the termination petition was filed. For the period of December 2006 through April 2007 Kevin attended only two of twenty-two scheduled visitations with Jacob.

Kevin was to participate in sessions designed to teach parenting skills. Until the termination petition was filed he failed or refused to do so. After beginning some participation, at an August 2007 session Kevin threatened Jacob's mother with physical violence. The juvenile court found that Kevin had shown no progress in development of parenting skills.

The juvenile court found, in part:

Kevin and [Jacob's mother's] visitation remains fully supervised due to lack of follow-through with drug testing, lack of stable housing, mental health treatment, domestic violence threats, lack of follow-through in parenting and lack of follow-through in BEP classes. Neither parent has demonstrated that they have developed appropriate skills to handle Jacob's behaviors. Neither parent has demonstrated an understanding of how their substance abuse and domestic violence affects their child. Kevin has not taken steps to complete a batterer's education program or anger management course to address some of these concerns. Both parents struggle to maintain appropriate and stable housing and employment.

We fully agree with and adopt these findings. We find, as the juvenile court did, that the State proved by clear and convincing evidence that Jacob could not be returned to Kevin without remaining a child in need of assistance because of the threat of further probable harm. We conclude the State proved the grounds for termination of Kevin's parental rights pursuant to section 232.116(1)(f). Although Kevin has not raised an issue concerning whether termination of his parental rights is in Jacob's best interest, we note that for the

reasons stated by the juvenile court we agree with its conclusion that termination is in his best interest. We affirm the decision of the juvenile court.

AFFIRMED.