

IN THE COURT OF APPEALS OF IOWA

No. 8-856 / 08-1464
Filed October 29, 2008

**IN THE INTEREST OF C.B.,
Minor Child,**

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

Appeal from the Iowa District Court for Cerro Gordo County, Gerald Magee, Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Douglas R. Grabinski of Grabinski Law Firm, Clear Lake, for appellant father.

David C. Laudner of Heiny, McManigal, Duffy, Stambaugh & Anderson, P.L.C., Mason City, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Paul L. Martin, County Attorney, and Gregg Rosenblatt, Assistant County Attorney, for appellee State.

Mark Young, Mason City, for minor child.

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

MAHAN, J.

Ollie appeals the district court's order terminating his parental rights to his two-year-old son, C.B. We affirm.

I. Background Facts and Proceedings.

C.B. is the child of Ollie and Jennifer.¹ C.B. was born in November 2005, but Ollie's paternity was not established until December 2006. Ollie has been incarcerated for most of the child's life. In March 2007 the court entered an ex parte order for C.B.'s temporary removal from Jennifer's care after Jennifer was arrested and charged with possession of crack cocaine and Jennifer had left C.B. with inappropriate caretakers without arrangements to resume his care. Thereafter, the Iowa Department of Human Services (DHS) founded a report for denial of critical care indicating that C.B. tested positive for exposure to drugs. C.B. was adjudicated a child in need of assistance (CINA) on April 18, 2007, continuing custody of C.B. with DHS with placement in foster care.

On December 13, 2007, the State filed a termination petition. A contested hearing began on May 30, 2008. Ollie was incarcerated at that time. On August 25, 2008, the court entered an order terminating Ollie's parental rights pursuant to Iowa Code sections 232.116(1)(e) and (1)(h) (2007). Ollie appeals.

II. Scope and Standard of Review.

We review termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the child. *Id.*

¹ The parental rights of Jennifer were not terminated.

III. Issues on Appeal.

Ollie argues the State failed to prove the grounds for termination under section 232.116(1)(e). Under section 232.116(1)(e), parental rights may be terminated if the court finds by clear and convincing evidence (1) the child has been adjudicated in need of assistance, (2) the child has been removed from the home for a period of at least six consecutive months, and (3) the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. Section 232.116(1)(e) defines what contact with the child is sufficient:

“[S]ignificant and meaningful contact” includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child’s life.

Iowa Code § 232.116(1)(e)(3). Ollie contends the State failed to prove by clear and convincing evidence that he did not maintain significant and meaningful contact with the child.

Although Ollie has maintained minimal contact with C.B. when he has been able to do so, this contact has not been significant and meaningful.² Ollie has been incarcerated for most of C.B.’s life. He has a lengthy criminal and substance abuse history. C.B. was born in November 2005; however, Ollie did

² When Ollie has maintained visitation with C.B., it has been supervised, and he has been intimidating and threatening to the DHS workers. Furthermore, he has missed and shortened visits.

not discover his parentage until sometime after December 2006.³ The court ordered that Ollie have no contact with C.B. until approved by DHS and after he completed psychological and substance abuse evaluations. Ollie first visited with C.B. in July 2007. This first visit took place while Ollie was in a residential facility.⁴ Ollie maintained weekly supervised visits with C.B. until October 2007, when he was again incarcerated. Ollie was released in February 2008, and he moved to a homeless shelter. He resumed supervised weekly visits with C.B. on February 28, 2008. Ollie maintained weekly visits with C.B. until the beginning of May 2008, when he was again incarcerated. Ollie was still incarcerated at the time the termination hearing began on May 30, 2008.

Ollie also struggles with chronic mental health issues. As the court noted, he has major depressive disorder, generalized anxiety polysubstance dependence, and antisocial disorder. Upon psychological evaluation, he was not seen as a good candidate for parenting. Throughout this case, when Ollie has not been incarcerated, he has lived at a homeless shelter, with friends, or in a residential home.

The record shows that when Ollie does visit with C.B., he interacts appropriately and they have developed a bond and attachment. Although Ollie clearly cares for C.B. and C.B. enjoys the time he spends with his father, we agree with the court that Ollie did not maintain significant and meaningful contact with his son during the six months prior to the termination hearing. In its termination of parental rights order, the court noted:

³ The paternity test was done in December 2006. Ollie was incarcerated at that time for domestic assault.

⁴ He was released later that month.

[W]hile Ollie recently has had regular visits with C.B., he has canceled some and he has shortened others; he's not met any financial obligation to support C.B.; he's not completed responsibilities in the Case Permanency Plan; and, he's not established and maintained a place of importance in the life of this child. In addition, he is often homeless; he is often incarcerated; he is involved in domestic incidents and struggles to meet his own basic living needs. His interests in C.B. seem principally to meet his own needs and desires rather than to place this child's needs first. The State has proved its allegation made under section 232.116(1)(e).

The Court finds and determines that it will not be detrimental to C.B.'s interests to terminate his father's parental rights. His father has not established a place of importance in his life and has not assumed the affirmative duties of parenting this child. The Court further finds that it is in C.B.'s best interest to terminate his father's rights.

We agree and find clear and convincing evidence supports termination of Ollie's parental rights.

Ollie further argues the State failed to prove the grounds for termination under section 232.116(1)(h). We have already determined that clear and convincing evidence supports termination of Ollie's parental rights under section 232.116(1)(e). Because we find statutory grounds for termination under section 232.116(1)(e), we need not address the arguments pertaining to the other statutory grounds supporting termination by the district court or by Ollie on appeal. 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."). We therefore decline to address this issue and affirm the district court.

AFFIRMED.