

IN THE COURT OF APPEALS OF IOWA

No. 9-129 / 08-2076
Filed March 11, 2009

**IN THE INTEREST OF L.L.D.-W.,
Minor Child,**

**G.S., Father,
Appellant.**

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

A father appeals from the district court's order terminating his parental
rights to his son. **REVERSED.**

John Bishop, Cedar Rapids, for appellant father.

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

Annette Martin, Cedar Rapids, for appellee mother.

Jessica Wiebrand, Cedar Rapids, for minor child.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VOGEL, P.J.

George appeals from the district court's order terminating his parental rights to L.D.-W.¹ (born November 2006). He challenges whether there was clear and convincing evidence that he did not maintain significant and meaningful contact with L.D.-W., that L.D.-W. could not be returned home, and that termination was in the child's best interests. We reverse.

We review termination of parental rights cases *de novo*. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Grounds for termination must be proved by clear and convincing evidence, and our primary concern is the child's best interests. *Id.*

L.D.-W. was removed from his mother's care in November 2006. George learned that he was L.D.-W.'s father in mid 2007, and has been involved with the Iowa Department of Human Services (DHS) since that time. In November 2007, L.D.-W. was placed in the custody of his paternal grandmother, George's mother. DHS began the process of reunification with George, found that he initially made substantial progress, and was granted discretion to begin trial home placement. Before that was able to occur, George was charged with domestic abuse assault involving the mother of his other two children; which caused visitations with L.D.-W. to return to being supervised.² In May 2008, George moved into his mother's home, allowing him access to L.D.-W., but with DHS's requirement that George's contact with his child be supervised by his mother. DHS workers made an effort to establish times when George would be available for drop-in visits, but had a

¹ The parental rights of L.D.-W.'s mother were also terminated. She does not appeal.

² The domestic abuse assault charge was dropped.

difficult time maintaining regular contact with him. They found that George was often unavailable for visits, difficult to contact, and not forthcoming about his whereabouts. On June 13, 2007, L.D.-W. was adjudicated a child in need of assistance (CINA) pursuant to 232.2(6)(c)(2).

To assist George in strengthening his parenting abilities, he was offered numerous services including: supervised visitation/services, protective daycare, drop-in services, several team meetings, and drug testing. However, George's participation was inconsistent and sporadic. Thereafter, DHS found that George was functioning in a parental role only when it conformed to his schedule, leaving his mother the responsibility of raising L.D.-W. On December 9, 2008, the district court terminated George's parental rights.

George's rights were terminated under Iowa Code sections 232.116(1)(e) (child CINA, child has been removed from home at least six consecutive months, and clear and convincing evidence that parent has not maintained significant contact), and (h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned to parent's custody under section 232.102). On appeal, George asserts the State failed to prove either ground by clear and convincing evidence. He also claims that termination was not in L.D.-W.'s best interests.

George contends that there is not clear and convincing evidence that he did not maintain significant and meaningful contact with L.D.-W. We agree. DHS has raised concerns about the initiative George has taken to become a full-time parent to L.D.-W. DHS attempted seventy-five drop-in visits, and George was

present for only fourteen of those seventy-five visits.³ The DHS worker spoke to George at family team meetings to let him know the import of his presence at the drop-ins, so they could assess his ability to parent L.D.-W., but the situation did not improve. DHS contends that George was not forthcoming with information, and they were unable to substantiate the type of lifestyle George leads.

While these are legitimate and worrisome concerns, we cannot say that based on the record, L.D.-W. and George did not have significant and meaningful contact, as required by Iowa Code section 232.116(1)(e). In May 2008, George moved in with his mother and L.D.-W., lived with L.D.-W. up to the time of trial, and was able to see L.D.-W. on a full-time basis. DHS found that George had bonded with L.D.-W. and understood the appropriate developmental expectations for him. He was present in L.D.-W.'s life. The problem lay with the fact that DHS could not substantiate George's parenting abilities because he was more often than not unavailable when DHS attempted to visit. Nonetheless, George's elusive conduct does not satisfy the elements in Iowa Code section 232.116(1)(e).

George next contends that there is not clear and convincing evidence that L.D.-W. could not be returned to his care. Under Iowa Code section 232.116(1)(h), the first three elements, listed above, are not in dispute, but the fourth element, which examines whether a child can be returned home under Iowa Code section 232.102 is at issue. We must decide whether the State has met its statutory burden of proving that L.D.-W. could not be returned to George's

³ George disputes these numbers, and argues that he was available for thirty-one of sixty-six visits.

custody without suffering adjudicatory harm. See Iowa Code sections 232.102(9) and 232.2(6).

When George found out that he was the biological father of L.D.-W., he was instructed on a list of objectives he had to meet in order to have L.D.-W. placed in his care, such as cooperating with services, complying with drop-in visits, and undergoing drug testing. At the termination hearing, when questioned about George's ability to parent L.D.-W, a DHS worker testified, "I just don't feel that he could handle the responsibility of having him [L.D.-W.] full time as a care giver due to his life-style and not being able to demonstrate that he can do so."

Even though DHS offered services to George, which he failed to complete adequately, we cannot say that based on the record that L.D.-W. would suffer adjudicatory harm if placed in George's care. There has been no evidence presented that George did not exercise reasonable care when supervising L.D.-W. While we agree that George has not been sufficiently responsive to services, we can find nothing in the record to suggest that L.D.-W. has or will suffer harm at the hands of George. Therefore, we cannot find that the State has met its burden of proof under Iowa Code section 232.116(1)(h).

Upon our de novo review of the record, we find that the State did not meet its burden of proving that George did not have significant contact with L.D.-W., or that adjudicatory harm would come to L.D.-W. if he were returned to his custody. Therefore, we reverse the termination of George's parental rights to L.D.-W.

REVERSED.