

IN THE COURT OF APPEALS OF IOWA

No. 9-774 / 09-1166
Filed October 7, 2009

**IN THE INTEREST OF O.A.F.
Minor Child,**

**T.L.C., Father,
Appellant.**

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

A father appeals from the order terminating his parental rights.

AFFIRMED.

Cynthia S. Finley, Cedar Rapids, for appellant father.

Ryan Tang, Cedar Rapids, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Harold Denton, County Attorney, and Robert Hruska, Assistant
County Attorney, for appellee State.

John Jacobsen of Hallberg, Jacobsen, Johnson & Viner, P.L.C., Cedar
Rapids, for minor child.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

A father appeals from the order terminating his parental rights. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

K.F. is the mother and T.L.C. is the father of O.A.F., born February 2008.¹ The child came to the attention of the Iowa Department of Human Services (Department) after the child tested positive for cocaine at birth. At the time of the child's birth, both parents were homeless. Although the parents had been in a relationship for a while, T.L.C. was unsure if he was the child's father. T.L.C. initially indicated that if he was the child's father, he would desire to place the child up for adoption.

On February 22, 2008, the State filed a petition alleging that the child was a child in need of assistance (CINA). The petition named the mother and stated that the child's father was unknown. Thereafter, the mother stipulated to the child's removal from her care and to the CINA adjudication. Following hearing, the court entered its order adjudicating the child CINA. The court ordered the child be placed in foster care and directed the Department to prepare a social history report. The court also authorized paternity testing.

In May 2008, paternity testing was performed on a sample previously provided by T.L.C. The results determined T.L.C. could not be excluded as the father of the child. T.L.C. received notice in late May that he was the child's father. Although the father continued to have contact with the mother and although the Department sent him letters and left him telephone messages

¹ The mother has not appealed from the termination of her parental rights.

concerning the case, he did not contact the Department's caseworker until August 11, 2008. Thereafter, the Department provided the father a copy of the social history questionnaire, which he agreed to complete. A meeting was to be scheduled to gather information for the questionnaire, but the father was out of town working. On August 22, 2008, the State amended its CINA petition naming T.L.C. as the father of the child.

The father is employed but travels substantially for work. He is often gone for days and weeks at a time. The father purchased a mobile home for eighty dollars to fix up. It was in great disrepair and had no utilities connected. The father was living with a friend while he repaired the home.

On October 15, 2008, the Department's social worker for the case submitted an amended case permanency plan to include steps for the father. The father requested visitation with the child, and he was offered weekly, fully-supervised visitation with the child. The father's visits were increased to two visits a week in November 2008. Although the visits were going well, the father cancelled or rescheduled several of the visits due to being out of town for work.

On November 14, 2008, the court, following the father's stipulation, adjudicated the child CINA as to the father. The father further agreed that the court's previous dispositional order should be continued as to him. The court found the Department had made reasonable efforts to reunify the family, including parenting instruction/services, supervised visitation/services, Young Parents Network (for the father), AEA—Early Access, Visiting Nurse Association, and Abbe Center Residential Center services. The order stated that the father had not requested any additional services or assistance.

From August 2008 to April 2009, the father participated in approximately twenty-four of the fifty-eight scheduled visits, due to his traveling for work. The father did not have any visits from December 22, 2008, to January 15, 2009, and from February 6, 2009, to March 18, 2009. When the father was in town and attended the visits, the visits were appropriate and went well.

The father did request extended visitation with the child, and he was told he would have to provide samples for urinalysis testing, although urinalysis testing was never formally stated as a requirement on the case permanency plan. The father was authorized for urinalysis drug testing thereafter, but never completed any urinalysis testing because he was either out of town for work or forgot to call when he was in town to see if he was required to provide a sample. The father never requested that the case permanency plan be changed to seek reunification with him rather than the mother. Additionally, the father never requested a trial home placement with the child.

On December 10, 2008, the State filed its petition to terminate the parents' parental rights. A hearing on the matter was held April 6, 2009. At the hearing, the Department's caseworker was unable to say that the child was bonded with the father, due to his inconsistent visitation with the child. The father testified that his home would be habitable in less than a week, and that he now had utilities connected to the home. He also testified that he had no family support, but he had two friends that could watch the child when he was called out of town for work, and that he was looking for new employment so he could remain in town with the child. The father further testified that one of the friends is employed full-

time. He requested that he be given additional time to be reunified with the child. He did not request any further services be provided to him.

On July 17, 2009, the juvenile court entered an order terminating the father's parental rights to the child pursuant to Iowa Code section 232.116(1)(e) (2009) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child) and pursuant to section 232.116(1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home). The father now appeals.

II. Scope and Standards of Review.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Evidence is clear and convincing when it leaves "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). Our primary concern in termination cases is the best interests of the child. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

III. Discussion.

On appeal, the father argues the State failed to establish by clear and convincing evidence grounds for termination and that reasonable efforts for reunification with the father were made. Additionally, the father contends the court erred in failing to give the father six additional months to pursue

reunification and in determining termination was in the child's best interests. We address each argument in turn.

A. Grounds for Termination.

When the juvenile court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate under one of the sections cited by the court in order to affirm the court's ruling. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). In this case, we choose to focus our attention on section 232.116(1)(h) as the basis for termination. Section 232.116(1)(h) permits termination of parental rights if all of the following have occurred:

- (1) The child is three years of age or younger.
- (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 six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Here, the father does not dispute the first three elements of section 232.116(1)(h). Rather, he contends the State failed to prove by clear and convincing evidence that the child could not be returned to his custody. We disagree.

The legislature incorporated a six-month limitation for children in need of assistance aged three and below. Iowa Code § 232.116(1)(h)(3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are

promoted by termination of parental rights.” *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the State having been legislatively set, we are obligated to heed the statutory time periods for reunification. The child first came to the attention of the Department in February 2008. Although T.L.C. had not been found to be the father at that time, he was in a relationship with the mother and was aware the child was removed from her care in February 2008. T.L.C. was aware he was the child’s father in May 2008, yet he did not contact the Department to become involved in the child’s life until August 2008. By the time of the termination hearing in April 2009, the child had been out of the parents’ custody for over a year, and the father had missed over half of visits extended to him. At the time of hearing, the father’s home was still not suitable for the child, and his proposed childcare plans for work-related absences did not appear to be realistic. The statutory six-month period expired with little evidence that the father could provide the child the necessary stability and care. The record reflects that the child cannot be returned to T.L.C.’s custody at this time.

“When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *Id.* For the above reasons, we agree with the juvenile court’s decision to terminate the father’s parental rights to the child.

B. Reasonable Efforts.

The father also argues the State failed to provide him with reasonable services intended to facilitate reunification with the child. “While the State has the obligation to provide reasonable reunification services, the [parent] ha[s] the obligation to demand other, different, or additional services prior to the termination hearing.” S.R., 600 N.W.2d at 65. When a parent alleging inadequate services fails to demand services other than those provided, the issue of whether services were adequate is not preserved for appellate review. *Id.*; *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). The father does not point to any unfulfilled requests for services and does not specify what additional services would have facilitated reunification. Therefore, the issue was not preserved for our review.

C. Best Interests and Additional Time for Reunification.

The father argues termination was not the child’s best interests and he should have been given additional time for reunification. As stated above, our primary concern in termination cases is the best interests of the children. A.S., 743 N.W.2d at 867. “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). Those best interests are to be determined by looking at the children’s long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the children if the children are returned to their parents. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parents’ past performance, for

that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). On our de novo review of the entire record, we find termination of the father's parental rights is in the best interests of the child.

Also, the child does not have a clear bond with the father due to his inconsistent visitations with the child. Asked how the child reacts to the gaps between visits, the family service worker testified that at the last visit, approximately two weeks before the termination hearing, she could tell the child did not recognize the father and was a little scared in the beginning of the first part of the visit. She testified it was probably halfway through the visit before the child started to warm up a little bit to the father again. Additionally, the child is doing very well in foster care, and the foster parents wish to adopt her

To grant additional time for reunification, the evidence must show that the need for removal would no longer exist at the end of that period. See Iowa Code § 232.104(2)(b). The record before us does not support such a finding. The district court concluded:

[The father] has failed to make parenting [the child] a priority in his life. He has not maintained significant and meaningful contact with the child and has not made reasonable efforts to begin care of [the child] despite being given the opportunity to do so.

We agree. The child should not be forced to wait for permanency. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) (“[P]atience with parents can soon translate into intolerable hardship for their children.”). “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *J.L.W.*,

570 N.W.2d at 781. The child should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993).

IV. Conclusion.

Because we find clear and convincing evidence supporting termination of the father's parental rights and termination is in the child's best interests, and because we find the father's claim that the State failed to provide him with reasonable services intended to facilitate reunification with the child was not preserved, we affirm the juvenile court's decision terminating the father's parental rights.

AFFIRMED.