IN THE COURT OF APPEALS OF IOWA

No. 23-2011
Filed February 21, 2024

IN THE INTEREST OF C.S.,
Minor Child,

B.S., Father,
Appellant,

M.K., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Romonda Belcher, District Associate Judge.

A mother and father separately appeal the termination of their respective parental rights. **AFFIRMED ON BOTH APPEALS.**

Amanda Demichelis of Demichelis Law Firm, PC, Chariton, for appellant father.

Ling Harl of Harl Law PLLC, Ankeny, for appellant mother.

Brenna Bird, Attorney General, and Tamara Knight, Assistant Attorney General, for appellee State.

Lisa Ann Allison of Allison Law Firm, LLC, Des Moines, attorney and guardian ad litem for minor child.

Considered by Greer, P.J., and Schumacher and Ahlers, JJ.

AHLERS, Judge.

A mother and known putative father[1] separately appeal the termination of their respective parental rights to their child, born in 2019. Both parents argue the Iowa Department of Health and Human Services failed to make reasonable efforts to facilitate reunification and contend termination is not in the child's best interests due to the closeness of their respective parent-child bonds.

We conduct de novo review of orders terminating parental rights. *In re Z.K.*, 973 N.W.2d 27, 32 (Iowa 2022). Our review follows a three-step process that involves determining if a statutory ground for termination has been established, whether termination is in the child's best interests, and whether any permissive exceptions should be applied to preclude termination. *In re A.B.*, 957 N.W.2d 280, 294 (Iowa 2021). If a parent does not challenge any of the three steps, we need not address it on appeal. *See In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

Here, the juvenile court found statutory grounds authorizing termination satisfied under Iowa Code section 232.116(1)(g), (h), and (*l*) (2023) with respect to the mother and section 232.116(1)(e), (h), and (*l*) as to the father. Neither parent directly challenges the statutory grounds authorizing termination. Instead, both argue the department failed to make reasonable efforts toward reunification. While not a strict substantive requirement for termination, "where the elements of termination require reasonable efforts by [the department], the scope of [the department]'s efforts after removal impacts the burden of proving those elements."

[1] The known putative father never completed testing to determine whether he is the biological father of the child. The juvenile court terminated the parental rights of all unknown putative fathers. As only the known putative father appeals, all references to the father refer to the known putative father.

In re L.T., 924 N.W.2d 521, 527 (Iowa 2019). Reasonable efforts must be established when the ground for termination includes an element requiring proof that the child cannot be safely returned to a parent's custody. *Id.* So the State must establish that the department made reasonable efforts to provide the parents with reunification services as part of its ultimate proof any time the statutory ground upon which the State relies includes an element that the child cannot be safely returned to a parent's custody. *See id.* In such a case, at its core, the parents' reasonable-efforts challenges function as challenges to a component of the statutory grounds.

Before we may proceed to the merits of the parents' respective reasonable-efforts challenges, we must consider the State's claim that the parents did not preserve error on this issue. To preserve error on a reasonable-efforts challenge, a parent is required to alert the juvenile court to any claimed deficiency in services "at the removal, when the case permanency plan is entered, or at later review hearings." *In re C.H.*, 652 N.W.2d 144, 148 (Iowa 2002). This means a parent must alert the court to any perceived deficiencies prior to the termination hearing. *See In re C.G.*, No. 21-1422, 2022 WL 108544, at *2 (Iowa Ct. App. Jan. 12, 2022) (collecting cases). When a parent fails to timely request additional or different services, the parent waives any reasonable-efforts challenge. *C.H.*, 652 N.W.2d at 148. After reviewing the record available to us,[2] it is apparent from the juvenile

[2] According to their respective combined certificates, neither parent ordered transcripts of any hearing other than the termination hearing. So if either parent orally raised a specific reasonable-efforts challenge not referenced in a subsequent order, we do not have any record of it to allow for our review. *See* Iowa Rs. App. P. 6.803(1) (requiring an appellant to provide the transcripts relevant to the issues on appeal), .804(2).

court's written orders that the parents orally raised various requests for additional services at court hearings, though it is not always clear from the orders who requested what service. The mother also filed a written motion for a hearing on reasonable efforts, raising issues related to visitation, transportation, and housing. Based on this record, we find the parents preserved error on some of their reasonable-efforts challenges, and we address the preserved challenges on their merits. As discussed below, the mother failed to preserve error on one of her reasonable-efforts challenges, which we decline to address.

We begin with the father and reject his arguments. First, we note that to the extent the father intends to advocate on behalf of the mother, he does not have standing to do so. *See In re A.S.*, No. 23-1625, 2023 WL 8449568, at *1 n.1 (Iowa Ct. App. Dec. 6, 2023). Second, the father generally complains about the services provided without explaining what services he believes were withheld that would have led to reunification. *See In re M.D.*, No. 23-1137, 2023 WL 6290679, at *2 (Iowa Ct. App. Sept. 27, 2023) (recognizing a parent must specifically identify purported service deficiencies). Third, to the extent that the father challenges the department's failure to transition visits to semi-supervised, the department reasonably conditioned that progression on his engagement in mental-health and substance-use services. The father completed a substance-use evaluation that did not recommend treatment, but he failed to engage in mental-health services beyond a couple initial sessions. In light of the father's long history of domestic abuse, it was reasonable for the department to not move forward with semi-supervised visits absent the father's meaningful engagement with mental-health services.

As for the mother, she highlights that she never progressed to semi-supervised visits despite the juvenile court ordering the department to facilitate that progression. And she states that the department "failed to accommodate [her] mental-health disability when providing services," specifically that the department provided her bus passes to aid her transportation problems despite knowing of her "fear of taking buses." With respect to the department's failure to progress to semi-supervised visits, we conclude the failure to progress is not the fault of the department. Rather, as with the father, progression of visitation was conditioned on the mother's ability to demonstrate her own progress with a clean drug test. That was a reasonable condition given her long history of substance use.[3] Regarding her complaint about being provided a bus pass despite her fear of riding the bus, from the record available to us, it appears the mother never specifically complained to the juvenile court that bus transportation was prohibitive. Instead, her motion for reasonable efforts complained that the department had "not offered any transportation assistance to [her] other than the FCS worker providing rides for visits." It made no objection to the use of bus passes or explanation of why a bus pass would not help address her transportation challenges.[4] And a March 2023 order noted the mother requested "transportation assistance" without reference to any inability to use bus transportation. So her complaint about bus passes not being a meaningful way to address her transportation problems is not

[3] The mother was thirty-seven years old at the time of the termination hearing and began using methamphetamine at age thirteen.

[4] There is a reference in a case provider's notes that the mother "discussed her trauma about riding the bus" without elaboration, and the notes also contain a transcription of a text message from the mother wherein she states, "I can't take the bus."

preserved for our review. Even if it was, we conclude it was a reasonable resource to provide the mother in an effort to address her transportation challenges. While we understand the mother states she has some trauma associated with riding the bus, she does not identify what alternative transportation service she should have received instead and in addition to the rides provided by service providers. *See id.* Accordingly, we conclude the department made reasonable efforts toward reunification, and we move on to the parents' best-interests arguments.

Both parents argue termination is not in the child's best interests. Before we reach any best-interests conclusions, we provide some additional background. The department became involved with this family due to concerns about the condition of the familial home. Both parents disclosed they had relapsed and used methamphetamine shortly before the department's involvement. In addition to her unresolved substance-use issues, the mother also suffers from several serious mental-health conditions. She self-reported diagnoses of "schizo[a]ffective disorder with psychosis, hyper-insomnia, post-traumatic stress disorder, dissociative identity disorder, ADHD, bipolar disorder, and generalized anxiety." She no longer attends mental-health treatment. There is conflicting evidence of whether she continues to see a provider for medication management.[5] The mother also lacks stable housing. She previously lived in a motel and now stays in the living room of a friend's one-bedroom apartment.

[5] The mother reported that she sees a psychiatrist monthly for medication management. But a report to the court prepared by the department states that the doctor reported he had not seen the mother since December 2022 and that she failed to follow through with a follow up appointment.

As for the father, he has a significant criminal history resulting in his incarceration for much of these proceedings.[6] Specifically, the father has a history of violence directed toward others, including the mother and his family. Back in 2015, the father became angry and punched his brother in the head several times. In 2016, he took a similar tack and punched his step-father in the head during an altercation when the step-father believed the father was "high on something." By 2020, the father had turned his aggression toward the mother when he punched her in the mouth, causing her mouth to bleed. The father assaulted the mother again in 2021, backhanding the mother and strangling her during an argument. In 2023, the father became angry with his own mother and destroyed her property and pushed her to the ground. Yet he has not taken any significant steps to address his domestic abuse.

Despite these unresolved concerns, the juvenile court initially found termination of the parents' respective rights was not in the child's best interests given the child's close bonds with the parents. Instead, the court determined establishment of a guardianship with the foster family would best serve the child's interests. The State filed a motion requesting the court reconsider, pointing out that some of the juvenile court's conclusions were not supported by the record, there was no evidence the foster family would be willing to serve as guardians, and neither parent presented evidence of a parent-child bond so significant to warrant forgoing termination. The juvenile court reconsidered and agreed termination would be in the child's best interests.

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[6] The father was incarcerated for most of 2022 and was incarcerated in prison at the time of the termination hearing.

With those facts as our backdrop, we reach a best-interests determination. When doing so, we "give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." *P.L.*, 778 N.W.2d at 40 (quoting Iowa Code § 232.116(2)). "It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *Id.* at 41.

Despite the juvenile court's initial findings, we conclude termination of both parents' parental rights is in the child's best interests. As for the mother, we note her parental rights to another child were previously terminated in 2016. The safety concerns necessitating termination in that case remain unresolved today. Those concerns include the mother's unresolved substance use; her unmet, serious mental-health needs; her unstable housing; and her history of relationships with domestic abusers. The mother has not been able to meaningfully address any of these safety concerns in the seven years since the last termination. She cannot provide the child with a threshold level of safe care at this time, and we do not believe the record establishes that she will be able to do so in the foreseeable future.

Likewise, the father is not safe for the child to be around as evidenced by his history of violence, to which it seems he has little insight. He also has a history of substance use, and while he now touts his sobriety, we note he has not demonstrated sobriety outside a controlled environment for any meaningful period of time. We understand the father asks for more time to allow him to discharge his

prison sentence, and he believes he will be equipped to parent upon his discharge. But we disagree. The father's history reveals him to be volatile and dangerous when met with conflict, which is not a trait of a safe caregiver to a young child.

With respect to the juvenile court's initial determination that a guardianship would be in the child's best interests, we are reassured that the court reconsidered its initial determination. "[A] guardianship is not a legally preferable alternative to termination." *In re B.T.*, 894 N.W.2d 29, 32 (Iowa Ct. App. 2017). And it is a particularly poor option in instances where the child is too young to express an informed preference. *In re A.S.*, 906 N.W.2d 467, 478 (Iowa 2018). The child in this case was just four years old at the time of termination and would potentially be subject to a guardianship for up to fourteen years. That weighs against a guardianship. *See id.* Likewise, no individuals were identified as willing to serve as guardians. This means permanency would be delayed until willing guardians could be found and potentially result in the child moving yet again. Conversely, the foster family is willing to adopt the child, which would provide the child with more stability and continuity of care than a guardianship. *See* Iowa Code § 232.116(2)(b). Termination is the better option and better serves the child's best interests.

To the extent the parents argue the juvenile court still should have forgone termination due to the strength of their respective bonds with the child, we disagree. Section 232.116(3)(c) permits the court to forgo termination when the bond between parent and child is so strong that termination would be detrimental to the child. However, it is the parent's burden to establish this exception to termination. *See A.S.*, 906 N.W.2d at 475–76. It is not enough to establish a bond

exists; instead, the bond must be so significant that severing it would be manifestly detrimental to the child. *See In re A.B.*, 956 N.W.2d 162, 169 (Iowa 2021). Certainly, both parents' contentions that their bonds with the child are significant are borne out by the record. Both parents love the child and vice versa. But their respective bonds are not so significant that severance of those bonds will be detrimental to the child to the extent that we could justify maintaining the legal ties between the child and these parents.

AFFIRMED ON BOTH APPEALS.

Schumacher, J., concurs; Greer, P.J., concurs specially.

GREER, Judge (specially concurring).

I write this special concurrence only to clarify that I do not think it is fair to the mother to state that she "never specifically complained to the juvenile court that bus transportation was prohibitive." In fact, after the permanency hearing, the juvenile court wrote: "The Department [of Health and Human Services] provided the mother with a bus pass even though the mother reported an intent not to use it because of trauma with riding the bus. The mother reports her lack of transportation has affected her ability to consistently attend scheduled interactions." And in response to the mother's contention, the juvenile court specifically ordered the department "to provide additional transportation assistance to the mother" as a reasonable effort to achieve permanency. So, I would find that the issue was preserved. *See In re L.M.*, 904 N.W.2d 835, 839–40 (Iowa 2017) (explaining that "parents have a responsibility to object when the claim the nature or extent of services is inadequate" and such objection "should be made 'early in the process so appropriate changes can be made'" (citation omitted)).

Addressing the merits of this preserved issue head-on, I further disagree with the majority's conclusion that providing the mother with only a bus pass was a "reasonable resource" in light of the mother's significant trauma with riding the bus system, especially since the juvenile court ordered *additional transportation services*.

Having said that, on this record, we do not have any evidence that the failure to address the bus transportation issue led to a disruption of the mother's scheduled visitations with the child. Contrary to the mother's position, the record reflects that in the offered time available to the mother she often left early.

In sum, I disagree with the path taken by the majority to arrive at affirming the termination of the mother's parental rights but still agree with the conclusion for all of the other reasons provided in the opinion.