

IN THE COURT OF APPEALS OF IOWA

No. 17-1612
Filed December 20, 2017

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

K.W., Father,
Appellant,

S.W., Mother,
Appellant.

Appeal from the Iowa District Court for Mahaska County, Rose Anne Mefford, District Associate Judge.

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

Bret R. Larson of Orsborn, Milani, Mitchell & Goedken, L.L.P., Ottumwa, for appellant father.

Cynthia D. Hucks of Box & Box, Ottumwa, for appellant mother.

Thomas J. Miller, Attorney General, and Ana Dixit, Assistant Attorney General, for appellee State.

Misty D. White-Reinier of White-Reinier Law Office, Sigourney, guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ.

POTTERFIELD, Judge.

A father and mother appeal separately the termination of their parental rights to their child, B.C.-W., born in February 2013. Both parents' rights were terminated pursuant to Iowa Code section 232.116(1)(f) (2017). The mother argues there is not clear and convincing evidence to support the statutory grounds for termination and termination is not in B.C.-W.'s best interests. The father argues service of process for the termination petition with notice of hearing date was improper, there is not clear and convincing evidence to support the statutory grounds for termination, reasonable efforts towards reunification were not made, and the court erred in denying the father's requested continuance for the hearing on permanency and termination.

I. Background Facts and Proceedings.

This family has previously been involved with the Iowa Department of Human Services (DHS) and the juvenile court. In July 2014, B.C.-W. was adjudicated a child in need of assistance (CINA) and removed from the home due to both parents' abuse of methamphetamine. The parents completed substance-abuse treatment, and B.C.-W. was returned to their care in November 2014.

In March 2016, DHS again became involved after local law enforcement indicated possible drug use in the home. The parents attempted to evade DHS for more than two weeks. B.C.-W. was removed from the home in April 2016 due to both parents' use of methamphetamine.

Both parents have successfully completed substance-abuse treatment and have remained sober throughout these proceedings. Both parents have also participated in reunification services, including: DHS case management; family

safety, risk, and permanency (FSRP) services; parent partner; family team meetings; substance-abuse evaluation and treatment; psychological evaluations; couples counseling; play therapy for B.C.-W.; Wapello Family Treatment Court; parent child interaction therapy (PCIT); strengthening families; parents as teachers; and families and children together.

However, even though the parents have participated in services and remained sober, serious concerns remained at the time of the termination hearing. While the parents have participated in PCIT since April 2017, neither parent had mastered the introductory level. According to FSRP workers, the parents have not demonstrated progress since May 2017 and are still unable to parent the child adequately after participation in services since April 2016. The parents' attitude toward services has deteriorated, and they are frequently uncooperative with the workers' attempts to provide parenting feedback or suggestions.

The father has an IQ of 73, a third-grade oral comprehension level, and a fourth-grade reading level. The mother has an IQ of 71, a first-grade oral comprehension level, and a fourth-grade reading level. Both parents have severely impaired verbal memory abilities, meaning neither parent is likely to recall sustentative information for any significant period of time. Because of the parents' lack of progress and disability, they may never be capable of performing parental duties.

The parents have demonstrated an inability to protect B.C.-W. from harm or to meet her physical, mental, and emotional needs, even during supervised visits. In March 2017, B.C.-W. reported to her foster mother an instance of sexual assault during a supervised visit with her parents at her parents' church. The parents

refused to believe B.C.-W., although B.C.-W's story included details her parents verified. The parents failed to take B.C.-W. to the doctor when she was ill during two separate supervised visits because they did not want to spend their time at the doctor's office, instead taking their sick child to a coffee shop and the mall.

II. Standard of Review.

We review the juvenile court's decision to terminate de novo. *In re M.W.*, 876 N.W.2d 212, 219 (Iowa 2016). "Grounds for termination must be proven 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.*

III. Mother's Appeal.

The juvenile court terminated both parents' parental rights pursuant to Iowa Code section 232.116(1)(f). The mother contests the fourth element, whether 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 232.106." Iowa Code § 232.116(1)(f)(4). The mother argues she has shown a willingness to engage in services to achieve reunification with her daughter. However, at the time of the termination hearing, B.C.-W. still could not be returned because the mother had not demonstrated the capacity to appropriately parent or supervise her. After seventeen months of extensive services, the mother was not able to make meaningful progress in her parenting skills. She did not respond effectively to the child's sexual-abuse allegations, demonstrating a deficiency in supervision abilities and indicating a future inability to protect B.C.-W. from harm. The record does not support a finding that B.C.-W. could be returned at the time of the termination hearing.

Next, the mother claims termination of her parental rights was not in B.C.-W.'s best interests. See *id.* § 232.116(2). In reaching our conclusion, we consider “the best placement for furthering the long-term nurturing and growth of the child, and...the physical, mental, and emotional condition and needs of the child.” *Id.* Parents’ past performance is indicative of the quality of care the parent is capable of providing in the future. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). At four years old, B.C.-W. has been removed from her home twice because of her parents’ methamphetamine use. The court must look to the child’s immediate as well as long-range interests. *In re J.E.*, 723 N.W.2d at 798. In considering the child’s long-term interests, B.C.-W.’s therapist testified the child is already approaching the mental capacities of her parents.

B.C.-W.’s therapist testified B.C.-W. has “blossomed greatly with her current home situation” and “seems to be very well-adjusted at this time versus when I first saw her.” B.C.-W.’s therapist also testified B.C.-W. has not formed a complete attachment with her mother and, because of past traumas, the child has shown an insecure ability to be able to bond with her parents, particularly her mother. Termination of the mother’s parental rights is in B.C.-W.’s best interests.

IV. Father’s Appeal.

The father first argues the juvenile court lacked jurisdiction because it did not properly serve him with the petition for termination of parental rights and notice of hearing. The father cites Iowa Code section 232.112(3), which states, “Notice under this section shall be served personally or shall be sent by restricted certified mail, whichever is determined by the court to be the most effective means of notification.” The father timely received notice through restricted certified mail. He

argues notice was not properly served because mail is not the most effective means of notification considering his mental disability. The father had actual notice of the date and time of the termination proceeding, which was the subject of the father's motion to continue hearing and which was discussed at previous court proceedings where he was present. See *In re R.E.*, 462 N.W.2d 723, 724–25 (Iowa Ct. App. 1990) (finding notice of the ongoing CINA action sufficient notice of the termination proceeding); see also *In re J.S.*, No. 17-0081, 2017 WL 1735916, at *2 (Iowa Ct. App. May 3, 2017) (finding service of process outside of the statutory timeframe acceptable when mother had prior knowledge of the date, her attorney had proper notice, and she failed to allege any prejudice). The father appeared at the termination hearing with his attorney. The father's argument about jurisdiction fails.

Second, the father argues there is not "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 232.106." Iowa Code § 232.116(1)(f)(4). While we consider each parent's arguments separately on appeal, for the same reasons the mother's arguments were unsuccessful, the father's also fail. The mother and father have similar learning disabilities, live together, and intend to co-parent. The father argues the juvenile court only cited potential harms in its assessment of whether the child could be returned. Termination provisions are "designed to prevent probable harm to the child and the State is not required to wait until actual harm has occurred before moving to terminate a parent's rights." *In re J.E.*, 723 N.W.2d at 798.

Third, the father argues reasonable efforts towards reunification were not made. “Reasonable efforts to reunite the parent and child are required prior to termination.” *In re T.C.*, 522 N.W.2d 106, 108 (Iowa Ct. App. 1994). The juvenile court denied the father’s motion for additional visitation and reasonable efforts, finding the father was

not protective of the child in his statement of disbelief that the child had been sexually assaulted, and would place the child at further risk of harm by the same perpetrator. If anything, the evidence at the time the father rested supported a decrease in parental visitation, however the court finds that the visitation schedule should remain the same.

The father argues he was never given an opportunity to demonstrate his ability to care for the child. The father received seventeen months of extensive services to work towards reunification but failed to make meaningful progress. During supervised visits, the parents twice failed to take B.C.-W. to the doctor, claiming they did not want to do it during their time with the child. The alleged sexual assault of the child took place during a supervised visit. The parents have been unwilling to accept or implement feedback given by workers and have not advanced in PCIT. Prior to termination, the State and DHS made reasonable efforts towards reunification.

Finally, the father argues the juvenile court erred in denying his motion to continue the hearing set for permanency and termination and on his motion for additional visitation and reasonable efforts. Hearing on the father’s motion took place on July 11, but there was insufficient time to hear the evidence of all the parties. The father apparently testified and then rested,¹ but he did not get an

¹ We have not been provided a transcript of the hearing.

opportunity to cross-examine other witnesses or present rebuttal evidence. The court initially set the continuation of the hearing for the same date as the termination hearing but then entered an order denying the father's motion to change disposition. The juvenile court found that the father's evidence failed to meet his burden to change the disposition. The father requested a continuance of the termination hearing to allow for more time for the hearing on his motion to change disposition, but the court denied the continuance.

A motion for a continuance is reviewed under an abuse of discretion standard and will only be reversed if injustice will result to the party desiring the continuance. *In re C.W.*, 554 N.W.2d 279, 280 (Iowa Ct. App. 1996). "Denial of a motion to continue must be unreasonable under the circumstances before we will reverse." *Id.* "A sense of urgency exists in termination cases due to the importance of stability in a child's life." *Id.* We find the denial of the continuance was reasonable, as the court entered its ruling on the motion for additional visitation, finding the father had not met his burden of proof.

We affirm the juvenile court order terminating the father's parental rights to B.C.-W.

AFFIRMED ON BOTH APPEALS.