

**IN THE COURT OF APPEALS OF IOWA**

No. 0-260 / 10-0203  
Filed May 12, 2010

**IN THE INTEREST OF S.A., D.A., and P.A.,  
Minor Children,**

**P.A.P., Mother,**  
Appellant,

**J.D.A., Father,**  
Appellant.

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Appeal from the Iowa District Court for Hamilton County, James A. McGlynn, Associate Juvenile Judge.

A mother and a father separately appeal the order terminating their parental rights to three children. **AFFIRMED.**

Douglas Cook of Cook Law Office, Jewell, for appellant mother.

Justin Deppe of Deppe Law Office, Jewell, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Patrick Chambers, County Attorney, and Adria Kester, Assistant County Attorney, for appellee State.

Ellen Henry of Henry Law Firm, Jewell, for minor children.

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

**MANSFIELD, J.**

Patricia and James separately appeal a juvenile court order terminating their parental rights to three children. Both parents assert that reasonable efforts were not made toward reunification and that termination is not in the children's best interests. We affirm.

**I. Background Facts and Proceedings.**

Patricia and James are the biological parents of daughter P.A. (born 1996), daughter S.A. (born 2000), and son D.A. (born 2002). Although Patricia and James are married, they have had an on-again, off-again relationship and have planned to divorce on several occasions.

Since April 1996, Patricia and James have had substantial and near continuous involvement with the Iowa Department of Human Services (DHS). This involvement has already resulted in the termination of parental rights to another one of their children. See *In re J.J.A.*, No. 08-1819 (Iowa Ct. App. Dec. 31, 2008).

In 1996, P.A. was removed from parental custody due to the unsanitary conditions of the home. In 2001, P.A. and S.A. were removed from the home due to unsanitary conditions and domestic violence. The 2001 removal resulted in P.A. and S.A. being adjudicated children in need of assistance (CINA) under Iowa Code sections 232.2(6)(b) and (g) (2001). That case was not closed until May 2007.

The current case was initiated in September 2007, after Patricia was found to be residing with a known registered sex offender (not James). At this time, instead of having the sex offender leave the home, Patricia decided to

voluntarily place her children into foster care. The circumstances surrounding the children's removal eventually resulted in Patricia being charged with and pleading guilty to child endangerment, and being placed on probation.

On December 21, 2007, the juvenile court entered an order affirming the voluntary placement with DHS for foster care. Ultimately, the two daughters, P.A. and S.A., were placed into one foster home, while the son, D.A., was placed into a different foster home with his older brother, J.J.A., the child who was the subject of the other termination proceeding.

On February 4, 2008, the three children were adjudicated CINA pursuant to Iowa Code section 232.2(6)(c)(2) (2007). Following adjudication, Patricia and James struggled to maintain any stability in their lives. Both parents moved among several different residences and were unable to maintain steady employment. During this time, Patricia had about twenty known residences (not including a period where she was thought to be homeless), while James had nine different known residences. Both parents also failed to maintain consistent visitation with their children. Patricia had only sporadic visitation due to her lack of stability and being jailed on several occasions for probation violations, while James had no visits with the children from May 2008 until April 2009. During this time, DHS noted that James had no intention of reunifying with the children. James would help Patricia by providing transportation to her visits, but then he would not participate in them.

On October 30, 2008, the juvenile court entered a stipulated permanency order granting Patricia and James an additional six months to work toward

reunification. However, due to claims regarding the Indian Child Welfare Act, permanency was delayed for over a year.<sup>1</sup>

In April 2009, Patricia and James resumed their relationship. A month later they moved into a trailer home in Webster City. Patricia and James also returned to school. Patricia started taking classes online through University of Phoenix, while James worked toward a commercial driver's license at Iowa Central Community College. During this time, Patricia and James also began to have extended visitation with the children, including overnight and weekend visitation.

Although Patricia and James seemed to be gaining some stability in their lives, several concerns remained. Both parents were still unemployed, and their sole source of income was James's mental health-related Social Security disability payment of \$900 per month. The parents also had substantial debts and unpaid fees and fines. Specifically, Patricia had until August 2010 to pay off over \$6000 in court fees stemming from her criminal charges and probation or she would be subject to further incarceration. In addition, the trailer had limited space. The DHS case worker who performed announced and unannounced visits noted that the trailer only consisted of two bedrooms and a makeshift third bedroom constructed by propping up a mattress against a bookshelf and using a blanket as a door. During the overnight and weekend visits, the trailer housed

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<sup>1</sup> At the March 2009 permanency review hearing, Patricia claimed to be a descendant of the Sac and Fox Indian tribes. As a result, the juvenile court delayed all permanency proceedings until eligibility could be determined. It was not confirmed until August 2009 that the children were not eligible for enrollment in either of those tribes. At that time, Patricia claimed that she might actually be a descendant from the Cherokee Indian tribes. The three Cherokee tribes denied enrollment in September 2009.

Patricia and James in one bedroom, D.A. and the parents' seventeen-year-old son in the other, and P.A. and S.A. in the makeshift third bedroom. (The makeshift third bedroom contained only a single twin-sized bed shared by P.A. and S.A.) The trailer was also often found to be in total disarray. On October 24, 2009, a caseworker observed several piles of dog feces on the floor of the living room and the makeshift third bedroom, and the kitchen was full of dirty dishes.

There were also concerns raised regarding a lack of supervision during visitation. P.A. was found using inappropriate language on Facebook after midnight, and P.A. and S.A. were allowed to watch a sex-oriented movie that was inappropriate for their ages.

On November 20, 2009, and December 17, 2009, the juvenile court held a hearing regarding the termination of Patricia's and James's parental rights. At the hearing, an in-home counselor testified that P.A. (who is thirteen) had told her she wanted to stay in the foster home, but was afraid to tell the truth in front of her parents. The counselor also testified that when S.A. had visits with her parents, her acting-out behaviors increased. In the counselor's view, whether P.A. and S.A. remained with their current foster parent family or not, termination would bring emotional benefits for the children:

Q. The question is if Jim and Pat's visits and parental rights are terminated, other than possibly keeping them in the [foster] household, is there any benefit or any interest of these children being served by terminating Jim and Pat's rights in your opinion professionally? A. Is there any benefit of rights being terminated?

Q. Yes, other than possibly keeping them in the foster household? A. I think the emotional aspect is a huge benefit for the kids.

Q. Do you think that would outweigh the emotional detriment of never seeing their natural parents again? A. Yes.

When P.A. was later called to testify by James's attorney, she confirmed that James had told her, "You better not choose them over us."<sup>2</sup> She also testified that things at her foster family were going "great" but she "didn't know yet" as to whether her parents' parental rights should be terminated.

According to the evidence presented at hearing, the foster family caring for P.A. and S.A. was "considering" adoption if parental rights were terminated, but was not committed to it. Meanwhile, the family caring for D.A. and J.J.A. (whose parents' parental rights had already been terminated) was planning to adopt both boys.<sup>3</sup>

During the termination hearing, new tensions in the relationship between Patricia and James also became apparent. On the second day of the hearing Patricia testified to what that juvenile court stated was "the obvious surprise of James," that she was "starting to see some of the same behaviors that caused [her] to leave the first time," and therefore she did not want James in the trailer home any longer. As Patricia explained,

At this point I need to look at what is in the best interests of my children, and at this point I do not feel that the best interest of my children is to go back into a home full of the emotional trauma that they have suffered in the past.

Patricia went on to state that if James left the trailer, she would support the children from her student loans and aid provided by her mother and sister. Patricia also admitted that she had not shared any of this information with James prior to her testimony at the termination hearing.

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<sup>2</sup> The foster mother also confirmed that P.A. said she had been threatened by James and was afraid of the threat.

<sup>3</sup> Patricia conceded that if parental rights were terminated as to D.A., "I don't think there would be much of an impact on him," because "he has a very strong emotional bond with the foster dad."

Prior to Patricia's testimony, James testified that he had a full-time job working for an insulating company earning \$400 to \$500 per week, and was ready, willing, and able to regain custody of the children. However, he did not respond or provide any insight on his future if his relationship with Patricia ended.

On January 22, 2010, the juvenile court entered an order terminating Patricia's and James's parental rights to P.A., S.A., and D.A. pursuant to Iowa Code sections 232.116(1)(d), (f), and (g) (2009). Patricia and James both appeal.

## **II. Scope and Standard of Review.**

We review termination of parental rights *de novo*. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Although we give weight to the factual determinations of the juvenile court, we are not bound by them. *Id.*

## **III. Analysis.**

Neither Patricia nor James disputes that the basic statutory requirements for termination of parental rights have been met. See Patricia's Petition on Appeal ("The evidence reflects and the parents conceded that statutory grounds for termination existed at the time of trial."); James's Petition on Appeal ("The father acknowledged at trial that the statutory grounds for termination existed at the time of the termination of parental rights trial."). Instead, Patricia and James separately assert the same two arguments—(1) that reasonable efforts were not made to reunify them with their children and (2) that termination of parental rights is not in the children's best interests.

**A. Reasonable Efforts.**

The State is required to “make every reasonable effort to return the child to the child’s home as quickly as possible consistent with the best interests of the child.” Iowa Code § 232.102(7); see also Iowa Code § 232.102(10)(a) (defining reasonable efforts). While the State has an obligation to make reasonable efforts toward reunification, a parent has an equal obligation to demand other, different, or additional services prior to a permanency or termination hearing or the issue is considered waived for further consideration on appeal. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005); see also *In re C.H.*, 652 N.W.2d 144, 148 (Iowa 1999) (stating complaints voiced to a social worker are insufficient and a parent must inform the juvenile court of any challenges). Patricia and James did not request additional services or challenge the adequacy of the services they were provided at any point prior to the termination hearing. Therefore, we conclude this issue has been waived.

However, even assuming, arguendo, that Patricia and James have properly preserved this issue for our review, we would still find that Patricia and James were provided more than adequate services to promote reunification with their children. The record shows that DHS has provided Patricia and James numerous services for all but fourteen months since 1996. These services included supervised visits, unsupervised visits, overnight and weekend visitation, a family-centered services in-home worker, remedial services, parenting skills sessions, family team meetings, individual therapy for the children, drug screens, gas cards, financial assistance in paying for water, electric, and gas bills, and food assistance. Despite these services, both parents have been unable to



make any significant strides toward providing their children with safety and stability. Significant questions remain regarding each parent's housing, employment, finances, and overall life stability. See *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000) (stating the reasonable efforts requirement is not a strict substantive requirement for termination, but rather impacts the State's burden of proving the child cannot safely be returned to the care of the parent). For example, we note the testimony of the DHS caseworker regarding her unannounced visit to Patricia and James's residence on a Saturday morning at 10 a.m. just a few weeks before the termination hearing:

[P.A.] was sleeping in the makeshift room off the living area, and there were at least two piles of [dog] feces in that room that I couldn't tell how long they'd been there, if they were dried up or anything like that, but they were there.

I did not go down the hallway at that point in time. I just felt stepping into the home I'd seen enough and that what I saw was incredibly dirty and inappropriate and needed to be taken care of. I advised Patricia it needed to be cleaned up immediately. It was entirely unacceptable.

Unannounced I returned to the home about two hours later.

. . . .

I then again entered [P.A.'s] room off of the living area, and there were still at least two piles of dog feces there. It was the same ones that had been there earlier.

We find the State met its burden here.<sup>4</sup>

### **B. Best Interests.**

Patricia and James also argue that termination is not in the children's best interest. See Iowa Code § 232.116(2); *In re P.L.*, 778 N.W.2d 33, 39 (Iowa

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<sup>4</sup> James argues on appeal that because the "dog messes" and more generally the deficiencies in the trailer did not lead the State to end overnight visitation, they should not be considered now as part of the grounds for termination. However, James cites no authority for this argument and we do not agree that the State automatically waives a potential ground for termination by not using it as a basis for ending visitation. Moreover, a residence that is intended to be permanent could logically be held to a higher standard than one used only for temporary visits.

2010). In evaluating this issue, the court gives 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 39. In seeking out a child’s best interests, “we look to the parents’ past performance because it may indicate 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). Parental rights to another child had already been terminated. At the time of the termination hearing, these children had been out of parental custody for over two years. In addition, the children had spent a significant portion of their lives in out-of-home placements and as adjudicated CINA. Persuasive evidence was presented at the hearing that the emotional health of these children would benefit from termination of parental rights. Despite over ten years of services, James’s and Patricia’s housing, employment, and financial status, not to mention their rocky relationship with each other, remained obstacles to their caring for P.A., S.A., and D.A. Notable in that regard was Patricia’s sudden announcement during the second day of the termination hearing that she was asking James to leave the trailer home because of a recurrence of his past verbal abuse of her. We agree with the juvenile court’s finding that “since the parents have conclusively demonstrated their inability to provide a permanent home for these children which is safe, stable, and secure, the cost to be borne by these children for maintaining parental rights is the endless limbo of foster care.” Accordingly, termination is in the children’s best interests.<sup>5</sup>

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<sup>5</sup> Neither Patricia nor James argues that any of the factors weighing against

For the foregoing reasons, we affirm the thorough and well-reasoned decision of the juvenile court terminating the parental rights of Patricia and James to P.A., S.A., and D.A.

**AFFIRMED.**

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termination set forth in Iowa Code section 232.116(3) apply here, see *P.L.*, 778 N.W.2d at 37-39, 41 (discussing and applying this section), although the parents refer to the children's bonds with them in the course of their best interests arguments. See Iowa Code § 232.116(3)(c). In any event, we conclude the bonds between these children and their parents do not outweigh the serious stability and safety issues discussed above making termination in the best interests of these children.