

IN THE COURT OF APPEALS OF IOWA

No. 0-332 / 10-0282
Filed May 26, 2010

**IN THE INTEREST OF L.N. and A.N.,
Minor Children,**

**T.L.N., Father,
Appellant.**

Appeal from the Iowa District Court for Bremer County, Peter B. Newell,
District Associate Judge.

A father appeals the termination of his parental rights to his children.

AFFIRMED.

John J. Sullivan of Sullivan Law Office, P.C., Oelwein, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Kasey Earl Wadding, County Attorney, for appellee.

Heather Prendergast of Roberts, Stevens & Prendergast, P.L.C.,
Waterloo, for mother.

Linnea Nicol, Waterloo, attorney and guardian ad litem for minor children.

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

EISENHAUER, J.

A father appeals the termination of his parental rights to his children. He contends the State failed to prove the grounds for termination by clear and convincing evidence. He also contends termination is not in the children's best interest and the State failed to make reasonable efforts to reunite him with his children. Finally, he contends the juvenile court's decision was a result of judicial bias. We review his claims de novo. See *In re N.E.*, 752 N.W.2d 1, 6 (Iowa 2008).

The children, then aged four months and three years, were removed from the parents' care in August 2008 following a domestic violence incident witnessed by the children. Both parents were charged with domestic abuse assault and the father was charged with child endangerment. The children were adjudicated in need of assistance on September 12, 2008. Given the parents' history of substance abuse and prior involvement with the Department of Human Services (DHS), including the removal of the father's two older children when it was discovered he was manufacturing methamphetamine in the home, the parents were ordered to obtain substance abuse and mental health evaluations and comply with any recommendations.

In January 2009, the DHS began investigating possible sexual abuse of the children by the parents. A.N. reported the mother and father hurt her, were "naughty" and "put things inside her to hurt her." A.N. exhibited sexualized behavior and demonstrated a high degree of distress after visitation with the parents, including nightmares and incidents where A.N. was wetting and soiling

herself. Additionally, a physical examination of A.N. revealed she has less hymenal material than would have been expected. This finding is consistent with a child having had a finger or object inserted into her vagina. Visitation with the children was suspended by the court in February 2009. At a review hearing in July 2009 the evidence of sexual abuse was heard by the court. The court found clear and convincing evidence proved the older child had been sexually abused by both parents. Visitation was allowed to resume in a supervised, therapeutic setting.

The State filed its petition to terminate parental rights in August 2009. The termination hearing was held in October 2009 and January 2010. In a February 5, 2010 order, the juvenile court terminated the mother and father's parental rights pursuant to Iowa Code sections 232.116(1)(f) and (i) as to A.N. and 232.116(1)(h) as to L.N. The father appeals.

We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). For termination under section 232.116(1)(f) or (h), the State must prove the child is of a certain age, has been adjudicated in need of assistance, and has been removed from the parent's custody for a requisite period of time. There is no dispute these elements have been proved for A.N. with regard to section 232.116(1)(f) and for L.N. with regard to section 232.116(1)(h). In order to terminate, both sections also require "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 232.102." The father argues the State failed to meet its burden on this element.

We conclude there is clear and convincing evidence the children cannot be safely returned the father's care at the present time. A.N. was sexually abused. The father's conduct is consistent with a perpetrator of sexual abuse of children. Additionally, the father has a lengthy history of substance abuse and was exhibiting drug-seeking behaviors in regard to prescription medications, as well as out-of-control behavior consistent with abuse of a stimulant. The father has also demonstrated a pattern of physical abuse. A report following a psychosexual evaluation states:

The parents are unable to sustain a lifestyle free of substance abuse and violence. Both are chronically maladaptive in their behaviors, thoughts and feelings, and find it difficult to care for themselves in a sustained manner, much less attempt to meet the needs of preschool children. Together they have been unable to parent effectively, and individually it is apparent they lack the skills to provide for the children.

Because the State has proved the grounds for termination under sections 232.116(1)(f) and (h) by clear and convincing evidence, we affirm.

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of Iowa Code section 232.116(2). *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010). In determining the best interest, this court's primary considerations are "the child's safety, 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.* Taking these factors into account, we conclude the children's best interest requires termination of the father's parental rights. The children have been in foster care since August 2008 and do not know their parents. The children are clearly not

safe in their father's care, nor is he able to provide for their long-term nurturing and growth. It would be a detriment to the children's physical, mental, and emotional condition to maintain the parent-child relationship with the father.

The father next contends the State failed to make reasonable efforts to reunite him with the children as required by Iowa Code section 232.102(7). The father filed a "Notice of Lack of Reasonable Efforts" in May 2009 because he was not allowed to see the children. This was during the investigation of the sexual abuse allegations and the court reviewed the efforts made by the State at the hearing in July 2009. The court found the DHS had put appropriate services in place when the children were removed. It also reviewed the decision to suspend visitation and found the father had made minimal efforts to obtain substance abuse and mental health evaluations and start treatment, and was violating an order to have no contact with the mother. The father denied and continues to deny the sexual abuse, and declined to participate in sex-offender therapy. The court ruled on the father's request to allow visitation and allowed visits in the presence of the therapist for the older child.

The father never made any additional request for services during the course of the CINA proceedings. Accordingly, this issue is not preserved for our review. See *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994) ("A challenge to the sufficiency of services should be raised in the course of the child in need of assistance proceedings."). Furthermore, the reasonable efforts requirement is not a strict substantive requirement for termination. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Instead, the services provided by the DHS to

reunify parent and child after removal impact the State's burden of proving the child cannot be safely returned to the care of a parent. *Id.* We conclude the State has met its burden.

Finally, the father contends, "The Court could not render a fair decision in this matter because of judicial bias and/or judicial predilection." The father makes no further argument in regard to this issue, nor was it ever raised to the juvenile court. Because we are unable to determine the nature of his claim or whether it was preserved, we affirm.

AFFIRMED.