

IN THE COURT OF APPEALS OF IOWA

No. 0-335 / 10-0028
Filed May 26, 2010

**IN THE INTEREST OF A.A., E.M., and V.M.,
Minor Children,**

H.J.B., Mother,
Appellant,

D.M., Father of E.M. and V.M.,
Appellant.

Appeal from the Iowa District Court for Benton County, Jane Spande,
District Associate Judge.

A father appeals from an order terminating his parental rights.

AFFIRMED.

John Mossman, Vinton, for appellant mother.

Troy Powell, Cedar Rapids, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, and David C. Thompson, County Attorney, for appellee State.

Jennifer Zahradnick, Belle Plaine, for minor children.

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

MANSFIELD, J.**I. Introduction.**

A father, D.M., appeals a juvenile court order terminating his parental rights to his daughters E.M. and V.M., born in 2001 and 2003 respectively, pursuant to Iowa Code sections 232.116(1)(e) and (f) (2009).¹ He asserts that the State failed to prove the grounds for termination by clear and convincing evidence, the State failed to make reasonable efforts to reunite him with his children, he should have been granted additional time for reunification, and termination was not in the children's best interests. We review his claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). For the reasons stated herein, we affirm.

II. Facts and Procedural History.

In 2003, the children² came to the attention of the Iowa Department of Human Services (DHS) due to drug use by their mother and father, both of whom had an extensive history of alcohol and drug abuse. The children were adjudicated to be in need of assistance (CINA) and removed from the home in February 2003. The mother and father participated in services and, eventually, the children were returned to their custody.

In August 2008, the children again came to the attention of DHS. At that time, the girls were living with their mother in a home that was described as "filthy and unlivable." The father D.M. was living in Cedar Rapids with a person that

¹ The juvenile court also terminated the mother's parental rights pursuant to Iowa Code sections 232.116(1)(b) and (e). The mother's untimely appeal was dismissed by our supreme court on May 5, 2010.

² The children's older half-sister (A.A.) was also removed from the home at this time, but was separately placed. She is not subject to this appeal.

was known by narcotics officers to be a methamphetamine manufacturer. Also, it was reported the father was believed to be “under the influence” on several occasions. He later admitted to DHS workers that he was manufacturing methamphetamine, as well as using it. In September 2008, the girls were again adjudicated to be CINA due to unsafe living conditions and domestic abuse in the home, physical abuse by their father, and their mother and father’s continued substance abuse. After initially being placed with family members, the children were placed in foster care in December 2008. However, due to severe behavioral issues, the older daughter had to be placed in a residential treatment facility in the summer of 2009. In a July 2009 report, the children’s guardian ad litem reported that the father had not demonstrated any progress towards reunification with the children, did not put the children above his own needs and desires, and was not fully complying with the services being provided. On December 22, 2009, following a hearing, the juvenile court terminated parental rights.

III. Merits.

We only need to find termination proper under one ground to affirm. *In re R.R.K.*, 554 N.W.2d 274, 276 (Iowa Ct. App. 1995). Termination is appropriate under section 232.116(1)(f) where there is clear and convincing evidence of the following:

- (1) The child is four years of age or older.
- (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 twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) 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 232.102.

The father's only argument with respect to this section is that there is not clear and convincing evidence the children could not be safely returned to his custody.

D.M. had made some progress at the time of the termination hearing. His housing arrangements were suitable for the children. His drug screens had been clean for eleven months. However, this situation falls well short of being one where the children could be safely returned to the father's care. The father has a significant history of alcohol and drug abuse, including manufacturing methamphetamine.³ He was last convicted of drug related offenses in the fall of 2008, and remains on probation for those charges. There was a founded report that he physically abused the girls in August 2008. Although the father had been able to maintain sobriety for nearly a year prior to the hearing, he has not been able to appropriately parent or consistently exercise visitation with his daughters during that time.

As chronicled by several witnesses, the father has not exercised consistent visitation with his children. A DHS worker testified that initially the father's visitation was inconsistent and minimal, and although he has recently shown more consistency, he still does not exercise visitation "regularly by any means." This inconsistency has a negative effect on the children, which has

³ According to one witness, [D.M.] typically reported to me that he felt he did not have a substance abuse issue. He reported that he was mostly involved for monetary reasons. He reported he felt he was never addicted. [D.M.] reported to me on more than one occasion that he felt meth was more of a woman's substance than a man's.

been demonstrated by the youngest daughter being confused, crying, and upset after two weeks without a visit from the father. When he did exercise visitation, there have been concerns about the father's behavior, such as sleeping during visits and not acting appropriately with the children. He routinely discussed inappropriate topics with the children, such as the mother's alleged meth labs. He had trouble controlling the children when they acted out. He asked the children to lie about the fact that he frequently drove illegally.⁴ A family advocate testified, "I would say more often than not that his interactions were inappropriate."

The father was asked to assist with the children's medical needs, but was unable to do so. When requested to make eye doctor appointments for the girls, he did not. In October 2009, when informed the youngest daughter was ill, he was unable to make arrangements for her to go to the doctor. The father frequently failed to bring appropriate food items to the visits.

There were also concerns over the father's relationship with a woman (A.S.) whom the father suddenly married two weeks prior to the termination hearing. Witnesses testified that A.S. (a community college student) is immature, does not know how to appropriately parent the children, and competed with the

⁴ According to the testimony of a witness:

Q. And are the children aware of the fact that he is not a licensed driver? A. They are.

Q. Have they made statements to either you or the providers regarding his driving? A. They have. They've said very specifically that Daddy—"Daddy drove, but I'm not supposed to tell anybody that he's driving."

The father testified that he will not be able to drive legally until he pays what he terms "a ridiculous amount in fines," according to him approximately \$40,000. This stems from his previously driving while suspended, driving while barred, and having two accidents (presumably where he did not have insurance).

children for the father's attention during visits. Further, she has mental health needs, which she only recently began addressing. D.M. and A.S. fight in front of the children and even though they claim the fighting is not physical, it is detrimental to the children because of their exposure to domestic violence in the past. According to one witness, at a team meeting in D.M.'s presence A.S. "said right out that she does not believe [D.M.] should have his children." The children also reported that they were uncomfortable with her. For example, V.M. said she felt "very uncomfortable and not safe" around A.S. and that the loud arguments between D.M. and A.S. would scare her.

The father testified that he receives \$600 a month in Social Security benefits and has no current employment. He testified that he believes this is enough to support himself, his wife, and the two girls because "[m]y rent right now is only 450." This plan appears unrealistic.⁵

The father has several founded abuse reports and a history of making bad decisions. Although we recognize that he has been drug-free for nearly a year, he has simply not demonstrated that he would be able to safely parent his children. During the times he exercises visitation with the children, there is often inappropriate behavior. When asked to perform basic caretaking tasks for his children, he does not complete them. Additionally, both girls have behavioral and mental health issues. We agree with the juvenile court that the children cannot be safely returned to the father's care.

⁵ The father also testified that he is making payments toward his driving-related fines out of the \$600 per month.

The father also raises as an issue whether “reasonable efforts were made to reunite the children with their father.” He does not identify what services were missing. Indeed, when asked at the termination hearing, “Did you ever complain to your lawyer that you wanted new or different services before this termination trial today?” he answered, “No.” Throughout the pendency of this case, the father did not request other services. The State asserts that this claim is not preserved. We agree. See *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005) (“[A] parent has an equal obligation to demand other, different, or additional services prior to a permanency or termination hearing.”); *In re C.D.*, 508 N.W.2d 97, 101 (Iowa Ct. App. 1993) (discussing that a parent’s challenge to services must be made at the time the services are offered). Regardless, even if preserved, we would find his argument without merit. A DHS worker testified that the father received “extensive” services for thirty-two months over approximately six and one-half years. These services were provided on a voluntary basis even when there was no open case. Furthermore, when a family advocate attempted to offer parenting services, “the typical response that I would usually get from [D.M.] would be that he did not need parenting skills or any type of such service because the girls would behave for him.”

Additionally, the father states: “[T]he court erred in failing to give the [father] six additional months to pursue reunification.” However, from our review of the record, we believe considerable time already has been provided and we do not believe an additional six months would materially change things. The concerns about D.M.’s lack of employment, lack of access to transportation, and his lack of attention to the children’s needs and inability to control their behavior

would remain. The issues surrounding A.S. and her difficulties with the children also would remain. See *P.L.*, 778 N.W.2d at 41 (“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.”).

Finally, the father asserts that termination was not in the children’s best interests. 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). *Id.* at 37. In considering a child’s best interests, “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.” *Id.* (quoting Iowa Code § 232.116(2)). There was considerable testimony about the father’s inability to adequately care for the children and his lack of commitment to them, which has had a devastating effect on the children. The girls’ therapist testified they are in dire need of stability, and that they have grown up in a chaotic environment and to have them remain in limbo for additional time would be very detrimental to them. Currently, they are in placements where they are doing well and to return them to a parent who has not demonstrated the ability to adequately parent them would be harmful. We find it is in the children’s best interests for the father’s rights to be terminated.

For the foregoing reasons, we affirm the judgment of the juvenile court.

AFFIRMED.