

IN THE COURT OF APPEALS OF IOWA

No. 0-373 / 10-0553
Filed June 30, 2010

**IN THE INTEREST OF J.B.K. and K.D.K.,
Minor Children,**

B.D.K., Father,
Appellant,

A.C.K., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, Judge.

A mother and father appeal from the termination of their parental rights.

AFFIRMED ON BOTH APPEALS.

Angela H. Kayl, Sioux City, for appellant father.

Jacquelyn Johnson, Hinton, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick A. Jennings, County Attorney, and Dewey P. Sloan, Assistant County Attorney, for appellee State.

Joseph Kertels, of the Juvenile Law Center, Sioux City, for minor children.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

DOYLE, J.

A mother and father appeal the termination of their parental rights to their children. The mother contends the State failed to make reasonable efforts to reunite her with the children. The father contends the State failed to place and to investigate placement of the children with their paternal grandmother. He also contends the juvenile court erred in failing to grant him additional time for reunification. We review their claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

At the time of termination, the children were three and one years of age, respectively. They came to the attention of the Iowa Department of Human Services (Department) in May 2009 due to concerns over parental drug usage, domestic violence, and neglect. The children were subsequently removed from the parents' care and were initially placed in the care of their paternal grandparents. Thereafter, the paternal grandmother agreed that the children should be placed with other relatives due to "all of the drama," and about a week later, the children were placed with the mother's brother and his wife. In August 2009, the children were adjudicated children in need of assistance (CINA). On October 14, 2009, the State filed its petition for termination of the parents' parental rights.

After the Department became involved with the family, numerous services were offered to the parents to reunify the family, including counseling through Jackson Recovery Centers and Siouxland Mental Health; family safety, risk, and permanency services to assist in developing parenting skills, maintaining appropriate housing and supervising visitations; family team meetings to identify

needs, strengths, and concerns and to involve appropriate support persons to address each issue; social history to assess concerns regarding parenting behaviors; drug testing; and housing assistance. However, the parents were generally uncooperative and noncompliant with some services offered until November 2009, after the State filed its petition for termination of the parents' parental rights. After November, the parents also gained employment and found housing.

Following a hearing, the juvenile court on March 11, 2010, entered its order terminating the parents' parental rights pursuant to Iowa Code sections 232.116(1)(d) (child CINA for neglect, circumstances continue despite receipt of services), (e) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child), and (h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home) (2009). The parents now appeal.

The mother contends the State failed to make reasonable efforts to reunite her with the children. The State is required to "make every reasonable effort to return the children to the children'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). The mother did not request additional services or challenge the adequacy of the services she

was provided at any point prior to the termination hearing. Therefore, we conclude the issue has been waived.

However, even assuming, *arguendo*, that the mother had properly preserved this issue for our review, we would still find that the mother was provided more than adequate services to promote reunification with her children. The record shows that the Department has offered or provided the parents numerous services since the case began; the parents simply did not avail themselves of those services until after the petition for termination of their parental rights was filed. We find the State met its burden here.

The father contends the State failed to consider placement with the paternal grandmother and to “work with the [paternal grandmother].” It is true that Iowa Code section 232.116(3)(a) states that the court need not terminate parental rights if the child is in the legal custody of a relative. However, the factors in section 232.116(3) are permissive, not mandatory, and it is in the court’s discretion, based on the unique circumstances of the case and the best interests of the child, whether to apply such factors. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa Ct. App. 1996).

Here, the record shows that from August 2003 to January 2008, ten police complaints were filed concerning arguments between the father and the paternal grandmother. The children were originally placed with the paternal grandmother, but she agreed the children should be placed with other relatives due to family “drama.” She did not appear at the termination seeking that the children be placed with her, nor do we find in the record such a request from the father.

Moreover, the juvenile court found the best interests of the children warranted permanency. Having found the grounds for termination had been met, the court concluded their best interests would be served by placing the child in the custody and guardianship of the Department for adoption. We find no abuse of discretion by the juvenile court in failing to consider placement with the paternal grandmother.

Additionally, the father contends the juvenile court erred in terminating his parental rights instead of granting him an additional six months to reunite with the children. We note that while the law requires a “full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,” this patience has been built into the statutory scheme of chapter 232. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). The legislature incorporated a six-month limitation for children in need of assistance aged three and below. Iowa Code § 232.116(1)(h)(3). Our supreme court has stated that “the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights.” *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the State having been legislatively set, we are obligated to heed the statutory time periods for reunification.

By the time of the termination hearing, the children had been out of the parents’ custody for over six months. Although the father had made some late improvements in his parenting ability, the statutory six-month period expired concerning each child with little evidence that the father could provide the necessary stability to safely parent the children in an unstructured, unsupervised

setting. “A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting.” *C.B.*, 611 N.W.2d at 494. “When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *Id.* We conclude the juvenile court did not err in refusing to grant the father additional time for reunification and accordingly affirm the court’s decision to terminate the parents’ parental rights to the children.

AFFIRMED ON BOTH APPEALS.