

**IN THE COURT OF APPEALS OF IOWA**

No. 0-719 / 10-1032  
Filed October 6, 2010

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

**A.S., Father,**  
Appellant.

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Appeal from the Iowa District Court for Delaware County, Thomas J. Straka, Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

David G. Baumgartner, Strawberry Point, for appellant father.

Stephanie Rattenborg, Manchester, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John Bernau, County Attorney, and Ryan J. Gallagher, Assistant County Attorney, for appellee State.

Kimberly S. Lange, Edgewood, for minor children.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

**DOYLE, 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 interests and the State failed to make reasonable efforts to reunite him with his children. Upon our review, we affirm.

***I. Background Facts and Proceedings.***

A.S. is the father and T.M. is the mother of T.S., born September 2007, and A.S., born August 2008.<sup>1</sup> The parents were both sixteen years old when T.S. was born; the father left school after eleventh grade. The parents have a history of domestic violence. The father reported that he received a domestic abuse/disorderly conduct charge in September 2008, and he had previously received a possession of alcohol under the legal age charge. The father lived with his father, the children's paternal grandfather, and he worked for his father doing some scrap work, but his income was inconsistent. The children lived with their mother.

The children came to the attention of the Iowa Department of Human Services (Department) in July 2009, after it was reported that the mother was seen walking barefoot with the children in a stroller along a busy highway, and the mother also did not have diapers or formula for the children. A case worker for the Department went to the mother's home to discuss the report, and the mother admitted the claim to the worker. Upon visiting the mother's home, the

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<sup>1</sup> This appeal concerns only the termination of the father's parental rights. The mother has not appealed.

worker noted other safety concerns, including the condition of the mother's home, and lack of food and clothing for the children. Both children appeared to be developmentally delayed. At the Department's request, the mother agreed to place the children in a foster home.

The Department's worker contacted the father. The father advised the worker that he saw the children every other weekend. He asked if he could get the children, and the worker explained that there were concerns about the children at that time and that the Department wanted to have the children evaluated. The worker asked the father if he would agree to the children's removal, and the father stated he would get back to the worker.

The children were later placed in a foster home. The foster mother found the children to be very hungry upon arrival. The foster mother observed that T.S., then twenty-two months old, hoarded food, trying to save it for later. She described T.S. as being "parentified," explaining that T.S. would try to take care of A.S. by throwing food to A.S. to make sure A.S. was being fed. She found T.S. to be very aggressive at times, throwing things and biting people. She also noted that T.S. appeared to be very smart, yet did not talk and only pointed at things. A.S., eleven months old at the time of removal, was unable to bear any weight on her legs. The foster mother observed that A.S. at first could not even sit up when the child first arrived. A.S. appeared to have spent a large portion of time in a car seat; her shoulders and arms were further back as if she were buckled in a seat, and the back of her head was flat. A.S. also seemed to have a small area of focus, which may have been related to her having been confined to

a car seat with a limited span of visibility. Additionally, A.S. also displayed difficult behaviors in the foster home.

On October 16, 2009, the State filed its petition asserting the children to be children in need of assistance (CINA). An adjudication hearing was held, and the parents agreed that the children were CINA as asserted by the State. The juvenile court adjudicated the children CINA and ordered that services remain in effect. The permanency goal was set for reunification of the parents and children.

A social report was completed by the Department. Both parents reported that they did not have any concerns for the children or the children's development. However, each child was evaluated and determined to have communication deficits. It was found that A.S. was only communicating with ten-month-old skills although A.S. was actually thirteen months old. T.S. was only communicating with seventeen-month-old skills even though T.S. was twenty-five months old. There were also cognitive concerns regarding T.S. because he did a lot of grunting and pointing when he wanted something. T.S. also continued to display behavioral difficulties in foster care. T.S. would bite himself and others, throw toys, and bang his head on the floor when he did not get his way. A.S. would also bang her head on the floor non-stop when she was told "no" or when she became mad. A.S. was found to be hard to console and required a lot of adult attention to calm down. Unified Therapy recommended further evaluation for physical and occupational therapy to address A.S.'s motor skill development. The foster parents reported that the children's behaviors appeared to worsen

following visits with the parents. However, the parents reported that the children did not display difficult behaviors with them.

A dispositional hearing was held in December 2009. The Department reported that both children were progressing in foster care. The head-banging had decreased in both children, and T.S.'s biting had decreased. Following the hearing, the juvenile court entered its dispositional order adopting the recommendations of the Department. The court's order also advised the parents that because the children were both under three years old, the permanency time frame was six months. The court's order stressed that "time [was] extremely limited to begin making sufficient progress for return of the children to their care."

Services were offered to the father, including the Parents as Teachers program, Parent Child Interactions Therapy with T.S., parenting classes through Volunteer Co-op, Family Safety, Risk, and Permanency services, Early Access, and supervised visitation. Except for visits with the children, the father minimally participated in services until late in the case. The father did not attend the children's speech therapy. The father was also to reschedule A.S.'s immunizations appointment but did not, although reminders were provided to him.

The father initially received visits with the children two days a week; those visits were held at the paternal grandfather's home. However, safety concerns were raised by the service providers concerning the home. At one point, there were puppies living in the house, and the father had to be told to clean up urine and feces on the floor. Electrical outlets were missing covers. The air conditioner, accessible to the children, had no cover on it. The floor was

cluttered. The paternal grandfather then began remodeling the house, and visitations were moved away from the home. The father was late by more than ten minutes to several visitations. When the house remodeling was finished, many of the same issues remained, such as the uncovered electrical outlets. After A.S. put a cigarette butt in her mouth, the service provider asked the father to pick up the butts laying about the yard. The father chose to move the visit to the park instead of picking up the yard.

Additionally, although the father had been told that unauthorized persons could not be present at visitations, unauthorized persons had shown up at the home during visits, including one friend of the father who came to the house intoxicated. There were also times when the father would have "friends" spend the night at his home when visits were scheduled, although he did not know the friends' names.

In December 2009, the father requested additional visitation with the children, and the Department approved the additional visitation, to be supervised by the paternal grandfather. The father was to set up the visits with the foster mother, but the paternal grandfather initially set up the visits. After the paternal grandfather was told in January 2010 that it was the father who was to take the initiative in setting up the visits, no visits were scheduled by the father until February. Besides additional visitation, the father never requested any additional services.

As the case progressed, the father became more frustrated in his visits with the children and often raised his voice, yelling at the children. The children,

who had been making substantial progress in foster care, regressed to some of their past behavior of biting and throwing tantrums.

In February, it was reported that the father missed several visits. The father admitted he missed a visitation after taking a friend's prescription medication and then oversleeping. After this, the Department tried to obtain a urine sample for drug testing. The Department's worker went to the father's home and waited one and a half hours for a sample, but the father stated he was unable to provide one. The worker then placed a patch on the father for testing and told him not to remove the patch; however, the father removed it before it could be tested. The father indicated that he was going to start participating with services relating to his parenting skills, but he did not begin participating until March 2010, even though the services had been available to him since the beginning of the case.

On March 23, 2010, the State filed its petition for termination of the parents' parental rights. On April 12, 2010, the father provided a sample for urinalysis testing that was positive for marijuana and benzodiazepines. It was recommended that the father complete a substance abuse evaluation due to his positive urinalysis sample; however, he did not complete the evaluation.

A termination of parental rights hearing was held in May. The Department's case workers and the service providers who supervised the father's visitations, along with the children's guardian ad litem, recommended that the father's parental rights be terminated. On June 10, 2010, the juvenile court entered an order terminating the father's parental rights pursuant to Iowa Code section 232.116(1)(h) (2009).

The father now appeals.

## ***II. Discussion.***

On appeal, the father 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 interests and the State failed to make reasonable efforts to reunite him with his children. We review the juvenile court's decision to terminate parental rights de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The State must prove grounds for termination by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). In considering whether to terminate, our primary considerations are the children's safety; their physical, mental, and emotional condition and needs; and the placement that best provides for the long-term nurturing and growth of the children. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37. "Even though the court may determine that termination is appropriate under section 232.116(2), the court need not terminate a parent's parental rights if any of the circumstances contained in section 232.116(3) exist." *P.L.*, 778 N.W.2d at 37.<sup>2</sup>

### ***A. Grounds for Termination.***

Termination is appropriate under section 232.116(h) where there is clear and convincing evidence:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

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<sup>2</sup> Because the father does not suggest any of the circumstances contained in Iowa Code section 232.116(3) exist, we do not have to discuss this step of the analysis. See *P.L.*, 778 N.W.2d at 40.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

There is no dispute the first three elements of this section have been proved. However, the father contends there is insufficient evidence to show the children cannot be returned to his care at the present time. Upon our de novo review, we find the State has met its burden.

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 adjudicated CINA aged three and younger. 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.

Here, the court advised the parents in December 2009 that it was essential, given the statutory time frame for reunification in the case, that the parents begin making progress. However, the father chose not to participate in services until March 2010. Despite his late participation, ongoing concerns still remained. The Department advised the father of various safety concerns in his

house throughout the case, yet the father did not attempt to rectify the concerns until the termination hearing. The father tested positive for illegal substances in April 2010, and he failed to obtain a substance abuse evaluation as recommended by the Department. The father's frustration and anger had escalated to where he was yelling at the children during visits, causing them to regress in their behaviors.

By the time of the termination hearing, the children had been out of the parents' custody for over six months. Although the father made some late improvements, 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 495. "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). We conclude there is clear and convincing evidence the children cannot be safely returned the father's care at the present time. We therefore agree with the juvenile court that the State proved the grounds for termination under section 232.116(1)(h).

***B. Best Interests.***

If a statutory ground for termination is determined to exist, the court may terminate a parent's parental rights. *P.L.*, 788 N.W.2d at 37. In considering whether to terminate, the court must then apply the best-interest framework

established in section 232.116(2). *Id.* In determining the best interests of a child, the 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 interests require termination of the father's parental rights. While we do not doubt the father's love for the children, "[i]t 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." *Id.* at 41. The record reveals that the children cannot be returned to the father at this time, and the children should not be forced to wait for permanency. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("[P]atience with parents can soon translate into intolerable hardship for their children."). "At some point, the rights and needs of the child[ren] rise above the rights and needs of the parents." *J.L.W.*, 570 N.W.2d at 781. The children should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993). The children are doing well in foster care, and their foster parents wish to adopt them.

### **C. Reasonable Efforts.**

The father also contends the State failed to make reasonable efforts to reunite him 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).

Here, the father requested additional visitation with the children and that request was granted by the Department. 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.”).

However, even assuming, *arguendo*, that the father had properly preserved this issue for our review, we would still find that the father was provided more than adequate services to promote reunification with his children. The reasonable efforts requirement is not a strict substantive requirement for termination. *C.B.*, 611 N.W.2d at 493. 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.* The record here shows that the Department has offered or provided the father numerous services since the case began; the father simply did not avail himself of those services until just before the State filed the petition for termination of his parental rights. We conclude the State has met its burden.

***III. Conclusion.***

We agree with the juvenile court that the State proved the grounds for termination under section 232.116(1)(h) by clear and convincing evidence and that termination of the father's parental rights was in the children's best interests. Accordingly, we affirm the judgment of the juvenile court.

**AFFIRMED.**