

IN THE COURT OF APPEALS OF IOWA

No. 0-829 / 10-1390
Filed December 8, 2010

**IN THE INTEREST OF K.L.A., K.J.A., and K.S.,
Minor Children,**

R.S., Father of K.S.,
Appellant,

D.D.A., Father of K.L.A. and K.J.A.,
Appellant,

P.A., Mother,
Appellant.

Appeal from the Iowa District Court for Harrison County, Mark J. Eveloff,
District Associate Judge.

A mother and two fathers appeal from the order terminating their parental
rights. **AFFIRMED ON ALL APPEALS.**

Jack J. White of Jack J. White, P.C., Missouri Valley, for appellant father
of K.L.A. and K.J.A.

William T. Early, Harlan, for appellant father of K.S.

Jesse A. Render, Logan, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Jennifer Mumm, County Attorney, and Judson L. Frisk,
Assistant County Attorney, for appellee.

Roberta Megal, Council Bluffs, attorney and guardian ad litem for minor children.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

SACKETT, C.J.

A mother and two fathers appeal from the order terminating their parental rights. Priscilla, the mother, contends the State did not make reasonable efforts to reunify her with her children, the court erred in finding the children could not be returned to her at the time of the termination, and the court should not have ordered termination because the children are in the care of a relative and there is a close parent-child bond. Ross, the father of the oldest child, contends the State did not make reasonable efforts to reunite him with his child. Donald, Priscilla's husband and the father of the two younger children, contends the State did not make reasonable efforts to reunite him with his children. His remaining three claims are unclear, but we understand claims two¹ and three² to be that the court erred in finding the children could not be returned to his care at the time of the termination. His fourth claim³ appears to be that the court should not have ordered termination because the children are in the care of a relative (his mother).

Background and Proceedings. Priscilla is the mother of three children, K.S., born in 2003, K.J.A., born in 2006, and K.L.A., born in 2008. Ross is the father of K.S. Donald is the father of the two younger children. The family came to the attention of the Department of Human services in April of 2008 because of allegations the family's living conditions were not clean and safe. This resulted in

¹ "That [the father] complied with many of the requirements of the DHS case plan, and was unable to comply with several others due to financial difficulties."

² "That [the father] has been successfully on probation since November 2008."

³ "That the children . . . will be adopted by his parents, and the children's relationship with their father will be essentially unchanged by termination of his parental rights."

a founded report of denial of critical care for failure to provide adequate shelter. Until January of 2009, the family received services voluntarily. The services were designed to help the parents develop parenting skills, provide for the children's physical and emotional needs, and address violence and distrust between the parents. The voluntary services ended in January of 2009 because the parents did not cooperate. In addition, Donald was on probation from a conviction of operating while intoxicated and faced criminal charges for domestic assault and smashing mail boxes. In February of 2009 the children were placed in protective custody after the oldest child reported that her mother struck her and a sibling with a hairbrush hard enough to draw blood. Following the incident in February, which resulted in a founded abuse assessment for denial of critical care based on the physical abuse, the children were found to be in need of assistance after a hearing in late March. The court continued the placement of the children in the care of the paternal grandmother of the younger two children. The adjudicatory order also provided for the parents to receive family safety, risk and permanency services; ordered the father of the younger two children to complete a batterer's education program, outpatient substance abuse treatment, and any recommended aftercare; and directed the mother and the father of the oldest child to obtain substance abuse evaluations and follow any recommendations. Ross, the father of K.S., had not seen her in about two years at this time.

A home study of Ross's home in Arkansas was ordered. In May, Arkansas requested updated information on Ross as attempts to contact him had

been unsuccessful. In July, Arkansas notified Iowa that placement was not recommended due to lack of a response from Ross.

In February of 2010 the State petitioned to have the parental rights of all three parents terminated, as well as those of any unknown putative fathers. Following a hearing in July, the court issued its order terminating the parental rights of all three parents. The court found clear and convincing evidence supported terminating Priscilla's parental rights under Iowa Code sections 232.116(1)(f) and (h) (2009); Ross's parental rights under section 232.116(1)(f); and Donald's parental rights under sections 232.116(1)(h) and (i). Giving primary consideration to the factors set forth in section 232.116(2), the court found the children's needs best suited by permanent placement with Chrystal (the paternal grandmother of the two younger children). The court considered the exception to termination in section 232.116(3)(a), but determined that because the children could not be returned to a parent's custody at that time or "any time in the near future" the children's need for permanency was best served by termination of parental rights so they could be adopted.

Scope and Standards of Review. Our review of juvenile court orders terminating parental rights is de novo. Iowa R. App. P. 6.907 (2009). The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). The State must prove the statutory grounds for termination by clear and convincing evidence. See Iowa Code § 232.117(3).

Mother. Priscilla raises three issues on appeal. She contends the State did not make reasonable efforts to reunify the family because no unsupervised visitation was offered after September of 2009, so she was not given an opportunity to reunify her family. She also contends she and her husband, Donald, met several of the outcomes established for reunification with the children. Consequently, the State did not prove the statutory grounds for termination under Iowa Code sections 232.116(1)(f) and (h). Priscilla's third contention is that the court should have refused to terminate her parental rights because of the close parent-child bond and because the children are placed with a relative. See Iowa Code § 232.116(3).

Reasonable Efforts. Priscilla argues "testimony was provided by the appellant's husband and other parties at the termination hearing as to visitation issues." She does not contend, and we do not find, that she at any time before the termination hearing asked the court to order additional or unsupervised visitation.

Although the "State must make reasonable efforts to provide services to a parent before termination proceedings may be instituted," Iowa Code § 232.102(7), (10)(a); *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002), a parent must request different or additional services prior to the termination proceeding in order to preserve the issue for our review. See *C.H.*, 652 N.W.2d at 148 (stating the parent must request services at the proper time or the parent "waives the issue and may not later challenge it at the termination proceeding"); *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994) (indicating parents "have a

responsibility to demand services” before termination if they feel they are inadequate). A parent wishing to challenge the State’s efforts, alleging a failure to discharge its statutory duty to make reasonable efforts to provide the parent with services, must do so at the removal hearing, review hearings, when the case permanency plan is entered, or when the services are offered or denied; it is too late to raise a challenge at the termination hearing. *C.H.*, 652 N.W.2d at 148; *L.M.W.*, 518 N.W.2d at 807. “A parent must inform the juvenile court of such a challenge,” because “voicing complaints regarding the adequacy of services to a social worker is not sufficient.” *C.H.*, 652 N.W.2d at 148. We conclude the mother has not preserved this issue for our review.

Statutory Grounds. The court terminated Priscilla’s parental rights under Iowa Code sections 232.116(1)(f) and (h). Both sections require the court to find the child cannot be returned to the custody of the parent at the present time. Iowa Code §§ 232.116(1)(f)(4), (h)(4). Priscilla argues she met several of the requirements for reunification, namely: maintaining a safe home, demonstrating stability, and having a daily routine for the children.

A child cannot be returned to a parent’s custody “at the present time” if doing so would put the child at risk of some harm that would justify finding the child to be in need of assistance. See Iowa Code §§ 232.116(1)(f)(4); 232.116(1)(h)(4); see also § 232.102(5). The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supported the child's removal from the home. See *In re M.M.*, 482 N.W.2d 812, 814 (Iowa 1992). Although Priscilla made progress in meeting case permanency

plan expectations, she still had anger and domestic violence issues, and had not been attending therapy consistently. She did not always take opportunities she was given to be with her children or help with their care, choosing instead to spend time with friends or to stay in bed until the children were ready to leave. We find no reason to disagree with the juvenile court, which correctly determined the children could not be returned to her care at the time of the termination hearing and affirm on this issue.

Exceptions to Termination. Priscilla further contends the court should have refused to terminate her parental rights because Chrystal, a relative of the two younger children has custody, and there is a strong parent-child bond. See Iowa Code § 232.116(3)(a), (c). The court considered that a relative had custody of the children, but determined their need for permanency outweighed that factor. Although the court noted testimony there was bonding between the children and the parents, it did not address the exception based on the detrimental effect of termination on the children because of the closeness of the parent-child relationship. See *id.* § 232.116(3)(c). There is nothing in the record to indicate the parents brought this to the attention of the court through a motion to amend or enlarge. See Iowa R. Civ. P. 1.904(2).

The exceptions to termination in section 232.116(3) are permissive, not mandatory. See *In re P.L.*, 778 N.W.2d 33, 38 (Iowa 2010); *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to

apply the factors in this section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993).

Priscilla argues termination will not change “the status quo” and the children will not be affected by termination of their parental rights. While the children have been in Chrystal’s care Priscilla and Donald have been able to see them whenever they wanted. We find no reason to disagree with the juvenile court’s determination that the exception to termination in section 232.116(3)(a) should not prevent termination under the circumstances before it. Terminating parental rights and freeing the children for Chrystal to adopt them provides safety, stability, and permanency for these children. *See In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2000) (Cady, J., concurring specially).

We affirm juvenile court’s termination of Priscilla’s parental rights.

Donald. The father of the two younger children contends he “was not afforded any meaningful opportunity to have unsupervised visitation with his children since September, 2009, and therefore could not claim to have any realistic ability to take immediate custody of the children.” He also contends he complied with many of the requirements of the case permanency plan and was unable to comply with others because of financial difficulties. He contends his relationship with his children will not change if his rights are terminated because the children will be adopted by his parents.

Donald cites no legal authority in support of his claims. Therefore, all of his claims are waived and we do not address them. *See Iowa R. App. P. 6.903(2)(g)(3); Iowa R. App. P. 6.1401—Form 5* (requiring “supporting legal

authority” for each issue); *see also In re J.J.A.*, 580 N.W.2d 731, 739 (Iowa 1998) (declining to address claims not supported by citation to legal authority). Even if his claims were not waived, we would affirm for the same reasons set forth above in our consideration of Priscilla’s claims because the claims he raises are essentially the same as hers. We consider all his claims whether discussed or not and find them to be without merit.

We affirm the termination of Donald’s parental rights.

Ross. The father of the oldest child, K.S., contends the State failed to make reasonable efforts to reunite him with his child. He does not challenge the statutory grounds for termination. Instead, he argues the State did not make an effort to comply with the order of the court to conduct a home study. He asserts the caseworker “made up her mind as to the outcome of the case prior to court proceedings” and the Department of Human Services did not make the proper efforts to involve him in his child’s life.

Ross lives in Arkansas. Prior to the removal of his child from Priscilla’s care in February of 2009, he had had no contact with the child for nearly two years. After the court found K.S. in need of assistance, it ordered Ross to obtain a substance abuse evaluation and also ordered a home study of Ross’s home. Ross did not provide any way to contact him except through a third party, to whom he had given a power of attorney. Arkansas was unable to contact Ross to conduct the home study.

Although Ross appeared at the adjudicatory hearing, he did not appear for the review hearing or the permanency hearing. At the review hearing, his attorney told the court he had had no contact with Ross.

In the termination order, the court found Ross had been ordered to complete a substance abuse evaluation, the court had ordered funds to assist in obtaining the evaluation, but Ross had not provided any evaluation to the department. Ross had been ordered to contact the department to arrange for therapeutic visits and contact with K.S., but had failed to do so. He had started visiting K.S. two hours twice a month in the months just before the termination hearing. The court noted there was contradictory evidence concerning Ross's involvement with his child and the ability to contact Ross for a home study, but found "reasonable efforts have been made to achieve primary permanency goal for the children in interest."

Although the evidence shows some missed communications between Ross, the department, and the Arkansas agency that would conduct a home study, we cannot say the State did not make reasonable efforts to reunify Ross with K.S. See *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997) (noting what constitutes reasonable efforts varies with each individual case). Ross did not comply with the court-ordered substance abuse evaluation. He did not keep in contact with his attorney. He did not begin visits with the child until a couple of months before the termination hearing. Ross did not bring his current challenge to services to the attention of the court prior to the termination hearing. See *In re C.H.*, 652 N.W.2d at 148.

We affirm the termination of Ross's parental rights.

AFFIRMED ON ALL APPEALS.