

IN THE COURT OF APPEALS OF IOWA

No. 1-1013 / 11-1000
Filed February 1, 2012

**IN THE INTEREST OF K.K.,
Minor Child,**

T.K., Father,
Appellant.

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

A father appeals from the order terminating his parental rights.

AFFIRMED.

Patrick McMullen, Marshalltown, for appellant mother.

Michael J. Cross, Hampton, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
County Attorney, W. Wayne Saur, County Attorney, and Brent J. Symens,
Assistant County Attorney, for appellee State.

Larry Johnson of Walters & Johnson, Iowa Falls, for minor child.

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

DOYLE, J.

A father appeals from the order terminating his parental rights to his child. He contends the State failed to make reasonable efforts to reunify him with the child, and he claims the State failed to prove the grounds for termination by clear and convincing evidence. He also argues termination was not in the child's best interests, and he asserts the juvenile court failed to "consider or determine" whether the child objected to the termination of his parental rights. We affirm.

I. Background Facts and Proceedings.

T.K. is the father and P.K. is the mother of K.K., born in 1999. The parents have two older children, not at issue here, and are no longer in a relationship. The father has a substantial criminal history.

K.K. and her siblings came to the attention of the Iowa Department of Human Services (Department) in October 2005, after it was reported that the mother was using controlled substances, the living conditions of the mother's home were poor, and the mother had threatened to commit suicide and was committed to a mental health facility for treatment. The father at that time was incarcerated and serving his sentence for his conviction of operating while intoxicated, third offense. The children were removed from the mother's care and placed in the care of their maternal grandmother.

While in prison, the father was allowed supervised visitation with the child. He also completed six months of drug and alcohol abuse treatment, as well as a course in anger management. The father was released from prison on April 24, 2006.

Thereafter, the court ordered the father to undergo a psychological evaluation. The evaluator reported he was disturbed by the father's level of self-disclosure. The father readily admitted to a longstanding history of alcohol and marijuana use, as well as anger issues, but he denied any of these issues were a problem for him. The father was allowed supervised weekly visitation with the child for two hours. In August 2006, the father pled guilty to a simple assault charge.

The parents were initially noncompliant with the court's orders in the case. At a permanency hearing in October 2006, the court learned the father had not been participating in drug testing. However, the father expressed an interest in having the child placed in his home. The court ordered the father to participate in anger management counseling, drug testing, and weekly AA meetings. The court also ordered the father to refrain from the use of alcohol and controlled substances.

Despite the father's intimations, the father had no contact with the Department for many months after the hearing. The father was charged with public intoxication in December 2006, and he had inconsistent contact with the child. In August 2007, the father was charged with public intoxication and disorderly conduct.

The mother made little progress in the case, and the child remained in the care of the grandmother until the Department learned in November 2008 the child had actually been living with the mother. The father asked for the child to be placed in his care, but due to his lack of participation in the case, the Department denied his request. The father became very upset with the

Department's social worker, using extreme profanity. A modification hearing was held in November 2008, and the court ordered both parents to undergo hair stat and urinalysis testing and to make their homes available for inspection.

A temporary removal review hearing was held in December 2008. The court learned the father and his paramour had undergone drug testing and provided clean samples. However, the child's older sister, two weeks shy of turning eighteen, testified at the hearing as to her relationship with the father. She testified that throughout her life her father has been in prison and that when he was not in prison, he was drunk. She also testified he was violent; he smacked her and the other children, and he would push the children down and call them names. The court continued the child's care in foster care.

In 2009, the mother made numerous reports stating the father and his paramour were drinking around the child. Additionally, the child made reports against the father, but the Department learned the mother had been encouraging the child to make false reports. The mother's and child's reports against the father were unsubstantiated.

In July 2009, the child was placed in the father's care. The Department believed the father was able to recognize the changes he needed to make in his life, and he had been able to accept responsibility for his choices. Although the father continued cooperating with drug testing, he did not participate in AA meetings.

By September 2009, the child was exhibiting extreme behaviors in the father's home and would not follow any directions from the father and his paramour. The child screamed, kicked, hit, and generally caused chaos in the

home. The child was removed from the father's care at the father's request to give the father a respite. The child was then placed in foster care and has not since been returned to the father's care.

In October 2009, the father became intoxicated and was arrested and charged with harassing a public official. A permanency hearing was held in November 2009. There, the father minimized his use of alcohol, explaining it was not a big deal because he only got drunk once. The father also blamed the Department for his drinking, asserting the Department had stated the child's placement in foster care would only be for a short amount of time, and when he found out it was a long-term placement, he became so frustrated he turned to alcohol. The Department recommended that permanency be continued for an additional six months. The court agreed and ordered the parents and the child to participate in a family-centered psychological evaluation. The court also ordered the parents to participate in a substance abuse evaluation and continue drug testing.

The court received a family-centered psychological evaluation on January 20, 2010. The doctor found the father had made little progress in his psychological development since his prior evaluation in 2006, and the father continued to exhibit anti-social, narcissistic personality traits, which would not bode well for his ability to refrain from the use of alcohol and other substances. The doctor opined the father was unlikely to make many substantial improvements in his functioning in the future and would likely continue to use alcohol as a means of coping with anger. The doctor further opined he was not confident either parent would be able to maintain sobriety or be capable of

nurturing, protecting, and providing reasonable behavioral limits for their children in the long run. The doctor found neither parent could be considered safe for their children if they were under the influence of drugs and/or alcohol.

On January 30, 2010, the father was arrested for disorderly conduct and possession of marijuana. He and his paramour separated, but resumed their relationship later. Following a permanency review hearing in April 2010, the court instructed the State to initiate proceedings for the termination of the parents' parental rights.

By July 2010, the father was having inconsistent visitation with the child. The Department reported several incidents where the father's anger and behaviors were at issue. The Department received a report that the father's paramour allowed her son to smoke marijuana in their home, and the father had no problem with it, telling the Department's worker, "[S]o what's the big deal if a seventeen-year-old smokes a little reefer?" The child's foster parents reported the child had stated she believed the father had called her after he had been drinking because he was difficult to understand and slurring his words.

A termination of parental rights hearing was held in July 2010. Although the court found the parents' rights should be terminated, this court reversed that ruling, finding the parents received deficient notice concerning the grounds for termination. After remand, the State again filed a petition for termination of the parents' parental rights. A second hearing was held in April and May 2011.

Both the Department's former caseworker and the service provider testified they believed the father's parental rights should be terminated. The service provider testified she supervised the father's visits with the child and, for

the most part, had not had any issues with the father. She testified he was intoxicated for one of the visits, but generally he was good with the child during his visits. However, she further testified that on the last visit between the child and the father after the court's first order terminating the father's rights, the sheriff had to be called to the scene due to the service provider's fear of the father. She testified the father was extremely upset and refused to come inside the Department office for the visitation, so the visit had to be held in the parking lot. The father refused to get out of his vehicle, and he told his children that "Dad's about to go to jail tonight." The father was very loud and used profanity at the service provider; the service provider had never seen the father like that before. The father's statements and actions were all made in front of the child. The service provider testified she was so scared of the father she began crying and hid behind a car until the sheriff arrived. The service provider testified the father had again been arrested for fighting in a bar since the last termination of parental rights hearing.

The child's therapist testified that although the child was conflicted between her loyalties to her parents and her foster parents, the child had told her she was comfortable where she was in foster care and was ready to move forward. The therapist opined it was in the child's best interests to remain in the care of the foster parents.

The Department's social worker involved in the child in need of assistance (CINA) proceedings for one of the other children testified the father had been cooperating with family safety, risk, and permanency services in that case, but he still was not attending AA meetings or substance abuse treatment. She testified

it was her understanding the father's probation had been revoked due to his relapsing and becoming intoxicated.

The mother testified she and the father had both requested services since the prior termination hearing and they did not receive any services. The father did not testify.

On June 14, 2011, the juvenile court entered its second order terminating the parents' parental rights. The father now appeals.

II. Scope and Standards of Review.

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).

III. Discussion.

On appeal, the father contends the State failed to make reasonable efforts to reunify him with the child, and he claims the State failed to prove the grounds for termination by clear and convincing evidence. He also argues termination was not in the child's best interests, and he asserts the juvenile court failed to "consider or determine" whether the child objected to the termination of his parental rights. We address his arguments in turn.

A. Reasonable Efforts.

The father argues the State failed to make reasonable efforts to reunify him with his children. While the State has an obligation to provide reasonable reunification services, the parent has an equal obligation to demand other, different, or additional services *prior to the termination hearing.*" *In re S.R.*, 600

N.W.2d 63, 65 (Iowa Ct. App. 1999) (emphasis added). When a parent alleging inadequate services fails to demand services other than those provided, the issue of whether services were adequate is not preserved for appellate review. *Id.*; *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). Although the mother testified she and the father had requested services, the father did not testify he had requested services. Moreover, there is no evidence in the record the father demanded any other, different, or additional services after the first ruling terminating his parental rights. We therefore find he has not preserved error on this issue.

B. Grounds for Termination.

The father's parental rights were terminated pursuant to Iowa Code section 232.116(1)(f) and (l) (2011). 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). Termination is appropriate under section 232.116(1)(f) where:

- (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.

Iowa Code § 232.116(1)(f). The father does not dispute the State has proved the first two elements under this section. Instead he contends the State failed to prove the child had been removed from his care for the time specified in subparagraph (3) and that the child cannot be returned to his care.

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 twelve-month limitation for children adjudicated CINA aged four and older. Iowa Code § 232.116(1)(f)(1), (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 child was first removed from her mother’s care in 2006. At that time, the father was incarcerated and the child could not be returned to his care. The child was placed in the father’s care for the first time in the case three years later, in July 2009. The child only remained in the father’s care for three months; the child was returned to foster care in September 2009 and has since remained. It is clear the child has been removed from the father’s physical custody for at least twelve of the last eighteen months, the statutory time-period set forth in section 232.116(1)(f)(3).

Furthermore, under the circumstances presented, it is clear the child could not be safely returned to the father’s care at the time of the hearing. At the time of the child’s initial removal, the father was incarcerated for an alcohol-related crime. His eldest child testified the father was either drunk or in jail throughout her life, and he was violent to her and her siblings. Throughout the case, the

father continued to accrue numerous alcohol-related charges. Despite these facts, he never participated in substance abuse treatment or AA meetings throughout the case, and he continued to minimize his issues with alcohol. Even after the first ruling terminating his parental rights (and while his other child's CINA case is ongoing), the father was arrested in a bar fight. The father's evident alcohol problem without any real participation in treatment or recognition of a problem during the five years this case has been ongoing clearly presents a danger to the child. See *In re J.K.*, 495 N.W.2d 108, 113 (Iowa 1993).

Additionally, the father continues to exhibit extreme anger issues, despite minimal participation in anger management counseling. At his very last visit with the child, the sheriff had to be called due to his threatening behavior towards the service provider. He continued to spew profanities in front of the child. We agree with the juvenile court that termination of the father's parental rights was proper under Iowa Code section 232.116(1)(f).

C. 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.* The legislature highlighted as primary considerations: 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.*; see also Iowa Code § 232.116(2).

Taking these factors into account, we agree with the juvenile court that the child's best interests require termination of the father's parental rights.

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.

P.L., 778 N.W.2d at 41.

The record reveals that the child cannot be returned to the father's care at this time, despite his being given extra time for reunification, and the child should not be forced to wait for permanency. Children are not equipped with pause buttons. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by P.L.*, 778 N.W.2d at 39–40. The child 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 child is in need of protection and permanency, and the child's therapist testified the child stated she was comfortable where she was in foster care and was ready to move forward. Given the father's minimal participation in the case and his failure to address serious concerns regarding his ability to safely parent the child, we agree with the juvenile court that termination of the father's parental rights was in the child's best interests. Accordingly, we affirm the ruling of the juvenile court terminating the father's parental rights.

IV. Conclusion.

For the foregoing reasons, the judgment of the juvenile court is affirmed.

AFFIRMED.