

IN THE COURT OF APPEALS OF IOWA

No. 1-134 / 11-0059
Filed March 7, 2011

**IN THE INTEREST OF C.D.F.,
Minor Child,**

J.F., Father,
Appellant,

M.F., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
Associate Juvenile Judge.

A father and mother appeal separately from the order terminating their
parental rights. **AFFIRMED.**

Cory Goldensoph, Cedar Rapids, for appellant father.

Judith Jennings Hoover, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney
General, Jerry Vander Sanden, County Attorney, and Rebecca Belcher,
Assistant County Attorney, for appellee State.

Kristin Denniger, Cedar Rapids, for minor child.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

DANILSON, J.

A father and mother appeal from the order terminating their parental rights to their eighteen-month-old son, C.D.F. The mother contends the State failed to prove the grounds for termination by clear and convincing evidence and termination is not in the child's best interests. The father alleges the State failed to make reasonable efforts for reunification. Considering the mother's aggressive and erratic behaviors that led to the suspension of visitation with the child and her minimal effort to become a safe and stable option for placement of the child, we affirm termination of her parental rights. We further conclude termination of the father's parental rights is proper under the facts and circumstances of this case.

I. Background Facts and Proceedings.

The parents are married, but have been separated since 2008. Their relationship is very unstable and has included significant incidents of domestic violence, with each parent being the aggressor at different times. The mother has threatened to kill the father's parents on numerous occasions and has damaged their property. The father has physically assaulted his ex-girlfriend (and mother of his oldest child) and has been convicted of causing damage to property. The parents have both been incarcerated multiple times. They have significant histories of substance abuse that began in their teenage years, and include the use of cocaine, methamphetamine, and marijuana. The parents have resided in Rock Island or Moline, Illinois, for the majority of their lives, and have extended families in Illinois.

They have two children together. The older child, E.F., born in February 2007, was removed shortly after birth due to positive tests for cocaine and marijuana. E.F. resides with his paternal grandparents in Illinois, and child welfare authorities in that state are beginning their process to establish permanency for him.¹ The parents each have another older child, from different relationships. The mother's oldest child resides with its father, and the mother has no contact with the child. The father's oldest child resides with its mother, and the father maintains some supervised visitation with the child.²

The instant proceedings were initiated in June 2009, when the mother admitted to abusing drugs during her pregnancy with C.D.F. On June 8, 2009, she entered Heart of Iowa in Cedar Rapids, a residential substance abuse treatment program for pregnant women or women with children. She tested positive for cocaine upon her admission to Heart of Iowa. The mother left Heart of Iowa within a week, only to return a few days later. She again tested positive for cocaine upon her re-admission. Approximately a week later, the mother gave birth to C.D.F. at St. Luke's Hospital. C.D.F.'s postpartum drug test indicated he had cocaine in his system at the time of his birth. Hospital staff began to ask about the mother's drug use history, and the mother became upset and combative, stating she did not want DHS to remove her baby. The mother left the hospital against medical advice, but came back an hour later. When she

¹ Aside from a brief trial home placement with the father in June 2010 (which resulted in E.F.'s return to the custody of the paternal grandparents when the father was placed in jail on June 30, 2010), the child has not been returned to the care of either parent since removal.

² A founded child abuse report in Illinois resulted from an incident of domestic violence in January 2010 that was perpetrated by the father against the mother of his oldest child and in the presence of the child.

asked to take C.D.F. outside with her to smoke a cigarette, a medical hold was placed on the child so the mother would not leave the hospital with him.

Hospital staff contacted DHS to complete an assessment as to the child's welfare and whether he was to remain in the mother's care. The mother was uncooperative with the DHS caseworker who arrived at the hospital. She refused to provide the father's name or information regarding potential relative placements for C.D.F. The following day, the caseworker requested and received a court order removing C.D.F. from the mother's custody and placing him in family foster care. C.D.F. has continuously remained in family foster care since his removal in late June 2009. The mother stipulated to his adjudication as a child in need of assistance (CINA) in August 2009.

The mother was discharged from her placement at Heart of Iowa in September 2009 because she was no longer qualified to remain in the program with her child placed in family foster care. She moved in with a couple she barely knew in their home near Cedar Rapids.³ Then in December 2009, the mother went to live with her parents in Rock Island.

During the mother's pregnancy with C.D.F., the parents were not allowed to have contact with each other pursuant to an Illinois court order, which was entered due to domestic violence between them. The no-contact order continues to be in place. The father resides in Moline, Illinois. After C.D.F.'s birth, the father was notified of the child's removal and placement in family foster care. He requested that paternity testing be completed and stated he was not interested in

³ The mother had also lived with the friends for a few months prior to her admission to Heart of Iowa.

establishing a relationship with the child until paternity was confirmed. The father failed to attend two appointments for paternity testing that were scheduled in September and October 2009. In November 2009, the father attended an appointment and test results established his paternity as to C.D.F. The child was moved to a foster home in Scott County to facilitate visitation with both parents.⁴

The father began participating in services in December 2009. He submitted to drug testing on several occasions. These tests were negative, although the record indicates concerns as to whether the father tampered with the test using a “wizinator.” Throughout these proceedings, the father continued to associate with people who used illegal substances. The father participated in fully supervised visitation with C.D.F. twice weekly. During these visits, the father exhibited “appropriate” behavior toward C.D.F. “the vast majority” of the time, although he had become aggressive toward caseworkers and while on the phone on several occasions. These aggressive behaviors occurred in the presence of C.D.F. A case home study was performed by Illinois caseworkers, and the father’s home was not approved for placement of C.D.F.

The mother’s visits were completely supervised and took place twice weekly at Bethany Services. The mother consistently attended visits, and her interactions with the child were usually “appropriate,” and she was able to meet his “basic care needs.” However, the mother exhibited aggressive, threatening behavior toward caseworkers that occurred in the presence of the child. She refused to attend parenting classes or learn about parenting skills. Visits

⁴ The child has remained in this foster family placement since November 2009. However, the mother moved in with her parents in Rock Island shortly after the child’s move to Iowa.

regularly ended early due to the mother becoming “extremely argumentative and aggressive” toward caseworkers and supervisors, and her continued use of profanity and derogatory comments, which led to “extremely hostile” situations. The mother’s behavior increasingly worsened, to the point that caseworkers felt threatened and unsafe and feared for the child’s safety around the mother due to her instability during these escalations and outbursts. On June 1, 2010, after another abrupt and hostile end to a visit, the DHS director stated that the mother was no longer welcome back into the building due to her “violent nature.” On June 8, 2010, the court entered an order suspending the mother’s visitation with the child. After her visits with C.D.F. were suspended, the mother also discontinued seeing her therapist in Rock Island.

Several weeks prior to the termination hearing, an incident occurred where the mother was intoxicated and got dropped off by a taxi at the father’s house. The father allowed her to stay at his house, despite knowing the no-contact order between them was in place. He stated that he felt sorry for her and he could not turn her away. Throughout these proceedings, the father and mother continued to have contact with each other, despite knowing that a no-contact order was in place. In late June 2010, the father was arrested as a result of another violation of the no-contact order.

The termination hearing took place over two days, on July 9 and August 19, 2010. At the hearing, the mother repeatedly interrupted witnesses with argumentative statements. She later testified that she was no longer seeing her sons or her therapist, and stated that she had been pushed too far and that instead of going insane or returning to drug use, she decided to stop and walk

away. The mother then refused to continue her testimony and walked out of the hearing.

On December 28, 2010, the juvenile court entered its order determining, in part:

C.D.F. could not safely be returned to the care of a parent at this time or in the reasonably near future. The parents have an unhealthy, violent relationship. The parents continue to violate the order of protection set in place by Illinois authorities. Contact between the two of them would place any child in their care at imminent risk of harm. The mother's behavior continues to be an issue. Her erratic and sometimes aggressive behavior would be detrimental to any child in her care. The parents both have a history of significant substance abuse. Both deny current use. However, the father continues to associate with individuals who use illegal substances and he has a history of attempting to manipulate drug testing. The mother was intoxicated in June 2010, when she appeared at the father's house. Given each parent's history and their current behavior, the risk of continued substance abuse by both parents is too great to say that it no longer poses a risk of harm to a child in their care. The father's home has not been approved by Illinois child welfare authorities as a placement for C.D.F., nor have Illinois authorities placed E.F. with the father due to their concerns regarding his safety if that were to occur. Without approval from Illinois, interstate compact provisions do not allow the child's placement in Illinois. Clearly, C.D.F. would remain a child in need of assistance if returned to the care of either parent.

The court ordered termination of the father's and mother's parental rights pursuant to Iowa Code section 232.116(1)(h) (2009). The parents now appeal.

II. Standard of Review.

We review termination proceedings de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Although we are not bound by them, we give weight to the district court's findings of fact, especially when considering the credibility of witnesses. Iowa R. App. P. 6.904(3)(g); *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). 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). The State has the burden of proving the grounds for termination by clear and convincing evidence. *In re P.L.*, 778 N.W.2d 33, 34, 39 (Iowa 2010); *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

III. Parental Rights of the Mother.

The mother contends clear and convincing evidence does not support termination under section 232.116(1)(h). Termination is appropriate under that section where the State has proved the following:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated CINA.
- (3) The child has been removed from the physical custody of the parent for at least six of the last twelve months.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents at the present time.

Iowa Code § 232.116(1)(h). There is no dispute the first three elements have been proved. Our inquiry therefore focuses on whether there is clear and convincing evidence the child cannot be returned to the care of either parent at the present time. *See id.*

The mother contends "there is no question that C.D.F. would not have been at risk of any harm with the mother at the time of trial that would justify the adjudication of him as a child in need of assistance." She states that "the circumstances underlying the child's original adjudication involved concerns regarding the mother's substance abuse," and that "substance abuse is no longer a genuine issue for her." The mother further argues that only when "issues regarding C.D.F.'s care were presented" would she become "visibly upset and, at times, say and do things that were inappropriate." The mother concludes that if

C.D.F. were placed in her care, then “in turn her strange behavior, would be eliminated.”

These proceedings were initiated in June 2009, when the mother admitted to abusing drugs during her pregnancy with C.D.F. She tested positive for cocaine twice during the last several weeks of her pregnancy. The child tested positive for cocaine in his system at birth, and has been removed from the mother’s care since that time. The mother was offered extensive services to work toward reunification with C.D.F. The mother was already involved in similar services in Illinois for nearly the same situation involving C.D.F.’s older brother.

We begin by acknowledging that the mother has exhibited periods of progress throughout these proceedings. She completed substance abuse treatment and has provided many negative drug tests for DHS. She consistently participated in visitation with C.D.F., interacted appropriately with him, and provided him with clothing, wipes, diapers, formula, and toys. She generally demonstrated good parenting skills.

However, during these same visits, the mother’s behavior could deteriorate quickly, to the point that it created an unsafe environment for the child. Several caseworkers and supervisors testified that the mother could be set off on a whim, and her behavior would turn aggressive, volatile, and erratic. She threatened DHS workers, and made profane and derogatory comments. These behaviors occurred in the presence of C.D.F. During the mother’s final visit with C.D.F. on June 1, 2010, after which all further visitations were suspended, the mother took all of C.D.F.’s clothes off and refused to dress him. The mother was out of control, and caseworkers feared for the child’s safety and their own safety.

The DHS director had to respond to the situation, as well as other caseworkers. The child was taken from the mother, and the mother damaged the door to the property as she left. As the juvenile court noted:

Testimony provided by Robin Krogman, Tanager Place, and Janelle Greenwood, Bethany Services, includes multiple examples of incidents where the mother's behavior during visitation was aggressive, intimidating, and demonstrated inappropriate and potentially unsafe parenting. The mother, at times, made nonsensical statements to and about C.D.F., bringing into question her multiple stability, e.g. telling C.D.F. that he should chew on wood, that he is a devil child, becoming upset when other workers at Bethany Services walked by the visitation room. According to credible testimony provided by Janelle Greenwood, the mother's behavior during visitation has become increasingly aggressive in the past several months.

The mother contends she has made efforts to change her lifestyle and become a safe and stable option for placement of the child, but the evidence in the record indicates otherwise. Also in the month preceding the termination hearing (after the mother's visitation with C.D.F. was suspended), the mother showed up intoxicated at the father's house, in violation of the no-contact order. Another violation of the no-contact order several weeks later resulted in the father's arrest.

At the termination hearing, the mother testified that she "stopped" visitations with her children and seeing her therapist because, as she stated, "[DHS] on both sides of the river has kind of pushed me too far. Instead of like going totally insane, I just stopped." The mother further explained, "I can't handle it no more. Basically, they are pushing me into a type of insanity or drug use" The mother then refused to finish her testimony and walked out of the hearing. The mother's actions indicate she has little regard for the court's orders

or the consequences they have on her ability to reunite with the child. As the court stated:

During the mother's testimony in these proceedings, she reported that in addition to no longer seeing C.D.F., she was no longer visiting E.F. [her middle son], and she was no longer seeing her therapist, Mr. Estes. The mother testified that she believed that she had been pushed too far and that instead of going insane, she decided to stop and walk away. The mother then refused to continue her testimony and left the courtroom.

The mother continues to blame others for the fact that C.D.F. is not in her care, rather than taking responsibility for her own behaviors that have resulted in his continued removal from her care. It is unclear whether additional time could allow the mother to show the stability necessary to parent C.D.F., and unfortunately, additional time could come at the expense of C.D.F.'s need for permanency and security.

We agree with the juvenile court that C.D.F. cannot be returned to the mother's care at the present time or anytime soon. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (noting evidence of a parent's past performance may be indicative of the quality of the future care that parent is capable of providing). The mother does not have an unlimited time to correct her deficiencies. See *In re H.L.B.R.*, 567 N.W.2d 838, 845 (Iowa Ct. App. 1997). Clear and convincing evidence supports termination of her parental rights.

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). *P.L.*, 778 N.W.2d at 37. In determining best interests, this 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 C.D.F.’s best interests require termination of the mother’s parental rights. Further, no factor weighing against termination in section 232.116(3) requires a different conclusion. C.D.F. is an adoptable age, and is in need of permanency and security. The mother’s instability and poor insight sufficiently supports the finding that she is unable to provide for the child’s long-term nurturing and growth. It would be a detriment to C.D.F.’s physical, mental, and emotional condition to maintain this parent-child relationship. We therefore affirm the termination of the mother’s parental rights.

IV. Parental Rights of the Father.

Because the father does not dispute the grounds for termination have been proved, we may affirm on those grounds. See Iowa R. App. P. 6.903(2)(g)(3) (“Failure to cite authority in support of an issue may be deemed waiver of that issue.”); *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) (“When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.”). However, the father contends the State failed to make reasonable efforts for reunification or eliminate the need for removal. He alleges a situation was created in this case “in which it would have been impossible for him to reunify with C.D.F.” In support of this contention, the father states that DHS was not able to transport the child across state lines without Illinois approval, so that even “if visitations were to ever progress to the point where visits could be held at the father’s home, they could not have been held there.”

The State contends the father has failed to preserve this issue, and argues that “[i]t is too late for the father to raise this issue for the first time on appeal.” We agree. Upon our review, we find no mention was ever made in regard to the sufficiency of the services. A parent’s challenge to services by the State should be made when they are offered, not when termination of parental rights is sought after services have failed to remedy a parent’s deficiencies. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005). The father fails to identify what services he previously requested, or how he otherwise challenged the adequacy of services prior to the termination hearing. We conclude this issue has been waived. See *id.* (concluding parent’s reasonable efforts claims were not preserved on appeal where DHS “has an obligation to make reasonable efforts toward reunification, but a parent has an equal obligation to demand other, different, or additional services prior to a permanency or termination hearing”).

Even assuming, *arguendo*, that the father had preserved this issue for our review, we would find it to be without merit. Several caseworkers testified that the father’s visitation with the child had not progressed to the point that it could be conducted at the father’s home (despite the home not being approved for placement of the child). The father’s continued contact with individuals using illegal substances, and with the mother in violation of the no-contact order, support the conclusion that it would not be appropriate for visitation to be held at the father’s home. Further, the record is replete with concerns that the father’s own drug tests have been compromised. The father has shown little progress to becoming a safe and stable placement for the child, and not requested additional or different services than those offered to him since December 2009.

Having considered the issue raised on appeal, we find no reason to further delay the permanency the child needs and deserves. Termination of parental rights is in the child's best interests, see Iowa Code § 232.116(2), and no factor weighing against termination in section 232.116(3) requires a different conclusion. We affirm the termination of the father's parental rights.

AFFIRMED.