

**IN THE COURT OF APPEALS OF IOWA**

No. 1-177 / 11-0178  
Filed May 11, 2011

**IN THE INTEREST OF C.L.,  
Minor Child,**

**J.D.L., Father,  
Appellant.**

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Appeal from the Iowa District Court for Black Hawk County, Kellyann M. Lekar, Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

Michael H. Bandy of Bandy Law Office, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steve Halbach, Assistant County Attorney, for appellee.

Brett Schilling, Waterloo, for mother.

Linda Hall, Waterloo, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., Potterfield, J., and Huitink, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**SACKETT, C.J.**

A father appeals<sup>1</sup> from the juvenile court order terminating his parental rights, contending the State did not make reasonable efforts to reunify him with the child. We affirm.

We review the termination of parental rights de novo. *In re C.S.*, 776 N.W.2d 297, 298 (Iowa Ct. App. 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). 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). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re J.A.D.-F.*, 776 N.W.2d 879, 883 (Iowa Ct. App. 2009).

The child, born in 2007, was removed from the parents' home in late 2009 because of violence in the home and concerns about the parents' mental health. The child was placed with a relative and remained in that placement throughout the pendency of this case. The parents repeatedly violated a no-contact order between them and involved the child.

A no-contact order, apparently entered in district court as a result of a domestic assault, prevented contact between the father and child. Several times during the proceedings the court instructed the father he needed to seek a modification of the order to allow for visitation. The father's June request for

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<sup>1</sup> The petition on appeal does not set forth "findings of fact or conclusions of law with which you disagree" as required by Iowa Rule of Appellate Procedure 6.1401–Form 5 (2010). This requirement was added effective May 27, 2010. It appears a previous version of the form was used in this appeal.

modification of the order to allow supervised visits with the child was resisted by Department of Human Services and the guardian ad litem. The court denied the request “until the Court has received a recommendation concerning the best interests of the child as to whether or not such visitation and contact should take place from Larry Ryan who is the child’s treating mental health professional”. At the time of the termination trial, the father had not been permitted a visit with the child.

In mid-2010 the State petitioned to terminate the parental rights of both parents. At the hearing the father requested a six-month deferral of permanency. The mother consented to the termination of her parental rights. The court terminated the father’s parental rights under Iowa Code section 232.116(1)(e), (g), and (h) (2009). The father appeals.

On appeal, the father does not challenge the statutory grounds for termination. Any challenge is therefore waived and we affirm the statutory grounds cited by the court. The father’s only claim is that the State did not make reasonable efforts to reunify him with the child because he was not permitted visitation with the child. The State contends the father failed to preserve this issue for our review.

The father asserts that “[d]uring testimony regarding termination of the father’s parental rights there was testimony from the Department of Human Services that the father had never been allowed to participate in visits with the child.” The transcript of the termination hearing shows only the mother testified at the hearing. No department employees testified. The father did not testify but

offered into evidence three documents: two appointment cards to show he was checking in with his probation officer and an undated letter from Pathways documenting inconsistent attendance at anger management classes and extended outpatient groups and sessions.

The father does not challenge the court's findings that he had failed to participate in mental health treatment and substance abuse treatment.<sup>2</sup> The record discloses the father was only minimally compliant with the requirements of the case permanency plan, including the reasonable services offered to help him work toward reunification with the child. Although reasonable efforts may include a visitation arrangement designed to facilitate reunification, see *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996), our focus is on the services the State provided and the parent's response, not on services the parent now claims were not provided. See *In re C.B.*, 611 N.W.2d 489, 493-94 (Iowa 2000) (noting "reasonable efforts" is not a substantive requirement for termination, but affects the State's burden to prove the elements for termination that require reunification efforts). "However, in making reasonable efforts to provide services, the State need not search for unavailable services." *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002). We conclude the State made reasonable efforts to reunify the father with the child under the circumstances before us.

We further conclude the court properly declined to defer permanency for six months. As noted above, the father was only minimally compliant with the requirements of the case permanency plan. He was not participating in drug

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<sup>2</sup> Nor does the father challenge the apparently mistaken finding that he took no action to modify the no contact order to permit supervised visitation.

testing. He was not following through with substance abuse treatment or mental health services. He was not compliant with medication management. He was incarcerated at the time of the termination and unavailable to parent the child.

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. *C.B.*, 611 N.W.2d at 494. “The future can be gleaned from evidence of the parents’ past performance and motivations.” *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). In this case, the father has had his parental rights terminated to another child, he has not obeyed the law so as to be available as a parent or to participate in services, and he has not taken advantage of the services offered to help him reunify with the child.

We affirm the termination of the father’s parental rights.

**AFFIRMED.**