IN THE COURT OF APPEALS OF IOWA

No. 1-183 / 11-0233
Filed April 27, 2011

IN THE INTEREST OF T.H. Jr. and M.H.,
Minor Children,

T.E.H. Sr., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen, Associate Juvenile Judge.

A father appeals from the order terminating his parental rights. **AFFIRMED.**

Randall L. Jackson, Des Moines, for appellant father.

Lane Lucas, Des Moines, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Andrea Vitzthum, Assistant County Attorney, for appellee State.

Kimberly Ayotte of the Youth Law Center, Des Moines, for minor children.

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

DOYLE, J.

A father appeals from the order terminating his parental rights to his children. He claims the State failed to prove the ground for termination by clear and convincing evidence. We review this claim de novo. *See In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The father and mother have two children together.[1] The family came to the attention of the Iowa Department of Human Services (Department) in February 2010 when the infant was hospitalized for failure to thrive. A child protective worker from the Department spoke with the mother, who informed the worker the father had physically assaulted her one week earlier. She had visible injuries from the assault. The worker reported the assault to the police against the mother's wishes.

The father was arrested and charged with domestic abuse assault. He pleaded guilty on May 3, 2010, and was released from jail the next day. He had two supervised visits with his children before being arrested on new charges on May 14 when he broke into the mother's home and assaulted her again. He has remained incarcerated since then.

The children were removed from their parents' care and placed in foster care where they have since remained. They were adjudicated as children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b) and (c)(2) (2009) in May 2010. A dispositional order entered in July prohibited the father from having visits with the children due to his incarceration. A subsequent review

[1] The mother has not appealed from her consent to the termination of her parental rights.

order found reasonable efforts had "been made to eliminate or prevent the need for removal of the children from the home." The order advised the parents "that failure to identify a deficiency in services may preclude the party from challenging the sufficiency of services in a termination of parental rights proceeding." *See* Iowa Code § 232.99(3).

The State filed a petition to terminate parental rights in October 2010. Following a hearing, the juvenile court entered an order terminating the father's rights to the children under section 232.116(1)(h).

The father appeals. He claims the State did not make reasonable efforts to reunite him with his children. Specifically, he argues the juvenile court's dispositional order "precluding visitation while [he] was at Polk County jail negates 'incarceration due to his own actions' as a ground for not providing reunification services."

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). 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*. The father did not appeal the court's dispositional order prohibiting visitation at the Polk County jail. *See In re A.W.*, 464 N.W.2d 475, 477 (Iowa Ct. App. 1990) (stating a CINA disposition order is an appealable final order). Nor did he challenge the court's review order, which found reasonable efforts had been made and noted that no additional services had been requested by the parties. Rather, he waited until the

termination hearing to argue he should have been afforded visitation with the children while incarcerated. That was too late. *See In re C.H.*, 652 N.W.2d 144, 148 (Iowa 2002) (stating a parent may not wait until the termination hearing to challenge the services provided by the State).

Assuming, arguendo, that error was preserved, "the reasonable efforts requirement is not viewed as a strict substantive requirement of termination." *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Instead, the scope of efforts by the State to reunify parents and children after removal impacts the burden of proving those elements of termination that require reunification efforts. *Id.* The State must accordingly show reasonable efforts as part of its ultimate proof the children cannot safely be returned to the care of a parent. *Id.* We conclude that burden was met here.

The juvenile court found the "setting for family contact at the Polk County jail [is] non-conducive to promoting the best interests of young children (there is no in-person contact; participants view each other via video)." This was a valid consideration for the court. *See In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000). The nature and extent of visitation is always controlled by the best interests of the children. *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). While visitation is "an important ingredient to the goal of reunification," it is "only one element in what is often a comprehensive, independent approach to reunification." *Id.* The father has not shown how having visits with his very young children at jail via video would have improved his parenting or facilitated reunification. *See C.B.*, 611 N.W.2d at 493 (stating the focus of reasonable efforts is on services to improve parenting and facilitate reunification while

providing adequate protection for the children). Indeed, the record shows the father made little effort to respond to other services designed to remedy the concerns that prompted the children's removal. *See id.* at 494 (stating our focus is on the services provided by the State and the parent's response to those services, not on the services the parent now claims DHS failed to provide).

As the juvenile court found,

> For the ten days that he was released to the community in May, 2010, [the father] chose to smoke marijuana and abuse alcohol. He also has a history of having used cocaine and methamphetamine. . . . [H]e failed to follow through on the evaluation that recommended outpatient treatment. He has never participated in batterers' educational programming and testified incredibly that he had no problem with domestic violence. He blames his behaviors on his substance abuse problem.
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> Given [the father's] past behaviors, there is little reason to believe that the future holds an entirely different scenario for him. . . . These children should not have to wait for the unlikely chance that their father would ever be in a position to provide them the safe and stable permanency they need.

We fully agree with these findings and adopt them as our own.

"'Children simply cannot wait for responsible parenting.'" *In re C.H.*, 652 N.W.2d 144, 151 (Iowa 2002) (citation omitted). "'The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.'" *Id.* (citation omitted). The father testified at the termination hearing that he would not be released from prison until at least July 2011. And he recognized that even when released, the children could not immediately be returned to his care. "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. Termination will provide these children, who are with preadoptive foster parents, with the safety, security, and permanency they deserve. *See id.*

The judgment of the juvenile court is affirmed.

AFFIRMED.