

IN THE COURT OF APPEALS OF IOWA

No. 1-236 / 11-0283
Filed April 27, 2011

**IN THE INTEREST OF C.J.H.,
Minor Child,**

**J.M.D., Father,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko,
Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Harold K. Widdison, Sioux City, for appellant father.

Stephanie Parry, Sioux City, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Patrick Jennings, County Attorney, and Diane Murphy,
Assistant County Attorney, for appellee State.

Marchelle Denker, Sioux City, for minor child.

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

DOYLE, J.

A father appeals from the order terminating his parental rights. Upon our review, we affirm.

I. Background Facts and Proceedings.

D.H. is the mother and J.D. is the father of C.H., born October 2006.¹ The parents are not married. In May 2009, law enforcement officials serving an eviction notice to the parents observed drug paraphernalia in the parents' home. The officers found marijuana pipes, a scale, and a bong. Both parents admitted to using drugs, but they denied using drugs in the child's presence. The parents were cited for possession of drug paraphernalia following the incident. The incident was then reported to the Iowa Department of Human Services (Department).

Thereafter, a Department worker contacted the parents via telephone to assess the situation; however, the parents refused to tell the worker where they were living and refused to meet with the worker. They stated they had not been convicted of anything and they would meet with the worker after their court hearings. As a result of the parents' citation and their lack of cooperation, the Department sought to have the child temporarily removed from the parents' care. The juvenile court then entered its ex parte removal order on June 23, 2009.

The parents were arraigned on their charges on June 25, and the Department's worker was at their arraignment with the juvenile court's removal order. The district court judge ordered the parents to disclose the child's location or be incarcerated for contempt of court. The parents then revealed the child

¹ The mother's parental rights are not at issue in this appeal.

was staying at the home of the child's paternal grandparents. The parents were later asked to provide urine samples for testing. The mother complied, and her test was positive for marijuana. The father refused to provide a sample, stating he was not the father of the child.

The Department's worker talked to the paternal grandparents, who reported the mother had complained in the past about the father slapping her, though they had never witnessed any domestic violence between the parents. The paternal grandparents further advised the father had been diagnosed in the past with attention deficit/hyperactivity disorder, oppositional defiant disorder, and that the father was very antisocial. The juvenile court placed the child in the paternal grandparents' care, and the parents were allowed supervised visits with the child.

On June 29, 2009, the State filed its petition asserting the child was a child in need of assistance (CINA). The petition noted the parents' refusal to cooperate with the Department and the mother's history of drug use. An attorney was appointed for each parent. Thereafter, the father's attorney withdrew from the case, citing a conflict of interest, and a new attorney was appointed to him.

On July 6, 2009, police were called to the paternal grandparents' home after the parents arrived at the home to visit the child. The father became "unglued" during the visit after his mother asked him to stop trying to anger the child. In response, the father stated: "[H]e can do any f**king thing he wants to do—he'll tear [their] f**king house apart and down and no one will stop him." The parents left before officers arrived. An officer later phoned the father to relay the grandparents' wishes that he not visit their home again. He responded: "Fine,

f**k my parents. I will f**king take my kids away from them and they will never f**king see them again.” Thereafter, a no-contact order was obtained to keep the parents from the paternal grandparents’ residence.

On August 18, 2009, the juvenile court adjudicated the child CINA, and a Court Appointed Special Advocate (CASA) was appointed for the child. The mother began treatment for substance abuse, and the parents resumed supervised visitation. The mother progressed in treatment, and at the beginning of September, the parents’ visits began being held separately. The mother ended her relationship with the father in October 2009, and the child was placed with the mother at the mother’s treatment center in November.

While the mother steadily progressed toward reunification the child, the father’s progress declined. His weekly supervised visits with the child initially proceeded well. He also made appointments for anger management issues and for a substance abuse evaluation. Following the evaluation, the treatment center reported the father had tested positive for marijuana but he had agreed to begin intensive treatment four days a week. However, the father told the service provider he was not going to go to any kind of treatment, the worker at the treatment center was crazy, and he did not have a problem. He later received a second chemical dependency assessment that recommended the father complete an intensive outpatient substance abuse treatment program. There is no evidence the father participated in the recommended program. The father was also asked to get a paternity test and to have a mental health evaluation. The father refused, stating he did not have enough time. Several months later, DNA testing later confirmed C.H. was the father’s biological child.

Concerns then arose regarding the father's behaviors during the visits towards both the child and the service provider supervising the visits. The father used excessive profanity towards the service provider. Additionally, the service provider reported the father had unrealistic expectations for the child's behavior, despite her young age, and the father's interactions with the child during the visits were often negative as a result. The service provider also reported the father talked disparagingly of the paternal grandparents in front of the child, even though he had been told repeatedly this was not in the child's best interests. Those concerns escalated, and an additional service provider was assigned to supervise the father's visits. When an incident occurred that required a visit to be rescheduled, the father began making threatening phone calls to the service provider and her supervisor demanding visitation. The father then was a no-show at several visits. Thereafter, the service provider requested the father sign a behavior contract before it would resume visits, which required the father to, among other things, refrain from profanity and disparaging various people. The father refused and continued to make threatening calls to the service provider. On one occasion, the father called the service provider's supervisor sixteen times until the supervisor shut off her phone. The father was instead offered telephone visits with the child, but he refused.

By the end of October 2009, the father had stopped participating in services, including visitation with the child. The child's CASA reported the father had been contemplating voluntarily terminating his parental rights, while blaming the "system" for not allowing him to reestablish a relationship with the child. The CASA opined that the father was quick to anger and unable to deal with his

frustration. In December 2009, the father's second attorney filed a motion to withdraw as the father's attorney, stating that the father had indicated his continuing dissatisfaction with his representation. The motion referred to three profanity-laced phone calls from the father on December 23, 2009, in which the father blamed the attorney for the father's situation.

The juvenile court at the dispositional hearing permitted the attorney to withdraw and informed the father that it would not appoint him another attorney at the state's expense. The court then entered its order, directing the parents participate in and cooperate with all services recommended by the Department. The court's order noted that the mother had resumed her contact with the father.

The mother relapsed in February 2010, and the child was placed back in the paternal grandparents' care. Additionally, the mother continued seeing the father. However, by June 2010 the mother had broken all ties with the father, and she began to again progress towards reunification with the child.

A permanency review hearing was set for June 2010. The CASA and the Department recommended the father's rights be terminated. Both reported the father had not had any communications with the Department, the CASA, or the service providers in many months, and he had had no visits with the child since October 2009.

Following the permanency review hearing, the juvenile court entered its order giving the mother an additional six months for reunification. However, because the father had stopped participating in services for some time, the court ordered that reunification efforts between the father and the child cease, and it directed that a termination of parental rights petition be filed concerning the

father. The court also directed that the mother demonstrate she had completely severed her relationship with the father.

In September 2010, the State filed its petition for the termination of the father's parental rights. On February 4, 2011, the juvenile court entered its order terminating the father's parental rights pursuant to Iowa Code §§ 232.116(1)(b), (d), (e), (f), and (l) (2009). The court found:

While it is unusual for this court to terminate the parental rights of only one parent, this case is an exception. After a review of the evidence entered in the underlying [CINA] proceeding, the court does find by not only clear and convincing evidence, but overwhelming evidence, that the parental rights of [the father] to . . . [the child] should be terminated. To maintain that legal relationship would subject [the child] to ongoing emotional stress and possible physical harm and neglect throughout her life and this is clearly not in her best interests. [The father] has done nothing to address his mental health or substance abuse issues. He has also been unwilling to participate in reunification services. There have been many occasions where he has been confrontational and threatening to all involved. He has also been assigned two lawyers, with whom he could not and would not cooperate. He has failed to provide any financial, emotional, or physical support for [the child]. As [the father] has shown no interest in being reunified with [the child], the court finds that [the child] should be released from any type of hold that he may have on her legally and be free to find permanency.

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). In considering whether to terminate, our primary considerations are the child's safety; the physical, mental, and emotional condition and needs of the child; and the placement that best provides for the

long-term nurturing and growth of the child. Iowa Code § 232.116(2); *P.L.*, 778 N.W.2d at 37.

III. Discussion.

A. Reasonable Efforts.

In challenging the termination of his parental rights on several grounds, the father argues the Department “failed to provide services to [him] to address his mental health concerns which inhibited him from being able to accept and handle the multitude of people monitoring his relationship with [the child].” While the State has an obligation to make reasonable efforts toward reunification, a parent has an equal obligation to demand other, different, or additional services prior to a permanency or termination hearing or the issue is considered waived for further consideration on appeal. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005); *see also* Iowa Code § 232.102(7).

We recognize a parent suffering from mental illness suffers a disability and may need special accommodations. This issue, too, should be raised at the removal or review hearing. It is too late to challenge the service plan at the termination hearing.

In re L.M.W., 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). The record reveals the father never demanded any other, different, or additional services during the course of the CINA proceedings. Accordingly, the issue of whether services were adequate has not been preserved for our review. *See id.*; *see also In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999).

However, even assuming, *arguendo*, that the father had properly preserved this issue for our review, we would still find the father was provided more than adequate services to promote reunification with his child. The

reasonable efforts requirement is not a strict substantive requirement for termination. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Instead, the services provided by the Department to reunify parent and child after removal impact the State's burden of proving the child cannot be safely returned to the care of a parent, which is not a consideration under Iowa Code section 232.116(1)(b). See *C.B.*, 611 N.W.2d at 493; see also Iowa Code § 232.116(1)(b). In any event, the record here shows the Department offered or provided the father numerous reasonable services since the case began. Specifically, the record shows the Department requested the father have a mental health evaluation, but the father refused. Additionally, the father was given visitation with the child until his behaviors became intolerable, and even then the father was offered telephone contact with the child, which he refused. The father simply did not avail himself of those services offered by the Department. We conclude the State has met its burden concerning its obligation to the father to make reasonable efforts toward reunification.

B. Grounds for Termination.

Having found the State met its burden concerning its obligation to make reasonable efforts, we turn to the grounds for termination. 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)(b) where there is clear and convincing evidence that the child has been abandoned or deserted.

“Abandonment of a child” means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof

of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Iowa Code § 232.2(1). Two elements are necessary to establish abandonment: (1) the giving up of parental rights and responsibilities as demonstrated by the party's conduct and (2) an accompanying state of mind that shows intent to forego these rights and responsibilities. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996) (citing *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994)). "Parental responsibilities include more than subjectively maintaining an interest in a child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances." *Id.*

In this case, at the time of the termination hearing, the child had been removed from the father's care for a year and a half. The father had not seen the child or supported the child financially or emotionally in over a year. The father has not made any effort to communicate or establish contact with the child since approximately January 2010, despite calls from the Department and the offer of telephone visits with the child. See *In re M.M.S.*, 502 N.W.2d 4, 7 (Iowa 1993) ("When opportunities for association with a child are few, they become more precious, and the spurning of them more egregious. If few opportunities for association are available, spurning all of them will suffice for a showing of abandonment."). The Department had been willing to continue in-person supervised visits if the father agreed to sign a behavior contract, but he refused. The child has clearly been abandoned by the father as evidenced by the father's lack of motivation/interest in assuming a parental role by failing to involve himself

in services and visitations and in failing to provide the child any emotional or financial support. Upon our review, we therefore agree with the juvenile court that the State proved the grounds for termination under section 232.116(1)(b). Accordingly, we affirm the termination of the father's parental rights to the child.

IV. Conclusion.

Because we find the State met its burden concerning its obligation to make reasonable efforts, and the State proved the grounds for termination under section 232.116(1)(b), we accordingly affirm the termination of the father's parental rights to the child.

AFFIRMED.