

IN THE COURT OF APPEALS OF IOWA

No. 1-686 / 11-0951
Filed October 5, 2011

**IN THE INTEREST OF H.E., M.E., and J.E.,
Minor Children,**

T.J.D., Mother,
Appellant,

D.J.E., Father,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother and a father separately appeal the order terminating their parental rights to three children. **AFFIRMED.**

Matthew L. Noel of Blair & Fitzsimmons, P.C., Dubuque, for appellant-mother.

Steven J. Drahozal of Drahozal Law Office, P.C., Dubuque, for appellant-father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Ralph Potter, County Attorney, and Jean A. Becker, Assistant County Attorney, for appellee.

Patricia Reisen-Ottavi, Dubuque, attorney and guardian ad litem for minor children.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

MULLINS, J.

A mother and father separately appeal a juvenile court order terminating their parental rights to three children under Iowa Code sections 232.116(1)(f) and (h) (2011). The mother argues the State failed to prove the statutory grounds for termination by clear and convincing evidence and that she should have been given a six month extension of time to work towards reunification. The father argues the State did not provide the reasonable services necessary in order to prove the statutory grounds. Upon our review, we affirm.

I. Background Facts and Proceedings.

The mother and father are the biological parents of three daughters: H.E. (born June 2005), M.E. (born June 2006), and J.E. (born May 2008). The mother and father are not married and have an on-again, off-again relationship. Their relationship includes a domestic abuse assault charge in 2005. The children have also been the subject of four founded child protective assessments for lack of supervision or denial of critical care between August 2005 and June 2008.

On February 25, 2010, the children once again came to the attention of the Iowa Department of Human Services (DHS) after someone reported that the mother had been physically assaulted by her paramour in front of the children. A child protective assessment was performed and determined to be founded. Following the assessment, the children were voluntarily placed with their maternal grandmother, and family safety, risk, and permanency services were initiated.

In late-March, the mother resumed custody of her children. However, shortly thereafter, DHS received reports that the mother was passed out on several occasions and the children were running wild around the house. During the ensuing child protective assessment (which was founded), DHS was informed by the children's paternal grandmother that on April 15, 2010, she went to the mother's residence to pick up H.E. for school. When she arrived, the children came out of the house in their pajamas covered in what appeared to be chocolate frosting and dry pudding mix. The paternal grandmother went into the home and found the mother passed out on the couch. The paternal grandmother yelled for the mother to wake up, but she did not respond. The mother did not awake until the paternal grandmother physically shook her. Due to supervision concerns, DHS requested an ex parte removal order, which was granted. The children were placed with their maternal grandmother, where they have remained.

The State filed a petition alleging the children to be children in need of assistance on April 19, 2010. On June 25, 2010, following a contested hearing, the juvenile court adjudicated the children in need of assistance under Iowa Code section 232.2(6)(c)(2).

Upon their removal, the children were noted as being very active and having several behavioral issues, including aggression and defiance. H.E. and M.E. were given counseling at Crossroads, where H.E.'s counselor recommended H.E. undergo further testing to determine if she has ADHD.

After removal DHS attempted to contact the mother on numerous occasions to arrange for services and visitation. However, from April until August 2010 the mother did not respond or participate in services and had no interaction with her children.

The mother participated in her first visit with the children on September 15, 2010. At the visit, the children were out of control and the mother needed prompting on several occasions to ensure adequate supervision. In addition, after visits were initiated, the mother was inconsistent in her attendance including a span from early December 2010 until late February 2011 during which no visits occurred. The mother then missed additional visits in April 2011 due to her incarceration on a driving while barred conviction.

The mother was also inconsistent in her participation in services. The mother was resistive to drug testing and treatment, and received three referrals for a substance abuse evaluation before she followed through. The mother also tested positive for methamphetamine through sweat patches in August 2010 and February 2011.

The father was also offered services following the children's removal. The father was cooperative with services and regularly participated in visits. However, there were concerns regarding the father's use of marijuana. In April 2010, the father was charged with possession of marijuana. As a condition of his probation and the juvenile court involvement, the father was required to undergo substance abuse treatment. He attended treatment and participated

appropriately, but nonetheless continued to use marijuana. The father tested positive for marijuana six times between August 2010 and April 2011.

At a family team meeting in October 2010, the father requested mental health counseling. A referral was made and a mental health evaluation was scheduled, but due to a conflict of interest between the doctor and the guardian ad litem, the evaluation was cancelled. A psychological evaluation was then scheduled by DHS at a different facility for late-December. However, the father had a conflict with the scheduled time; therefore, he was given the contact information and was told to reschedule. Due to rescheduling difficulties with the new doctor's office, the father did not have a mental health evaluation performed until May 10, 2011.

It was reported that the father was struggling during visits as well. The father had weekend visits supervised by his mother or his two sisters. During these visits, both his mother and his sisters reported that the father would either fall asleep on the couch and rely on them to care for the children, or he would yell at the children from the couch and not interact with them. The DHS worker who performed drop-ins during weekend visits made similar observations.

Additional concerns were also raised regarding the father's anger management. In early-February 2011, the paternal grandmother reported that the father had threatened to kill her. As a result, she refused to supervise any more visits in her home. Further, the father admitted that at a family team meeting on February 25, 2011, he "blew up" and was yelling at providers.

The State petitioned to terminate the parental rights of the mother and father on March 31, 2011. The petition came to hearings on April 28 and May 23, 2011. Prior to the hearings, a court appointed special advocate submitted a report recommending the termination of parental rights.

At the hearing, the mother and father testified they had recently begun working on reconciling their relationship, and were living together. They also both admitted they were not in a position to have their children returned to their care at the present time, but requested additional time to work toward reunification.

On June 6, 2011, the juvenile court entered an order terminating the parental rights of the mother and father under Iowa Code sections 232.116(1)(f) and (h). The parents separately appeal.

II. Standard of Review.

We review termination of parental rights proceedings de novo. *In re H.S.*, ___ N.W.2d ___, ___ (Iowa 2011). Although we are not bound by them, we give weight to the factual findings of the juvenile court, especially when considering the credibility of witnesses. *Id.*

III. Mother's Appeal.

A. Statutory Grounds. The juvenile court terminated the mother's parental rights under Iowa Code sections 232.116(1)(f) and (h). On appeal, the mother only challenges the common fourth element asserting the State failed to prove by clear and convincing evidence that the children cannot presently be returned to her care. See Iowa Code § 232.116(1)(f)(4), (h)(4).

The mother openly admitted during the termination proceeding she was not prepared to have the children returned to her care, and needed additional time. The evidence further shows that significant concerns remain regarding the mother's continued drug use and her ability to provide adequate supervision for the three very active children. We find the State met its burden.

B. Extension of Time. Although the statutory grounds have been shown, the juvenile court had the option to continue the placement for an additional six-month period to work towards reunification. See Iowa Code § 232.117(5). However, before making such an order, the court must be able to make a determination that “the need for removal of the child from the child’s home will no longer exist at the end of the additional six-month period.” *Id.* § 232.104(2)(b). As our court has noted:

Under some circumstances extensions could be appropriate. “The judge considering them should however constantly bear in mind that, if the plan fails, all extended time must be subtracted from an already shortened life for the children in a better home.”

In re A.A.G., 708 N.W.2d 85, 92 (Iowa Ct. App. 2005) (quoting *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987), *cert. denied sub nom. In re A.C. v. Iowa*, 485 U.S. 1008, 108 S.Ct. 1474, 99 L.Ed.2d 702 (1988)).

On our review, we agree with the juvenile court that a six-month extension would not resolve the issues that necessitated removal. The record reveals the mother has been very inconsistent in her participation in services and visitation. Following the children’s removal, the mother went five months without participating in services or having any interaction with her children. She then had minimal participation for a short period of time before going another month

without any services or visits. She then missed additional visits because she was incarcerated. The mother's testimony revealed a lack of insight into how her inconsistency has negatively affected her children. In addition, although the mother has completed a substance abuse and mental health evaluation, she has not followed through with the treatment recommendations. In short, we agree with the juvenile court's finding that

Given the age of the children, the length of time they have been out of home, [the mother's] uninvolved involvement in services for months at a time, and her unresolved substance abuse and mental health issues, the Court does not believe an extension would likely address these issues to the extent the girls could be safely placed with [the mother], and does not believe an extension would be in the best interests of the girls.

IV. Father's Appeal.

A. Reasonable Efforts. The father argues the State failed to prove the children could not be returned to his custody because the State failed to show that every reasonable effort was made when it did not provide mental health services.

DHS is obligated to "make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child."

Iowa Code § 232.102(7). However,

the reasonable efforts requirement is not viewed as a strict substantive requirement of termination. Instead, the scope of the efforts by the DHS to reunify parent and child after removal impacts the burden of proving those elements of termination which require reunification efforts. The State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of the parent.

In re C.B., 611 N.W.2d 489, 493 (Iowa 2000).

Upon our review, we find that despite the delay in receiving mental health services, the record shows that the children could not be safely returned to the father's care. Since the beginning of this case, the father has participated in substance abuse treatment. However, he has clearly gained no insight into his substance abuse issues as he openly admits to his continued use and has tested positive for marijuana throughout these proceedings. The father also has significant parenting issues. Despite having weekend visits, the father showed little interest in parenting, spent most of his time on the couch, and relied heavily on his family to provide for his children's care. Further, when visits were held at the DHS office, the father struggled to control his children and they were seen running in the hallways. The father also has unresolved anger management issues, and has recently moved in with the mother, causing additional concerns given their unstable and sometimes abusive past. Accordingly, we find the State made reasonable efforts toward reunification and has met its burden to show that the children could not be safely returned to the father's care.

V. Conclusion.

For the foregoing reasons, we affirm the juvenile court's order terminating the mother and father's parental rights to H.E., M.E., and J.E.

AFFIRMED.