

IN THE COURT OF APPEALS OF IOWA

No. 1-791 / 11-1316
Filed November 9, 2011

**IN THE INTEREST OF M.C. and T.C.,
Minor Children,**

**M.T.C., Father,
Appellant,**

**S.R.D., Mother,
Appellant.**

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

A mother and father appeal from a juvenile court order terminating their parental rights. **AFFIRMED.**

Dustin Baker of Baker Law, Dubuque, for appellant-father.

Whitney R. Jacque of O'Connor & Thomas, P.C., Dubuque, for appellant-mother.

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

Sarah Stork Meyer of Clemens, Walters, Conlon & Meyer, P.C., Dubuque, attorney and guardian ad litem for minor children.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

MULLINS, J.

A mother and father appeal from the district court's order terminating their parental rights to their two children, M.C. (born 2007) and T.C. (born 2008). The mother asserts reasonable reunification efforts were not made and termination of her parental rights was not in the children's best interests. The father also asserts reasonable reunification efforts were not made and requests more time. Because we find both parents were provided with reasonable services and termination is in the children's best interests, we affirm.

I. Background Facts and Proceedings.

The mother has four children, K.B., S.S., M.C. and T.C. The father has six children, including M.C. and T.C. The mother and father have a long history with the Iowa Department of Human Services (DHS). In 2008, the mother's child K.B. was physically abused by the father, who was then convicted of child endangerment. K.B., S.S., and M.C. were removed from the home and the family was offered services. K.B. was permanently placed with her biological father, but S.S. and M.C. were later returned home. The juvenile case was closed in February 2009.

In March 2009, the mother began obtaining prescription narcotic pain medication for S.S., claiming that S.S. had severe back pain. A drug test demonstrated that the mother had not been giving the medication to S.S., but the mother's drug test tested positive for hydrocodone. S.S. was removed from the mother's care in March 2010, and the mother's parental rights to S.S. were terminated in March 2011.

In August 2010, the father assaulted the mother, with M.C. witnessing the altercation. In September 2010, the mother tested positive for morphine. On October 20 and November 18, 2010, the mother did not submit to drug tests. On November 23, 2010, the mother tested positive for methadone. The father, who remained on parole for his child endangerment conviction, was convicted of domestic abuse assault and was incarcerated in November 2010.

In December 2010, M.C. and T.C. were removed from the mother's care due to her continuing drug abuse and homelessness, and placed in foster care. Subsequently, M.C. and T.C. were adjudicated to be in need of assistance. The mother then admitted she had an addiction to prescription drugs. The mother was offered numerous services, but her participation was sporadic and she did not progress such that the children could be returned to her care. The father had been in and out of half-way houses and prison since he was a juvenile, and he remained incarcerated throughout this case. On June 29, 2011, the State petitioned for termination of the mother and father's parental rights and the district court scheduled the hearing for July 19, 2011.

On July 6, 2011, the mother moved to continue the termination hearing and requested that she receive in-patient treatment services. On July 13, 2011, the father also moved to continue the termination hearing and asserted that the mother should be able to go to in-patient treatment with the children and he would be released from prison in August or September 2011.

A hearing was held July 19 and 29, 2011. A DHS social worker testified that she previously worked with the parents in March 2008, and had again been involved with the family since August 2010. At that time, Family Safety, Risk, and Permanency Services (FSRP) were offered to the family. After M.C. and T.C. were removed from the mother's care in December 2010, the social worker recommended that the mother receive inpatient treatment, but the mother declined. The social worker referred the mother to outpatient treatment for both her mental health and substance abuse issues. The mother, however, was not consistent with either. The mother cancelled multiple appointments for her substance abuse treatment and did not begin the program until February 21, 2011. She tested positive for amphetamine on April 15, 2011; oxazepam and temazepam on April 26, 2011; and amphetamine, morphine, and codeine on May 13, 2011.

The mother was also not consistent in attending her mental health counseling. In April 2011, the social worker arranged for the mother to see a new mental health counselor that also had a background with substance abuse issues. The mother only attended two of the five scheduled appointments. Consequently, the mother's mental health and substance abuse had not been adequately treated.

The social worker further testified there were multiple other concerns regarding the mother's ability to care for the children. The mother did not consistently visit the children, and did not attend a recent birthday party and a medical appointment. Some visits were described as "chaotic," with the mother

focusing on phone calls rather than the children. At a visit the week before the hearing, the mother bought inappropriate food for the children and did not bring necessary items like diapers. She also made inappropriate remarks in front of the children, swearing and talking about inappropriate subject matter. The mother had not maintained employment and was unable to provide financially for her children. She also had not maintained adequate housing. She had been in two shelter facilities and was asked to leave both, had been evicted from a residence, had been homeless, and had moved several times. In addition, the mother had concerning relationships with men, including her father that had abused her and was a registered sex offender and inappropriate boyfriends.

The social worker testified the children would not be safe with either parent and recommended that both the mother and father's parental rights be terminated. The father had minimized his anger and domestic violence, had not obtained mental health treatment, did not have housing, and even after his release from prison would require services.

Neither the mother nor the father challenged the statutory elements for termination, but both parents requested additional time to pursue reunification with the children. The mother testified she had been taking prescription pain medication since 2008, but did not start abusing it until December 2010. She testified that on June 6, 2011, a meeting was held and she requested inpatient treatment. She was later accepted at the Heart of Iowa, but was unable to go because DHS workers would not allow the children to go with her. There were other programs that would admit her and the children could join her after she

completed three weeks of treatment, including CADS, Jackson Recovery Center, and Hightower. She had enrolled in CADS and was entering the program on July 20, 2011.

The mother further testified that she had been arrested the previous weekend for failing to appear in court and had multiple pending criminal charges, including two theft charges, two driving while barred charges, and a warrant for her arrest in Wisconsin. She also stated she did not believe the father had abused K.B. and he was a great dad.

The father testified he had been convicted of child endangerment, domestic abuse assault, and violation of a no-contact order. While in prison he had completed his GED and expected to complete the Batterer's Education Program in August 2011. He requested to participate in the fathers' program, but the prison would not permit it because of his child endangerment conviction. There was the possibility he could be paroled in August 2011, but he was scheduled to be released on September 29, 2011. Upon his release, he expected to live with a family member, possibly his mother although she had previously refused to participate with DHS services.

The father further testified he had been previously incarcerated for burglary from 1999 to 2003. In April 2010 he was jailed for thirty-three days for unpaid child support. He has significant child support debt for multiple children in Iowa and for one child in Wisconsin. Approximately \$10,000 of that debt is for a five-year-old daughter in Minnesota or Wisconsin with whom he has not had any

contact with since 2007 and for whom he is considering terminating his parental rights in exchange for the child support debt being forgiven.

On August 5, 2011, the district court denied the parents' requests for more time to seek reunification and terminated the mother and father's rights pursuant to Iowa Code section 232.116(1)(h) (2011).

II. Standard of Review.

Our review is *de novo*. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Although we give weight to the district court's factual findings, we are not bound by them. *Id.* Our primary concern is the best interests of the children. *Id.*

III. Mother's Appeal.

The mother asserts she was not provided reasonable services to correct her substance abuse problem, and the district court should have granted her June 2011 motion requesting inpatient treatment. However, DHS workers offered the mother inpatient substance abuse treatment, but the mother refused to participate until the eve of termination. A social worker testified that when the children were removed from the mother's care in December 2010, she recommended the mother go to an inpatient program, but the mother declined. The social worker then referred the mother to outpatient substance abuse treatment, but the mother cancelled appointments and did not begin the program until the end of February 2011. The social worker again urged the mother to go to inpatient treatment in April and May 2011, but the mother refused.

The same month the termination petition was filed, the mother requested inpatient treatment in June 2011. Further, she requested to be admitted at the

Heart of Iowa, which required her children be placed with her after only two weeks. DHS workers agreed inpatient treatment would be beneficial for the mother, but did not agree to place the children with her after two weeks. A social worker testified that she evaluated the mother's history and did not believe the mother would be prepared to have the children placed with her after only two weeks of inpatient treatment. She explained that the mother had not been having consistent visitation with the children and when she did have visitation, the mother "couldn't handle a two-hour visit and be able to discipline the children"; the mother had been sporadically attending appointments; and the mother could not handle the structure provided at the Maria House and was asked to leave. Rather, DHS workers agreed that after three weeks of inpatient treatment, they would assess the mother's progress to determine if the children could be placed with her. DHS workers contacted two other inpatient programs (the Jackson Recovery Center and the Hightower Program) that were willing to take the mother and did not have a two-week policy, but they did not have any immediate openings.

The record demonstrates the mother was provided with the requested services, but she simply chose not to utilize them. The mother had been offered inpatient treatment numerous times throughout the case. It was only once the statutory time standards in section 232.116(1)(h) had passed that she requested inpatient treatment at a place requiring placement of the children after two weeks. Given the mother's history of inability to follow through with services, it was reasonable for DHS workers to require the mother complete at least three

weeks of inpatient treatment before determining whether the children could be placed with her. Moreover, her request was simply too late. See *In re C.B.*, 611 N.W.2d 489, 493-94 (Iowa 2000) (“We have repeatedly emphasized the importance for a parent to object to services early in the process so appropriate changes can be made.”); *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997), *overruled on other grounds by In re P.L.*, 778 N.W.2d 33 (Iowa 2010) (“Challenges to services should be made when the case plan is entered. When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued.”).

The mother further argues termination was not in the children’s best interests and she should have been given an extension of time to pursue reunification efforts. In determining a child’s best interests, “the court shall give primary consideration to the child’s safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.” *P.L.*, 778 N.W.2d at 39 (quoting Iowa Code § 232.116(2)). DHS has provided services to the mother over a period of several years. Despite this, the mother was unable to address her mental health and substance abuse issues. Given her history, there was no indication she would be able to resume care of the children in the near future. “At some point, the rights and needs of the child[ren] rise above the rights and needs of the parents.” *J.L.W.*, 570 N.W.2d at 781; see also *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997) (explaining that once the statutory time frame has

been met, “patience with parents can soon translate into intolerable hardship for their children”). The children are in need of permanency and have been placed with an adoptive-foster family. Therefore, we find termination was in the children’s best interests and the district court appropriately denied the mother’s request for more time.

III. Father’s Appeal.

The father asserts he was not provided reasonable services. He claims he requested contact and visitation with the children, but DHS did not provide the services to him because he was in prison. We first note that prior to the father’s imprisonment, the father was offered visitation and FSRP services, but he was not consistent in accepting those services. Once imprisoned, the father could not receive phone calls and it was difficult for him to make phone calls, so DHS communicated with him by mail. Because of the nature of his child endangerment conviction, the prison would not allow him to participate in their fathers’ program. Further, due to the distance between the facility in which the father was imprisoned and the children, reunification services were infeasible. See *In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000). We find the father’s argument is without merit.

He next argues that although the statutory time standards in section 232.116(1)(h) had passed, the children had only been removed for less than a year and he should have been granted more time to pursue reunification. He also argues the district court did not have to terminate his rights under section

232.116(3)(c) and (e), and should have given him a sixty-day extension. Section 232.116(3) states,

The court need not terminate the relationship between the parent and child if the court finds any of the following:

· · · ·
c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.

· · · ·
e. The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces.

Iowa Code § 232.116(3).

What the father overlooks is that DHS has been involved with this family since 2008 due to the father physically abusing a child. The children had been previously removed from the mother and father's care and after they were returned, it was necessary to remove the children again. For the current removal, the children had been out of the father's care for the statutory time period. Once the statutory time frame has been met, "patience with parents can soon translate into intolerable hardship for their children." *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997).

The father has a long criminal history, including previous incarcerations. He had previously been offered services and prior to his current incarceration, his participation was not consistent. It appears he relied upon the mother to resume care of the children, rather than addressing his own issues. It was clear the children could not be returned to the father's care, and given his history and continuing need for services, there is no indication the children could be returned in the near future. There was no evidence that termination would be detrimental

given the closeness of the parent-child bond. After considering section 232.116(3), termination was appropriate and it was in the children's best interests. Therefore, we affirm.

AFFIRMED.