

**IN THE COURT OF APPEALS OF IOWA**

No. 1-838 / 11-1460  
Filed November 9, 2011

**IN THE INTEREST OF S.B. and A.B.,  
Minor Children,**

**W.B., Father,**  
Appellant,

**K.B., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A father and mother appeal separately from the order terminating their parental rights. **AFFIRMED.**

Timothy K. Wink of Schweitzer & Wink, Columbus Junction, for appellant father.

Sara Strain Linder of Tindal Law Office, P.L.C., Washington, for appellant mother.

Thomas J. Miller, Attorney General, Janet Hoffman, Assistant Attorney General, Alan Ostergren, County Attorney, and Korie Shippee, Assistant County Attorney, for appellee State.

Joan Black, Iowa City, for minor children.

Considered by Sackett, C.J., and Vogel and Eisenhauer, JJ.

**EISENHAUER, J.**

A mother and father separately appeal from the termination of their parental rights. They contend the State failed to prove the grounds for termination by clear and convincing evidence. They also contend the State failed to make reasonable efforts to reunite them with their children and termination is not in the children's best interests. We review these claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The children at issue were three and four years of age at the time of termination. They have three siblings, all of whom have been adjudicated to be children in need of assistance (CINA) and live outside the home. The parents' parental rights to one of the older children were terminated in July 2009.

The children at issue were adjudicated CINA in October 2008 when their parents failed to provide adequate supervision, including leaving the children unattended and failing to provide adequate shelter. The children remained in the home until November 2010 when they were removed following a domestic violence episode where the mother struck the father. A petition to terminate rights was filed in February 2011. After a hearing in April 2011, the juvenile court entered its September 2, 2011 order, terminating parental rights pursuant to Iowa Code section 232.116(1)(g) (2011).

Termination is appropriate under section 232.116(1)(g) where clear and convincing evidence establishes the following:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family or a court of competent jurisdiction in another state has

entered an order involuntarily terminating parental rights with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

There is no dispute the State proved the first two elements. The parents argue there is insufficient evidence to show they lack the ability or willingness to respond to services. They also argue there is insufficient evidence to show an additional period of rehabilitation would not correct the situation.

The parents have been offered services since 2008, including: parenting skill development; mental health evaluations and treatment; assistance in finding housing; substance abuse evaluation; transportation; child health referrals; preschool; family team meetings; visitation; community resources; and protective day care. The parents have failed to take full advantage of the services offered and continue to have ongoing mental health issues, struggles maintaining safe and stable housing, and difficulties maintaining employment. Just weeks before the termination hearing, the parents continued to demonstrate inappropriate behavior in front of the children by name-calling and arguing in front of them at visitation, as well as encouraging the children to engage in behavior the parents' had been told was unsafe.

Both the mother's and father's therapists testified with additional time they could improve and have the children safely returned to their care. However, the juvenile court found the testimony of Dr. McEchron, who evaluated both parents, to be more credible. Dr. McEchron testified both parents' prognoses are very guarded. He opined the mother would not be capable of safely parenting the

children for another six to twelve months and the children would be at risk if returned to the father's care. This testimony confirms the views of the service providers and DHS workers who have interacted with the family for years. Given the deference afforded the court's findings, especially with respect to credibility determinations, see *In re A.S.*, 743 N.W.2d 865, 868 (Iowa Ct. App. 2007), and the record as a whole, we concur in the juvenile court's finding the parents lack the ability or willingness to respond to services and an additional period of rehabilitation would not correct the situation.

Termination of parental rights should only occur when it is in the children's best interests. Iowa Code § 232.116(2). In determining best interests, we must consider the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. *In re P.L.*, 778 N.W.2d at 37. These children were adjudicated in need of assistance when they were just shy of two and one years of age respectively. Three years later, their parents have made little to no progress and are still unable to provide adequate parenting to protect the children from harm. Children should not be forced to endlessly await the maturity of a natural parent. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000). At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Given the young age of the children, their need for permanency, and the unlikelihood the mother or father will be able to safely parent them in the near future, we conclude termination is in the children's best interests.

Finally, the parents contend the State failed to make reasonable efforts to reunite them with their children. Specifically, they claim the DHS failed to consider their transportation issues when providing visitation with the children. The children were removed from the custody of their parents in November 2010. Initially, they were in a foster home in Muscatine and visits were to take place in Muscatine. After a request by the parents, the court, in February 2011, ordered some visits to occur in Mount Pleasant where the parents lived.

Iowa Code section 232.102(7) requires DHS to make reasonable efforts to return a child to their parent. Services are to be offered to improve parenting skills. *In re C.B.*, 611 N.W.2d at 493. A challenge to the sufficiency of such services should be raised when the services are offered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). However, the reasonable efforts requirement is not a strict substantive requirement for termination. *C.B.*, 611 N.W.2d at 493. Instead, the services provided by DHS to reunify parent and child after removal impacts the State's burden of proving the child cannot be safely returned to the care of a parent. *Id.*

We conclude the State has met its burden of proving the children cannot be safely returned to the parents' care. Having visitation in Mount Pleasant would not have impacted the question of the parents' ability to safely care for the children. Their issues with housing, employment, mental health, and their own relationship would have continued to exist. Visitation never progressed beyond being supervised. We quote with approval the following from the trial court's order:

The parents have a history of arguing during supervised visitation. They argue between themselves or with the Department or service provider. Despite years of parenting education they are still unwilling to accept assistance. On March 15, 2011, the provider ended a visit early due to the parents' inappropriate behavior, include name-calling and arguing.

Having found the grounds for termination were proved by clear and convincing evidence and termination is in the children's best interests, we affirm the juvenile court order terminating the mother's and the father's parental rights to the children.

**AFFIRMED.**