

IN THE COURT OF APPEALS OF IOWA

No. 1-953 / 11-1732
Filed February 29, 2012

**IN THE INTEREST OF K.M.,
Minor Child,**

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

Appeal from the Iowa District Court for Linn County, Susan Flaherty,
District Associate Judge.

A father appeals a juvenile court order terminating his parental rights to his
daughter. **AFFIRMED.**

Carrie K. Bryner, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, and Janet L. Hoffman, Assistant
Attorney General, for appellee.

Barbara A. Connolly of Howes Law Firm, P.C., Cedar Rapids, attorney
and guardian ad litem for minor child.

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

MULLINS, J.

John appeals from a juvenile court order terminating his parental rights to his daughter, K.M. (born October 1996). John argues reasonable services were not provided to facilitate reunification, K.M. failed to prove the statutory ground for termination, and termination was not in the child's best interests. For the reasons stated herein, we affirm.

I. Standard of Review.

We review termination proceedings de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). While we are not bound by the juvenile court's factual findings, we give them weight, especially to the extent that they provide us insight into the credibility of witnesses who appeared before the trial judge. *Id.*

II. Background Facts and Proceedings.

John has a significant history of substance abuse, particularly alcohol. His substance abuse began in his late-teens, and has continued off and on since. John's periods of sobriety have occurred when he has participated in AA.

K.M. was born in Massachusetts in 1996. For the first four years of her life, K.M. lived with John and her mother. John and the mother had a tumultuous marriage marred with domestic violence and alcohol abuse by both individuals. In 1997, Massachusetts child welfare authorities determined K.M. was the victim of neglect.

After a domestic dispute that occurred when K.M. was approximately four years old, John moved to Canada to live with a woman he had met via the internet. K.M. remained with her mother. For the next four years, John remained

in Canada and had very little contact with K.M. John testified that he tried to contact K.M., but was blocked by her mother. While in the mother's care in September 2000, K.M. was the victim in another founded report of neglect due to alcohol abuse and domestic violence.

Due to his health problems, John returned to Massachusetts when K.M. was approximately eight years old. John sought to resume contact with K.M., but due to what he characterized as a "horrible" relationship with K.M.'s mother, visits were difficult to arrange. John testified that it was not until the Massachusetts child welfare authorities completed two child abuse assessments in 2006 due to K.M. having head lice that he was able to have consistent visitation with K.M.

On August 26, 2007, John and K.M. returned to the mother's home after a visit to find that she had died unexpectedly as a result of her alcohol abuse. Following the mother's death, K.M. began to live with John and his then paramour on a full time basis. After about one year, John told K.M. that he had met a woman from Iowa on the internet and that the woman wanted him to move into her home in Palo.

In March 2008, John and K.M. moved to Iowa to live with the woman John met online. K.M. testified that after moving to Iowa, John resumed drinking. John admitted that he was an alcoholic. John's relationship with the woman soon deteriorated, and the two argued frequently. K.M. testified that when John became angry, he was verbally abusive and intimidating, and would throw things and destroy property. K.M. testified that she was very fearful of her father, and would hide in her closet. During this time, K.M. developed a relationship with

John's paramour's extended family, particular an adult niece. K.M. spent time at the home of the adult niece and her fiancé on a regular basis.

On July 28, 2009, the police received a call regarding a domestic incident between John and the woman. John was intoxicated, breaking and throwing things, swearing, and making verbal threats to the woman. During the incident, K.M. heard John threaten to leave and she became scared he would take her with him. Afraid, K.M. locked herself in the bathroom with a knife. K.M. eventually fled the house and flagged down the police car responding to the home. The officer asked John to leave for the night and he agreed to do so. K.M. stayed with the woman.

The following morning, John returned to the home and began to yell at K.M. K.M. fled the home and contacted a friend and then the police. The police found K.M. and her friend on bicycles along the side of the road. The police officer told K.M. to ride her bicycle home, and then drove to K.M.'s residence. When the officer arrived, the woman was preparing to move out of the residence. The woman told the officer that there were numerous incidents in the past where John had become verbally abusive and had violent outbursts breaking doors and punching holes in walls. The woman stated she feared for her safety. John was found later that afternoon in a local bar. The officer arranged for K.M. to be placed in a youth shelter for a forty-eight-hour hold. The officer also contacted the Iowa Department of Human Services (DHS) for a child abuse assessment. During the assessment, K.M. threatened that she would kill herself before

returning to John's care. The assessment was eventually determined to be confirmed for denial of critical care for failing to provide adequate supervision.

On August 3, 2009, the State filed a petition seeking to have K.M. adjudicated a child in need of assistance (CINA). John stipulated to K.M. being adjudicated a CINA under Iowa Code sections 232.2(6)(c)(2) and 232.2(6)(f) on August 19, 2009. At this time, K.M. remained in temporary shelter care.

Following adjudication, K.M. wanted to be placed with the woman's adult niece. However, John objected to this placement because he believed the niece, as a relative of the woman, would undermine reunification efforts. This issue came to a contested hearing on October 2 and 9, 2009. After the hearing, the juvenile court entered a dispositional order placing K.M. into foster care, although the court did allow K.M. to have contact with the niece.

At the outset of the case, K.M. was adamantly against visitation with John. K.M. had a significant amount of anger and fear toward John. Accordingly, the parties agreed that any possible visitation should be taken slowly and in a therapeutic setting. The parties, as well as the professionals in this case, supported a plan that allowed K.M. to maintain control over the contact with John to allow her to build trust that John had made changes and could provide her with a safe and stable home environment. DHS arranged for supervised phone calls and filtered email communication.

The parties also agreed to parallel plans for reunification, where K.M. and John would separately work on their issues before attempting reunification. By working on their issues independently, the professionals hoped that John and

K.M. would reach a point where they could make amends. Mike Mitchell, a Family Safety, Risk and Permanency (FSRP) service provider at Four Oaks, oversaw this amends process.

Following removal, John provided clean drug tests, maintained housing and employment, completed individual and group anger management, and attended AA meetings.

Meanwhile, K.M. participated in individual therapy and remedial services. Individual therapy was done weekly with Rosemary Rohde Ziskovsky. K.M. was diagnosed with post-traumatic stress disorder and adjustment disorder with depression and anxiety. During her sessions, K.M. mainly underwent trauma recovery trying to process and overcome past events in her life. Individual therapy also sought to help K.M. progress in expressing her feelings and become less guarded in her relationships with others. Remedial services were provided by Sharon Thomsen. During these sessions, K.M. participated in services directed at anger management, coping skills, and healthy communication.

Initially, progress toward repairing K.M and John's relationship was made. The phone conversations were noted as becoming longer and more substantive. However, a turning point occurred in May 2010, when John was invited by K.M. to attend a school band concert. The adult niece's fiancé also attended the band concert. According to K.M., John approached the fiancé and told him to not come close to his daughter. K.M. perceived this to be an attempt by John to intimidate the fiancé. John testified that he did not approach the fiancé or speak to him. Rather, John testified that he felt he was set up for a problem, so he

called his attorney for advice. Following this incident, K.M. testified that her faith in her father was “very depleted,” and the incident reinforced her belief that John had not changed and that she could not trust him. Shortly after the incident, K.M. refused to participate in phone conversations with John. Although K.M. refused phone contact, John was still able to call the foster parents, which he did intermittently.

At the July 7, 2010 permanency hearing, all the parties agreed that reunification was “no longer a realistic goal” and that another permanent planned living arrangement should be pursued. Following the hearing, John and K.M. continued to work on their parallel paths towards amends in the hope that a relationship could still be maintained even though K.M. would be placed into someone else’s care.

In September 2010, the juvenile court approved K.M.’s placement into a new foster home. The placement was supported by both K.M. and John. K.M. has developed a strong bond with this foster family. She has also thrived in the placement. She has continued to participate in individual therapy and remedial services, her overall mood was happier and more confident, and she has become more active in school, both academically and with extra curriculums. K.M. participated in a speech competition where she received a gold medal and advanced to the regional competition and in a geography bee where she made the final round. In addition, K.M. participated in band, choir, the school newspaper, and color guard.

On November 3, 2010, a review hearing was held. At this time, the parties agreed that K.M. should remain with her current foster family. However, the parties disagreed as to whether the placement should continue as a permanency order in the CINA proceeding, a guardianship, or proceed to the termination of parental rights to allow for adoption. John did not object to a permanency order with the foster family, but strongly disagreed with a possible termination of his parental rights. The juvenile court decided to defer permanency for an additional four months to consider the most appropriate method to achieve permanency.

On December 13, 2010, John filed a request for services asking that DHS implement family counseling and visitation. The request came to a hearing on January 6, 2011. At the hearing, Mike Mitchell, the FSRP provider, testified to the work he had done with John and K.M., and to the continued need to move slowly with efforts to repair the relationship. Mike Mitchell further testified to the importance of the amends process between John and K.M. Mike Mitchell stated that John was to prepare for the amends process through his work with his AA sponsor and the 12-step program. Following the hearing, the juvenile court denied John's motion, but directed the parties to proceed as expeditiously as possible with the amends process as outlined by Mike Mitchell.

Although K.M. agreed and was ready and able to undergo an amends meeting, the amends process failed to move forward because John was unable to get his AA sponsor to meet with Mike Mitchell so the two could collaborate and ensure that John was properly prepared to undergo the amends meeting. John testified that the delay was due to his sponsor having significant health problems.

In early March 2011, John and Mike Mitchell decided they would directly work together so the amends process could move forward. At this time, John increased his participation and began to write an amends letter to K.M.

On April 12, 2011, K.M.'s attorney and guardian ad litem filed a petition to terminate John's parental rights. The petition came to a contested hearing on May 3 and June 27, 2011.

On the first day of the hearing, the four services providers in this case testified. Rosemary Rohde Ziskovsky and Sharon Thomsen both testified about K.M.'s significant progress during therapy sessions. Specifically, they noted K.M.'s social progress and her recent ability to form healthy relationships. Both testified that they supported the termination of John's parental rights. They both testified termination was appropriate to ease K.M.'s anxiety toward John and to give her stability. The juvenile court found this testimony to be compelling and credible.

Mike Mitchell, the FSRP provider, testified that the amends plan was being followed, and he was concerned that the termination of parental rights could "artificially intrude[] upon the therapeutic process." He opined that termination should not occur, but rather a guardianship should be put in place to allow the process to continue to some peace and reconciliation and possibly some level of connectedness.

Brian Jeffrey, the DHS case worker, testified that John was cooperative and had met all the expectations of the DHS case plan. Brian Jeffrey believed that a guardianship, as opposed to termination, was more appropriate in this

case. He believed that the termination of parental rights would cut off any possible future relationship between K.M. and John.

In the time between the first and second days of the hearing, John had finally reached the point where he was able to participate in the amends meeting with K.M. K.M. testified that she was prepared to hear her father talk about his alcoholism and specific events in their past that were harmful to her. K.M. thought John would apologize for the events. In response to a question, K.M. testified that “[w]hen it comes to the amends process I am disappointed in him, yes.” K.M. did not feel that her father was sincere or that he showed much insight, emotion, or effort. K.M. testified that she told John he should let her go and allow her to be adopted by her foster family. K.M. testified that when she spoke, John seemed bored and gave her a blank look like it had no effect on him. Nonetheless, K.M. testified that she believed the amends meeting was helpful because it allowed her to release her animosity toward her father and to have some closure. K.M. further testified that she would be willing to participate in another similar session and to continue to address their relationship, but was adamant that she did not want to return to his care. K.M. continued to believe that John had not changed, and that she would not be safe in his care. John testified that he was sincere at the amends meeting. John thought the meeting could have gone longer and been more detailed, but felt K.M.’s body language showed that she did not want to be there.

On October 11, 2011, the juvenile court entered an order terminating John’s parental rights to K.M. under Iowa Code section 232.116(1)(f) (2011).

John appeals arguing he was not provided reasonable services, the statutory ground for termination was not shown by clear and convincing evidence, and that termination was not in K.M.'s best interests.¹

III. Analysis.

A. Reasonable Efforts. John asserts the State failed to make reasonable efforts at reunification. The State "shall 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); *see also id.* § 232.102(10) (defining "reasonable efforts").

Here, John asserts the State failed to prove reasonable efforts when it did not move forward with family counseling and visitations. However, on January 6, 2011, the juvenile court ordered that before counseling or visitation should begin, John must undergo the amends process. John failed to complete his part of the amends process in a timely manner. When he did finally complete his side of the amends process such that the amends meeting could occur, termination was already pending. In addition, K.M. found John's efforts less than sincere and "disappointing." *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000) (in considering reasonable efforts, "our focus is on the services provided by the state and the response by [the parent], not on services [the parent] now claims the DHS failed to provide"). Nonetheless,

The reasonable efforts requirement is not viewed as a strict substantive requirement of termination. Instead, the scope of the

¹ John does not argue on appeal that the juvenile court should have provided permanency through a CINA order or a guardianship, as opposed to terminating his parental rights. Accordingly, we find this argument to be waived.

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 a parent.

Id. at 493 (citations omitted). For the reasons stated in the next section, we find the State met its burden showing reasonable efforts and that K.M. cannot be returned to John's care.

B. Statutory Ground. John contends K.M. failed to prove by clear and convincing evidence that at the time of the termination K.M. could not be returned to his custody. Iowa Code § 232.116(1)(f)(4).

John has a lengthy history of substance abuse and domestic violence. As a result of much of this history being in K.M.'s presence, K.M. has developed a clear sense of fear, anxiety, and distrust of John. The evidence at the termination hearing showed that placing K.M. into John's care would be detrimental to her mental and emotional health. John recognized this and admitted at the termination hearing that "it's obvious that [K.M.'s] place is not with me." Accordingly, we find K.M. met its burden.

C. Best Interests. In determining a child's best interests, we "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." *In re P.L.*, 778 N.W.2d 333, 39 (Iowa 2010) (quoting Iowa Code § 232.116(2)).

K.M. has a clearly demonstrated fear and distrust of her father. K.M.'s individual therapist and remedial worker both testified that in order to best meet K.M.'s mental and emotional needs, termination should occur so she can have a

sense of safety and permanency and begin to form healthy and stable relationships. In addition, K.M. has become integrated into her foster family, and the foster family is willing to adopt K.M. Iowa Code § 232.116(2)(b). We find termination is in K.M.'s best interests.

IV. Conclusion.

Although we are highly concerned when a child refuses to participate in visitation with a parent, we find that termination is appropriate in this case. John and K.M. agreed to work along parallel paths toward an amends process, but the process was simply not enough to overcome K.M.'s fear, distrust, and anxiety toward John as a result of years of unstable, unpredictable relationships, and living through his alcohol abuse and domestic violence. Accordingly, we affirm the detailed order of the juvenile court terminating John's parental rights to K.M.

AFFIRMED.

Tabor, J., concurs; Danilson, J., concurs specially.

DANILSON, J. (concurring specially)

I specially concur to add that K.M.'s stated reasons for termination, such as growing tired of the juvenile proceedings and wanting to close the possibility of ever residing with her father, do not support termination over a guardianship. However, her story does. K.M. has endured years of a chaotic life. Her foster family is willing to adopt. She wants a family and stability—she deserves both. Whether K.M. ever opens the door to John and his family will ultimately be her choice, but it seems obvious that John and his family would welcome her with open arms.