

IN THE COURT OF APPEALS OF IOWA

No. 2-041 / 11-1941
Filed February 1, 2012

**IN THE INTEREST OF C.B., K.A., R.A., and J.H.,
Minor Children,**

M.B., Father of C.B., K.B., and R.A.,
Appellant,

B.J.H., Mother,
Appellant.

Appeal from the Iowa District Court for Floyd County, Gregg R. Rosenblatt, District Associate Judge.

A mother and father separately appeal the district court's order terminating their parental rights. **AFFIRMED.**

David A. Kuehner of Eggert, Erb, Mulcahy & Kuehner, P.L.L.C., Charles City, for appellant father.

DeDra Schroeder of Schroeder Law Office, Osage, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Normand C. Klemesrud, County Attorney, for appellee State.

Cynthia S. Schuknecht of Noah, Smith & Schuknecht, P.L.C., Charles City, attorney and guardian ad litem for minor children.

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

VOGEL, P.J.

Michael and Billi Jo separately appeal the termination of their parental rights. Michael appeals the termination of his parental rights to C.B., born 2003, K.B., born 2004, and R.A., born 2006. Michael's parental rights were terminated under Iowa Code section 232.116(1)(d) (adjudicated CINA, child neglected, parents offered or received services to correct circumstance that led to adjudication, circumstance continues despite offer or receipt of services) and (f) (child four or older, adjudicated CINA, child removed from physical custody of parents for at least twelve of last eighteen months or last twelve consecutive months and any trial period at home less than thirty days, clear and convincing evidence child cannot be returned to parents at present time) (2011).

Billi Jo appeals the termination of her parental rights to C.B., K.B., R.A., and a fourth child, J.H.¹, born 2008. Billi Jo's parental rights were terminated as to C.B., K.B., R.A., and J.H.² under Iowa Code section 232.116(1)(d) and (f), and as to J.H. under Iowa Code 232.116(1)(h) (child three or younger, adjudicated CINA, child removed from physical custody of parents for at least six of last twelve months or last six consecutive months and any trial period at home less than thirty days, clear and convincing evidence child cannot be returned to parents at present time).

¹ The parental rights of J.H.'s father, Shawn, were also terminated. Shawn does not appeal.

² We note the district court terminated as to J.H., under section 232.116(1)(f) (child four or older) and (h) (child three or younger). According to the record, J.H. was born in April 2008, and was three years old at the time of the October 12, 2011 hearing, making 232.116(h) applicable to J.H., and not 232.116(f).

I. Background Facts and Proceedings

In January 2010, there were concerns that Michael, with whom C.B. lived, had a registered sex offender living in his home. The Iowa Department of Human Services (DHS) began providing services on a voluntary basis. C.B. was adjudicated a child in need of assistance (CINA) in February 2010. In late February 2010, Michael entered BeJe Clark Residential Center as required under the terms of his probation. At this time, C.B. went to live with her mother, Billi Jo, and her husband, Shawn, where she lived with her three other siblings. In May 2010, C.B., K.B., R.A., and J.H. were removed from Billi Jo's home due to the condition of the home and lack of supervision. For example, on May 7, 2010, C.B. and K.B., as well as their three-year-old sister, R.A., walked to school alone, not dressed appropriately for the weather, and not having eaten since the previous day. The children were voluntarily placed with relatives. C.B. was placed with her paternal uncle and his wife. K.B., R.A., and J.H. first lived with their maternal grandmother, then were voluntarily placed in foster care in late May 2010. K.B., R.A., and J.H. were adjudicated CINA in September 2010.

From the time of the children's removal until the termination hearing, Billi Jo had moved several times, and been in serious relationships with at least three different men. Two of these men, one with whom Billi Jo resided and was engaged to at the time of the termination hearing, were not considered appropriate to be around the children. Billi Jo's fiancé, Mike, had a founded report of sexual abuse, involving two of his children and another couple's two children.

A termination of parental rights hearing was held on October 12, 2011, with written order issued on November 17, 2011. Michael and Billi Jo separately appeal.

II. Standard of Review

Our review of termination of parental rights proceedings is de novo. *In re D.W.*, 791 N.W. 2d 703, 706 (Iowa 2010). While we are not bound by the district court's findings of fact, we do give them weight, particularly in assessing the credibility of witnesses. *Id.*

III. Father's Argument

Michael's sole argument is that the court erred in finding DHS made reasonable attempts at reunification with him under the directives of the Americans with Disabilities Act (ADA).³ Michael specifically states that once his psychological evaluation was completed, the plan identified specific services not previously provided to him that could have been offered. The State asserts this issue was not preserved for appellate review, because reasonable efforts must be raised prior to the termination hearing.

Although Michael had reported his disability to DHS, and his service providers were aware of the disability, no modifications in services offered were made to accommodate Michael. A DHS social worker, Sharon Reinardy, testified at the termination hearing that during the pendency of this proceeding, Michael had never expressed to her that he had not received the services he required to make progress in the reunification with his children. It was further noted by another DHS social worker, Katie Einck, that Michael declined DHS's request for

³ Americans with Disabilities Act, 42 U.S.C. §§ 12101–12213 (2006).

a psychological evaluation in April 2011, and that only by court order did DHS obtain a psychological evaluation in August 2011.

We find Michael did not preserve error with regard to his claim that DHS failed to make reasonable efforts toward reunification in accordance with the ADA. While the State had the obligation to make reasonable efforts, “it is the parent’s responsibility to demand services if they are not offered prior to the termination hearing.” *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). “If a parent has a complaint regarding services, the parent must make such challenge at the removal, when the case permanency plan is entered, or at later review hearings.” *In re C.H.*, 652 N.W.2d 144, 148 (Iowa 2002) (internal citation omitted). Because Michael did not challenge the services provided until the termination hearing, error was not preserved for our appellate review.

Even if we were to overlook the error preservation problem, we find the record replete with services offered to Michael accommodated to his needs. For example, DHS social worker Einck explained that Michael was “reluctant to participate in [any services] that the Department suggest[ed],” which included a psychological evaluation. Einck explained that her ability to recommend mental health services to Michael was hampered by not having a psychological evaluation at an earlier stage in the proceedings. When Michael finally underwent such an evaluation in August 2011, psychologist George Harper cautioned that Michael was “suffering from some serious mental health disorders that will almost certainly impair his ability to adequately nurture, protect[,] and care for his children.” Harper further recognized that in the past and at the present time, Michael has displayed a general lack of motivation to address his

mental health issues. Overall, Michael's inability to cooperate with recommended services, as well as his lack of motivation to address his mental health, hampered DHS's ability to identify and offer additional services to achieve reunification.

We therefore affirm the district court's order as to Michael.

IV. Mother's Argument

Billi Jo challenges the district court's order by arguing "the State [did not establish] the mother did not have a current ability to provide for the needs of her children and the return to her home would be a detriment to her children." The State alleges error was waived because the mother did not specifically address in her appeal any of the code provisions under which the district court terminated Billi Jo's parental rights. "We will not speculate on the arguments [appellant] might have made and then search for legal authority and comb the record for facts to support such arguments." *Hylar v. Garner*, 548 N.W.2d 864, 876 (Iowa 1996). Billi Jo failed to cite authority to support any claim regarding the grounds upon which the district court ordered termination, and this issue has been waived. See Iowa R. App. P. 6.903(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue.").

Even if we were to reach the general argument Billi Jo makes, we would find that the district court was correct in terminating her parental rights under Iowa Code section 232.116(1)(f) and (h). At the termination hearing, DHS social worker, Sharon Reinhardy, and Lutheran Services of Iowa care coordinator, Jessica Riesberg, testified that in August 2011, Billi Jo acknowledged she could not handle all of the children in her home at one time. Riesberg also testified that

although Billi Jo interacts with the children during supervised visits, Billi Jo “struggles when [the children’s] behaviors become negative” and “becomes overwhelmed and frustrated easily.” It was also noted by Riesberg that Billi Jo has missed “quite a few” visits with the children, and within the past six months, there had not been an overall improvement in Billi Jo’s ability to work with providers. At the time of the termination hearing, Riesberg’s overall conclusion was that Billi Jo was not prepared to assume custody of the children.

Social worker Einck also expressed concerns regarding Billi Jo’s current, live-in paramour, Mike, who had a founded report of sexual abuse against him, involving his two children and another couple’s two children. Einck also explained that during the life of this case, Billi Jo has moved approximately eight times and has not been employed.

Billi Jo finally argues the State failed to make reasonable efforts to reunify her with her children. The State argues error was not preserved on this issue, as the mother did not state what services were requested, nor when she requested them.

In general, if a parent fails to request other services at the proper time, the parent waives the issue and may not later challenge it at the termination proceeding. If a parent has a complaint regarding services, the parent must make such challenge at the removal, when the case permanency plan is entered, or at later review hearings.

C.H., 652 N.W.2d at 148 (internal citation omitted). Because the record does not support Billi Jo made requests for other services prior to the termination hearing, error was not preserved and we decline to consider this issue on appeal.

Finally, Billi Jo does not challenge the district court's findings under section 232.116(1)(d), and we may affirm the termination of parental rights under any section found by the district court. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("We need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.") Because we find the statutory elements of Iowa Code section 232.116(1)(d) were met, and Billi Jo fails to challenge this ground for termination on appeal, we affirm.

AFFIRMED.