

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1134 / 12-1138  
Filed January 9, 2013

**IN THE INTEREST OF T.J.L.R. and T.J.M.,  
Minor Children,**

**S.M. SR., Father of T.J.M.,**  
Appellant,

**S.R., Father of T.J.L.R.,**  
Appellant,

**A.R., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Pottawattamie County, Craig M. Dreismeier, District Associate Judge.

Two fathers whose sons have the same mother appeal the termination of their parental rights. **AFFIRMED ON BOTH APPEALS.**

Jay W. Mez, Council Bluffs, for appellant-father of T.J.M.

Benjamin J. Pick of McGinn, McGinn, Springer & Noethe, Council Bluffs, for appellant-father of T.J.L.R.

Sara Benson of Rouwenhorst & Rouwenhorst, P.C., Council Bluffs, for appellant-mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Eric Strovers, County Attorney, for appellee-State.

Phil Caniglia, Council Bluffs, attorney and guardian ad litem for minor children.

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

**TABOR, J.**

The Department of Human Services removed Anna's two sons from her care because she was not able to maintain a suitable home and struggled with substance abuse and mental health problems. At the time of the termination hearing, T.J.R. was three years old and his half-brother T.M. was eleven. The juvenile court terminated Anna's parental rights to both children. The court also terminated the parental rights of T.M.'s father Steve and T.J.R.'s father Shane, both of whom were incarcerated at various points during the juvenile court proceedings. The fathers appeal.<sup>1</sup>

***I. Background Facts and Proceedings***

T.M. was removed from Anna's care and adjudicated as a child in need of assistance (CINA) in the spring of 2009 because the condition of her home was filthy and unsafe for her son. At this time, Anna did not have good control over her depression and bipolar disorders because her pregnancy required her to discontinue her medications. T.J.R. was born in May 2009. After his birth, Anna resumed taking her medications and was able to regulate her mental health conditions. T.M. was returned home in July 2009.

The Iowa Department of Human Services (DHS) removed both boys from Anna's home in January 2010 after she tested positive for methamphetamine.

Both Steve, T.M.'s father, and Shane, T.J.R.'s father, have missed time with their sons because they were serving prison time. Steve was incarcerated in Missouri before his release on August 3, 2011. After his release, he failed to

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<sup>1</sup> Anna also filed a notice of appeal from the termination order, but the Iowa Supreme Court dismissed her appeal on December 11, 2012, because her petition was untimely.

appear for a scheduled visitation with T.M. and failed to appear for a permanency review hearing on November 3, 2011. By the time of the next permanency review hearing on March 14, 2012, Steve was incarcerated in Nebraska.

Shane was released from prison in May 2011 and began services at that time. The DHS offered him supervised visitation and initially he responded well to T.J.R.'s needs. Shane was eventually allowed unsupervised visits in public settings. But by the end of 2011, Shane started to show up late for visitation, stopped complying with drug testing, and logged several arrests. In January 2012, the DHS returned him to supervised visits, which he stopped attending all together in April 2012. Shane committed domestic violence against Anna; she reported the most recent assault on April 23, 2012.

In April 2012, the county attorney filed a petition seeking the termination of parental rights for Anna, Shane, and Steve. The juvenile court held hearings on May 17 and May 29, 2012. On June 14, 2012, the court issued an order terminating the parental rights of the mother and both fathers. The court determined that Steve's rights regarding T.M. should be terminated based on the following provisions: Iowa Code sections 232.116(1)(b), 232.116(1)(d), 232.116(1)(e), 232.116(1)(f) and 232.116(1)(i). The court decided Shane's rights regarding T.J.R. should be terminated based on the following provisions: 232.116(b), 232.116(d), 232.116(1)(e), 232.116(1)(h), and 232.116(1)(i). We will address the arguments by each father in turn.

## **II. Standards of Review**

We perform a de novo review of juvenile court orders terminating parental rights. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). While they are not binding on us, we give weight to the juvenile court's findings of fact, especially in assessing the credibility of witnesses. *Id.* We will uphold a termination order if the record contains clear and convincing evidence of the grounds alleged under Iowa Code section 232.116. *Id.* Evidence is "clear and convincing" when there are no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence." *Id.*

Termination cases follow a three-step analysis. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). First, the juvenile court must determine if the petitioning party has established a ground for termination under section 232.116(1). *Id.* Second, the court must apply the best-interest framework set out in section 232.116(2). *Id.* Third, if the best-interest framework supports termination, the court still must consider if any factors in section 232.116(3) preclude termination of parental rights. *Id.*

## **III. Analysis**

### **A. Grounds for terminating rights of T.J.R.'s father**

Shane is the father of T.J.R. The record shows that he has assaulted Anna, the mother of his child. Shane admits on appeal that his attendance at visits with his son has been "somewhat inconsistent in the months prior to the termination hearing." Shane's assessment is an understatement. According to the testimony of a DHS case worker, Shane only participated in one visit with his

son between January 23, 2012, and the date of the termination hearing. Shane did not attend the May 17, 2012 hearing, and the DHS worker was unsure of his whereabouts. He also had a pending warrant for his arrest. The case worker told the court that Shane did not follow through with random drug screens requested by the DHS. In addition, the worker did not believe that Shane would be able to maintain suitable housing for his son.

On appeal, Shane contends the State did not offer clear and convincing evidence to satisfy any of the five statutory grounds cited by the juvenile court. When the juvenile court bases its termination decision on more than one subdivision of section 232.116(1), we may affirm by finding clear and convincing evidence in support of any one of the identified provisions. *In re R.K.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). We find overwhelming evidence supported termination under section 232.116(1)(h). The juvenile court correctly determined that T.J.R. was younger than three years of age, had been adjudicated a CINA, was out of the home for more than six months, and could not be placed in his father's care. Shane was not present at the termination hearing and offered no evidence that he was presently able to care for his son.

While he does not fully develop a reasonable-efforts argument in his petition on appeal, Shane complains that the DHS did not offer him services while in prison and reasons that if the DHS has offered such services, he would have "been better able to comply with all of the recommendations and demands DHS placed on him upon his release from prison."

It is true that a parent's imprisonment does not excuse the DHS from the mandate that it make reasonable efforts toward reunification. *In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000). But the DHS is only required to supply those services that are reasonable under the circumstances. *Id.* The reasonableness of the services depends on the following non-exclusive list of factors: the child's age; the child's bond, if any, with the incarcerated parent; the limitations of the parent's confinement, and the nature and length of the sentence. *Id.*

T.J.R. was seven months old when he was removed from his mother's home; Shane was incarcerated at the time. The case worker testified that Shane participated in "parenting through the jail" but was not offered other services by the DHS until he was released from custody in May 2011. On appeal, Shane does not give specific examples of what additional services the DHS should have offered him while he was incarcerated.

While the DHS is obliged to provide reasonable reunification services, the father bears an equal obligation to demand other, different, or additional services before the termination hearing. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). The record does not show that Shane sought additional services before or after his release from jail. Accordingly, we question whether a reasonable-efforts argument has been preserved. But even if we were to overlook the preservation issue, we would find the DHS provided Shane with reasonable services, including visitation, parenting instruction, and help with finding housing

and employment. Shane's own conduct and his failure to follow through with the DHS case plan resulted in the termination of his parental rights.

**B. Grounds for terminating rights of T.M.'s father**

Steve is the father of T.M. He was released from prison in Missouri in August 2011. A DHS case worker testified at the termination hearing that she tried to set up visitation between Steve and T.M., but Steve "never made himself available to us."

Steve was again incarcerated at the time of the May 17, 2012 termination hearing and testified by telephone. He told the juvenile court that the case worker did not call him about a visitation time. The juvenile court was skeptical of Steve's version of events:

[Steve] failed to appear for hearing in November 2012. Nothing was mentioned to the court about his attempts to get in contact with the case worker. In fact, nothing was ever argued by [Steve] about having no opportunity for services to assist with reunification until the termination hearing. This Court finds he should have been proactively involved in the case and he failed to do such. He had opportunities to request assistance with any component of the case plan, but failed to ask for those services. The Court does not find his testimony that he did attempt such contact with the case worker credible.

The court concluded Steve's lack of significant and meaningful contact with his son was "by his own accord."

In his petition on appeal, Steve argues the State did not offer clear and convincing evidence to satisfy any of the five statutory grounds cited by the juvenile court. He does not identify which elements were lacking in the State's proof. As noted above, we may affirm by finding clear and convincing evidence in support of any one of the provisions cited by the juvenile court. *R.K.K.*, 544



N.W.2d at 276. We find ample evidence supported termination under section 232.116(1)(f). T.M. was eleven years old, he had been adjudicated as a CINA, he had been removed from his parents' care since January 2010, and he could not be returned to Steve's care at the time of the termination hearing because Steve was incarcerated. Steve had never been the child's primary caregiver and did not establish any meaningful relationship with the child even when he was released from incarceration.

Steve also contends the DHS failed to make reasonable efforts to reunify him with his son. As noted above, a parent bears a responsibility to let the DHS know what services would help move the family toward reunification. *See In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005) (describing parent's obligation to demand other, different, or additional services before permanency or termination hearing). We do not see how Steve preserved this claim. The juvenile court credited the case worker's testimony that when Steve was released from incarceration, the DHS offered him visitation with T.M., but the father did not follow through. The court noted that Steve did not ask for any services from the DHS. We defer to the juvenile court's credibility findings and reject Steve's reasonable-efforts argument.

### **C. Best Interests of the Children**

The juvenile court expressly considered Iowa Code sections 232.116(2) and (3). The court found terminating parental rights and enabling the children to move toward adoption would further their long-term nurturing and growth. The record indicates that the foster parents were willing to adopt T.M. and T.J.R.

The State proved the grounds for terminating the fathers' rights under sections 232.116(1)(f) and (h); termination is in the children's best interests as set out in section 232.116(2); and no countervailing factors arise under section 232.116(3). Accordingly, we affirm.

**AFFIRMED ON BOTH APPEALS.**