

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1202 / 12-2073  
Filed February 13, 2013

**IN THE INTEREST OF R.H.,  
Minor Child,**

**T.L., Mother,  
Appellant,**

**M.H., Father,  
Appellant.**

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

A mother and father appeal the termination of their parental rights to their child. **AFFIRMED.**

William A. Lansing, Dubuque, for appellant mother.

Les M. Blair III of Blair & Fitzsimmons, P.C., Dubuque, for appellant father.

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

Mary Kelley, Assistant Public Defender, Dubuque, attorney and guardian ad litem for minor child.

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

**VAITHESWARAN, J.**

A mother and father appeal the termination of their parental rights to their child, born in 2011.

***I. Mother***

The mother seeks reversal of the juvenile court's termination decision on the grounds that (A) the Department of Human Services (DHS) did not make reasonable efforts to reunite her with the child and (B) the juvenile court abused its discretion in denying her request for an extension of time.<sup>1</sup> On our de novo review, we disagree with both contentions. See *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (setting forth the standard of review).

**A. Reasonable Efforts**

The department is obligated to make reasonable efforts towards reunification. Iowa Code § 232.102(7) (2011); *C.B.*, 611 N.W.2d at 493. This obligation is “a part of its ultimate proof the child cannot be safely returned to the care of a parent.” *C.B.*, 611 N.W.2d at 493.

According to department reports, the agency became aware of this child “through a previous DHS case where there were protective concerns regarding chronic instability and [the mother and father’s] volatile relationship with one another.” That case, in a different county, resulted in the termination of the mother’s parental rights to two older children.

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<sup>1</sup> The mother also contends she was deprived of due process because no transcript of the termination hearing was available when she filed her briefs. We note that the transcripts of two termination hearings are available to us and we have reviewed them de novo. See *In re C.M.*, 652 N.W.2d 204, 212 (Iowa 2002) (“Counsel had the opportunity to identify the issues for review by the appellate court with supporting legal authority and the reviewing court had the entire record and trial transcript before it when conducting its de novo review.”).

While the first case was pending, the mother gave birth to the child involved in this proceeding. The department immediately facilitated the mother and child's placement at a transitional housing facility that provided a variety of supportive services, including individual counseling, day care for the child, and parent-skills training. Parents who followed the rules of the facility were allowed to remain for up to two years. To retain the child in her care, the mother was required to follow the rules.

The mother failed in this obligation, accumulating close to the number of violations that would have resulted in her discharge. A service provider expressed particular concern with the need to prompt her to attend to the basic needs of her child.

Approximately four months after her admission, the mother left the facility and moved into a mobile home with the father of the child. The child was placed in foster care.

The mother lost her access to publicly-funded health insurance and discontinued individual counseling. The department assisted her with obtaining county funding for individual counseling services, but she did not follow through. The department also provided supervised visits, food assistance, and parent-skills training. The mother claims these efforts were insufficient in several respects.

First, she asserts the department failed "to increase parent-child visitation." To the contrary, the department afforded the mother two four-hour visits a week. The department offered to add a third weekly visit closer to where the child lived to minimize the travel time for the child. The mother declined this

offer on the ground she lacked funds to make the trip. The service provider responded by offering her \$10 gas cards to defray the cost. The mother did not take advantage of this offer.

The mother also did not make significant strides in moving toward semi-supervised visits or a trial home placement. Although she took steps to address the department's unease with her failure to proactively parent the child, she still required prompting. She also missed eleven visits between February and October 2012 and arrived late to several others. To address this problem, the department implemented a plan requiring the parents to schedule their visits and confirm their attendance at least two hours in advance. The mother generally satisfied these requirements but, without explanation, stopped visits in the two weeks preceding the termination hearings. The service provider concluded the mother "lack[ed] . . . follow-through and . . . consistency with interactions." On this record, we agree that any visitation failures were of the mother's own making.

The mother next contends the department delayed "reunification when there was no valid reason to do so." We disagree. A service provider testified that, at the beginning of the proceeding, "[t]he concerning areas . . . were the relationships between [mother and father]; mental health; the parental capabilities; . . . [e]mployment, transportation, support system; . . . [a]nd some housing concerns." Many of these concerns remained at the time of two termination hearings in October 2012.

The mother acknowledged a history of domestic violence with the father. Although the mother stated they separated before the termination hearing, the

father noted that they kept in daily contact with each other and he expressed hope they would reunite. At the same time, he discontinued couple's counseling and did not take prescribed medication to treat his explosive temper.

As for the mother's mental health, her initial therapist reported that she needed ongoing care because she had "a lot of trauma to work through" but had "quite an aversion to going there." A clinical psychologist diagnosed the mother with moderate depression and anxiety, a diagnosis that, the psychologist opined, directly affected her ability to promptly respond to the child's needs. In her words, "inconsistently slow processing speed" is "common in patients with psychiatric disturbance such as depression and anxiety." As noted, the mother did not follow up with individual counseling to address this issue.

Turning to the remaining concerns raised by the service provider, employment and housing were no longer issues. The mother secured a job shortly before the termination hearing, made arrangements for transportation, and, after being evicted from the mobile home, began living with her cousin in a home he owned.

In the end, we are persuaded that any delays in reunification were not caused by the department, but by the mother's unwillingness to focus on her mental health and its effect on her parenting and her unwillingness to take full advantage of her visits with the child. These delays meant that the mother could not independently meet the child's basic needs at the time of the termination hearing.

Finally, the mother contends the department failed "to adequately address th[e] issue of mother's head injury condition." This assertion is based on the

mother's 2004 involvement in a serious car accident that resulted in temporary numbness and ongoing headaches. The mother attributed her slow parenting responses to the head injury and asked the court to order a neurological examination. The court obliged, and the department afforded her the option of undergoing an evaluation with a physician at the University of Iowa Hospitals and Clinics in Iowa City or an evaluation with a clinical psychologist who was closer to home. According to the department caseworker, the mother opted for the evaluation that was closer to home. While the mother disagreed that she was given the option between the two, the fact that she expressed an unwillingness to travel to a nearby city for an additional visit with her child raises doubts about whether she would have been willing to travel to Iowa City.

In any event, the clinical psychologist who evaluated her addressed the effect of the head injury and found that her profile "was not consistent with cerebral dysfunction" and "there was no evidence for cognitive sequelae of a traumatic brain injury." Nonetheless, the evaluator acknowledged that the mother "may have some limitations that would hamper comprehension of complex or abstract information." She recommended that "information . . . be presented to her in a rather concrete and simple format in order to enhance understanding."

The service provider testified she used this type of an approach. She stated she would "probe for more information" when she initially did not succeed in "get[ting] information out of" the parents. Tellingly, the mother similarly testified that the service provider "would give us suggestions on things to do and then help us—try to help us figure out how to do it." While she said that this

approach was only “sometimes” helpful, she acknowledged that she did not tell professionals who worked with her “when you do this and this, this is not helping me.” She also denied having a learning disability that would prevent her from following instructions. On this record, we conclude the department adequately addressed the mother’s 2004 head injury and its possible effect on her parenting skills.

In the end, we are convinced the department satisfied its reasonable efforts mandate.

### **B. Extension of Time**

The mother requested an extension of time to facilitate reunification. The service provider recommended against an extension, stating, “[T]here has not been much progress in the last nine months to show that an additional three months would make a difference.” The juvenile court concurred, noting that the parents had received reunification services since the commencement of the previous action in 2009 and had made “little to no progress with services.” We agree with this reasoning. We conclude the juvenile court did not abuse its discretion in declining the mother’s request for an extension of time.

### ***II. Father***

The father argues “the trial court erred in finding clear and convincing evidence that [his] parental rights . . . should be terminated.” We disagree.

The juvenile court terminated the parents’ rights to their child pursuant to Iowa Code section 232.116(1)(h) (requiring proof that child three years of age or younger cannot be returned to the parents’ custody). Although the father contends his parental rights should not have been terminated, he does not

request a return of the child to his custody. Instead, he asks “that the child be placed with the [m]other, or in the alternative, that the [m]other and [f]ather be granted a short extension of time to work towards reunification.”

The father’s position on appeal is consistent with his position at the termination hearing. There, he was questioned about whether he wanted the court to give the child to him or to the mother. He responded, “At this point, it would probably be better with her.”

Based on this record, we conclude the father has asserted no basis for reversing the ground for termination of his parental rights cited by the juvenile court and, accordingly, no basis for an extension of time. See Iowa Code § 232.117(5) (authorizing an extension of time pursuant to another code provision “[i]f after a hearing the court does not order the termination of parental rights”).

We affirm the termination of the parents’ rights to this child.

**AFFIRMED.**