

IN THE COURT OF APPEALS OF IOWA

No. 2-189 / 12-0162
Filed March 14, 2012

**IN THE INTEREST OF T.S.,
Minor Child,**

L.R., Mother,
Appellant,

M.S., Father,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko,
Associate Juvenile Judge.

A mother and a father separately appeal a juvenile court order terminating
their parental rights to their daughter. **AFFIRMED ON BOTH APPEALS.**

Priscilla E. Forsyth, Sioux City, for appellant-father.

Angela H. Kayl, Sioux City, for appellant-mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, Patrick Jennings, County Attorney, and Dewey Sloan, Assistant County
Attorney, for appellee.

Robert Pierson, Sioux City, attorney and guardian ad litem for minor child.

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

MULLINS, J.

A mother and a father separately appeal a juvenile court order terminating their parental rights to their daughter, T.S. (born January 2008), under Iowa Code sections 232.116(1)(d), (e), and (h) (2011). We affirm.

I. Background Facts and Proceedings.

In December 2006, when the father was eighteen and the mother was nineteen, police discovered approximately seventeen pounds of individually packaged marijuana in the father's bedroom. The father was arrested for conspiracy to distribute marijuana, possession with intent to deliver marijuana, and drug tax stamp violation. The mother was present at the time of the discovery, and was arrested for conspiracy to distribute marijuana. The charges against the mother were later dismissed, but the father was convicted of possession with intent to deliver and was sentenced to probation.

On September 15, 2009, the mother called the police to stop a fight occurring at the family's residence. Upon investigation, it was discovered that the father, his brother, and a friend had vandalized a random vehicle. The owner of the vehicle saw the group throwing rocks and hitting his vehicle, exited his apartment, chased the group to the family's residence, and began arguing and fighting with the group. The father was subsequently charged with criminal mischief.

Six days later, pursuant to the father's probation agreement, the house where the family was living was searched. During the search, probation officials discovered a drug dealing operation, including about seven pounds of marijuana,

a digital scale, and several plastic bags. The father was arrested for possession with intent to deliver marijuana, drug tax stamp violation, and possession of drug paraphernalia. The police subsequently notified the Iowa Department of Human Services (DHS). When DHS met with the mother, she denied having any knowledge of the marijuana in the home. A child protective assessment was determined to be founded and confirmed, and both parents were placed on the child abuse registry for denial of critical care for failing to provide adequate supervision.

On October 5, 2009, the State filed a petition alleging T.S. to be a child in need of assistance (CINA). T.S. was adjudicated a CINA under Iowa Code sections 232.2(6)(b), (c)(2), and (n) (2009) on January 5, 2010. The parents retained custody of T.S. under the protective supervision of DHS.

Following adjudication, both parents were receptive to services. The father participated in outpatient chemical dependency treatment through Jackson Recovery, and provided negative drug tests. The mother attended family groups. The family also participated in in-home family safety, risk, and permanency (FSRP) services through the Boys and Girls Home. Both parents were employed, with the father working as a roofer for the mother's father, and the mother working part time at a fast food restaurant. The father pled guilty to possession with intent to deliver marijuana, and was sentenced to probation until March 31, 2014.

By the review hearing held August 3, 2010, the parents had separated. The mother had recently moved into an apartment in South Sioux City,

Nebraska, and was beginning to miss scheduled services. The mother was either not home or actively avoided contact with the in-home FSRP service provider. The father's circumstances had also deteriorated. He had recently been released from jail, had lost his employment, and was living house to house. The father initially provided his probation officer the mother's address as his residence, but at the review hearing, stated he was living with "Omar" whose last name was unknown. Living outside of Iowa was a violation of his probation, so the probation officer provided the father with thirty days to find a residence in Iowa. In addition, because he provided an out-of-state address, the father could not begin to participate in drug court or the Phoenix Program. Following the review hearing, the juvenile court modified placement so T.S. was placed solely with the mother.

While at a party on August 6, 2010, the mother and the father got into an argument over the father wanting to see T.S. During the argument, the father produced a butter knife from his pocket, so the mother ran away and called the police. The father fled, but eventually returned to the scene, and was arrested without incident for aggravated domestic assault. The father was incarcerated for violating his probation, and was not released until October 17. At that time, he moved into a residential treatment facility. The father began drug court, underwent another chemical dependency assessment, and was recommended to participate in intensive outpatient services, followed by extended outpatient services and continuing care.

On August 30, 2010, the mother was served with a thirty-day eviction notice for her apartment due to damage she caused to the floor of her apartment as well as damage to a railing in a common hallway that she allegedly tore down. Service providers referred the mother to legal aid for assistance with the eviction and spoke with her regarding local housing assistance programs, but she did not contact anyone for help. The mother also continued to miss meetings with the in-home worker, and her work hours were reduced at the fast food restaurant because she was rude to customers.

After being evicted, the mother took on a nomadic lifestyle. She initially stayed overnight at an undisclosed residence where the mother and T.S. suffered numerous bug bites. The mother then moved into the apartment of her boss; however, the boss told DHS that the mother had not been residing there on a consistent basis. It was then discovered that the mother was living in an unfinished, unheated basement with several other people. This residential arrangement only came to light because an upstairs neighbor called the police to complain about the mother constantly yelling at T.S. in the middle of the night. The mother was forced to leave this location in late-November 2010 when the utilities were turned off. The mother then moved in with her sister. At that time, she began to make some changes in her life. She started working at Rocket Auto Wash where her brother-in-law worked, had T.S. consistently attend a day care, finally applied for housing assistance, and began to pay off some of her fines.

In late-December 2010, the State sought to remove T.S. from the mother's care and to place the child into family foster care. The juvenile court denied the request, and kept T.S. in the custody of the mother citing her recent improvement and the stability of her sister's residence.

On January 25, 2011, the mother was asked to leave her sister's residence. The sister had discovered that the mother was having people over when she and her husband were not home, and was doing other people's laundry at the house. The mother became very belligerent, and police intervention was necessary. The mother and T.S. were transported to the mother's grandmother's house for the night. The next day, T.S. was removed from the mother's care and placed into family foster care.

After being involved in a physical altercation on February 13, 2011, the father was arrested and incarcerated for criminal mischief and disturbing the peace. A couple of weeks later, he bonded out of jail.

By the April 5, 2011, review hearing, the mother had again made some improvements. She got her own apartment, which was noted as clean and appropriate. She also participated in twice-weekly two-hour supervised visits, which apparently went well. The mother paid off her fines and outstanding electric and water bills. She also maintained her employment at Rocket Car Wash and was looking for a second job. During this time, the mother became pregnant and had a miscarriage shortly before the hearing.

In May 2011, the father began serving a ninety-day sentence at the county jail for a probation violation stemming from the fight in February. He was denied

work release, and remained in jail until July 17, 2011. Upon his release, the father moved in with his brother. At this time, the father joined the mother at her twice-weekly two-hour supervised visits with T.S. Because T.S. had only seen her father once in the last year, she tended to display more affection towards the mother during these visits. In addition, visits occurred at public places because neither parent had a residence sufficient to host a visit.

By July 2011, the mother lost her employment due to excessive unexcused absences. The mother also had to leave her apartment for failing to pay her rent. The mother initially moved into a friend's apartment and was living with her paramour. However, when the relationship ended, she moved into a trailer park with another friend. During this time, the mother discovered she was pregnant with the paramour's child. In October 2011, the mother moved into a women and children's shelter, but she was evicted later that month for violating shelter rules.

On November 4, 2011, the State filed a petition to terminate parental rights. A hearing was held on December 2, 2011.

By the time of the termination hearing, the parents had both begun to make progress again. The mother was living in an apartment with a friend and had gained full-time employment. The father had completed an updated drug evaluation, began attending twice weekly AA/NA meetings, began renting his own apartment, and was employed.

On January 13, 2012, the juvenile court entered an order terminating the mother and the father's parental rights under Iowa Code sections 232.116(1)(d), (e), and (h) (2011). The mother and the father separately appeal.

II. Standard of Review.

We review termination orders de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give weight to the juvenile court's factual findings, but are not bound by them. *Id.*

III. Father's Appeal.

The father asserts that the State failed to provide sufficient evidence to support each of the statutory grounds for termination. When the juvenile court terminates parental rights on more than one ground, we need only find one ground to be appropriate to affirm. *Id.* at 707. We find the evidence supports terminating parental rights under Iowa Code section 232.116(1)(h). Under this section, the father only challenges whether the State presented clear and convincing evidence that T.S. could not be returned to his care at the present time. Iowa Code § 232.116(1)(h)(4).

T.S. has been involved with DHS for over two years. For the initial twenty months of this case, the father had little to no interaction with T.S. due to his ongoing criminal struggles and his intermittent incarcerations. Although the father made progress in the final months leading up to the termination hearing, the changes are insufficient in light of the preceding twenty months. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) ("Time is a critical element. A parent cannot wait until the eve of termination, after the statutory time periods for

reunification have expired, to begin to express an interest in parenting.”). As was the case in *C.B.*, the father “waited too long to respond, and the underlying problems which adversely affected [his] ability to effectively parent were too serious to be overcome in the short period of time prior to the termination hearing.” *Id.* In addition, the father will be on probation until March 2014, and has yet to fully complete drug treatment.

Children should not be forced to endlessly await the maturity of a natural parent. *Id.* 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). T.S. needs safety and deserves permanency. Iowa Code § 232.116(2) (setting forth the best interests of the child). Upon our de novo review, we find clear and convincing evidence that termination is appropriate under section 232.116(1)(h). See *D.W.*, 791 N.W.2d at 707-08.

IV. Mother’s Appeal.

The mother contends the State failed to show that reasonable reunification efforts were made. See Iowa Code § 232.102(7), 232.102(10)(a) (setting forth reasonable efforts). However, the mother did not request other, different, or additional services to the juvenile court, and has not identified in her appeal what services could or should have been provided to her. See *In re C.H.*, 652 N.W.2d 144, 148 (Iowa 2002) (“In general, if a parent fails to request other services at the proper time, the parent waives the issue”); *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005) (holding that while DHS has an obligation to make reasonable efforts towards reunification, a parent has an equal obligation to

demand other, different, or additional services prior to a permanency or termination hearing or the issue is considered waived for further consideration on appeal). Accordingly, we find this issue to be waived.

Nonetheless, even if we assume this issue is not waived, the record shows that the mother did not respond meaningfully to the services offered to her in this case. See *C.B.*, 611 N.W.2d at 494 (stating our focus is on the services provided by the State and the parent's response, not on the services the parent now claims DHS failed to provide). The mother was offered help with housing, employment, public assistance programs, transportation, and budgeting. She not only did not cooperate with these services to successful conclusions but was at times argumentative. She also often denied help stating she would do things on her own, but then she would fail to follow through.

V. Conclusion.

For the foregoing reasons, we affirm the juvenile court order terminating the parental rights of the mother and the father to T.S.

AFFIRMED ON BOTH APPEALS.