IN THE COURT OF APPEALS OF IOWA

No. 2-246 / 12-0196
Filed March 28, 2012

IN THE INTEREST OF J.K.,
Minor Child,

C.D.K, Father,
Appellant.

Appeal from the Iowa District Court for Lee (South) County, Gary R. Noneman, District Associate Judge.

A father appeals from the order terminating his parental rights. **AFFIRMED.**

Alan N. Waples, Burlington, for appellant father.

Reyna Wilkens, Fort Madison, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Michael Short, County Attorney, and Clinton Boddicker, Assistant County Attorney, for appellee State.

Kendra Abfalter, Fort Madison, for minor child.

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

DOYLE, J.

A father appeals the termination of his parental rights to his child. He contends the State did not make reasonable efforts to reunify him with his child. Our review of this issue is de novo. *In re P.L.,* 778 N.W.2d 33, 40 (Iowa 2010).

J.K. was born in October 2010. The child was removed from his mother's care in November 2010 due to his fragile medical condition. He was returned to his mother for a short time and then placed in voluntary foster care in January 2011. He was never returned to the care of his mother.

The father is incarcerated in Illinois. His expected discharge date is August 2012. Following his tenure as an Illinois inmate, he has an Iowa detainer pending under a probation violation warrant. After a paternity test established him as the father, he was ordered to participate in any services recommended by the Iowa Department of Human Services (Department) available at his location of incarceration, and he did. In a May 2011 letter to the Department, the father asked for visits with his son. Visitation was not established. The father has never met or seen the child personally.

A petition for termination of parental rights was filed in August 2011. Trial was held on November 10 and December 13, 2011, and the father participated by telephone. On January 20, 2012, the juvenile court entered its ruling terminating the parents' parental rights. The father appeals.[1]

The juvenile court terminated the father's parental rights pursuant to Iowa Code section 232.116(1) paragraphs (b) (requiring proof of abandonment) and

[1] The mother voluntarily consented to termination of her parental rights. The termination of her parental rights is not at issue in this appeal.

(h) (requiring proof of several elements including proof the child cannot be returned to the custody of the child's parents at the present time) (2011). We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995).

The father does not dispute the State has proved the elements under these sections. Instead he contends he was never accorded reasonable efforts to reunite him with his son. However, this is not a prerequisite to termination under the terms of section 232.116(1)(b). *Cf. In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000) (discussing other grounds for termination and noting they each contain an element that implicates the reasonable efforts requirement). All that is required under this section is proof the father relinquished his parental rights and responsibilities with an intent to forgo them. Iowa Code § 232.2(1) (defining the term "abandonment of a child"). The father has not challenged this ground of termination. We could very well stop here and affirm, but we choose to address the father's reasonable efforts argument concerning section 232.116(1)(d).

The father asserts that under section 232.116(1)(d)(2), the juvenile court was required to find by clear and convincing evidence the Department offered him services to help him reunite with his son. However, the court did not find paragraph (d) as a ground for termination; rather it found evidence supported grounds stated in paragraphs (b) and (h). Although not set forth as an element of proof in section 232.116(1)(h), this ground for termination contains an element that implicates the reasonable efforts requirement. *See* Iowa Code § 232.116(1)(h)(4) ("child cannot be returned to the . . . parents . . . at the present

time."); *C.B.*, 611 N.W.2d at 492 (concerning paragraphs now redesignated as (d), (e), (f), (h) and (*l*)).

Although the State has an obligation to provide reasonable reunification services, the parent has an equal "obligation to demand other, different, or additional services *prior to the termination hearing*." *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999) (emphasis added). When a parent alleging inadequate services fails to demand services other than those provided, the issue of whether services were adequate is not preserved for appellate review. *Id*.; *see also In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). Here, there is no evidence the father requested services, other than visitation, prior to the termination hearing. Rather, he waited until the termination hearing to argue he should have been afforded participation in a parenting class. That was too late. *See In re C.H.*, 652 N.W.2d 144, 148 (Iowa 2002) (stating a parent may not wait until the termination hearing to challenge the services provided by the State). Furthermore, we find the father's claim meritless because he does not specify what additional services would have facilitated reunification.

"[T]he nature and extent of visitation is always controlled by the best interests of the child." *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). While visitation is "an important ingredient to the goal of reunification," it is "only one element in what is often a comprehensive, interdependent approach to reunification." *Id.* The father has not shown how having visits with his very young child at the correctional facility would have improved his parenting or facilitated reunification. *See C.B.*, 611 N.W.2d at 493 (explaining the focus of reasonable efforts is on services to improve parenting and facilitate reunification

while providing adequate protection for the child). Furthermore, visitation was not practical under the circumstances. Travel for the child was not recommended because of his young age and his fragile medical condition. The child was on an oxygen machine and an apnea monitor. His condition required he be in a smoke-free environment and he not be out in the cold. The correctional facility was some two-hour's drive from the child's foster home, and the length of such a trip have would necessitated changing oxygen tanks during the trip. We conclude the fact visitation was not facilitated does not undermine the juvenile court's finding that "reasonable efforts had been made to attempt to reunify the child with his [father] and to correct parental deficiencies and that those efforts have failed."

Moreover,

> the reasonable efforts requirement is not viewed as a strict substantive requirement of termination. Instead, the scope of efforts by the [Department] to reunify parent and child after removal impacts the burden of proving those elements of termination that 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.

C.B., 611 N.W.2d at 493 (internal citations omitted). Upon our review, we conclude that burden was met here. Accordingly, the judgment of the juvenile court is affirmed.

AFFIRMED.