IN THE COURT OF APPEALS OF IOWA

No. 2-249 / 12-0306
Filed April 11, 2012

**IN THE INTEREST OF K.M.B.,
D.M.B., and T.C.B.,
Minor Children,**

C.E.B., Father,
Appellant,

J.T., Mother,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson, District Associate Judge.

A father and mother separately appeal from the district court's order terminating their parental rights to their three children. **AFFIRMED AS TO BOTH APPEALS.**

Roberta J. Megel of Public Defender's Office, Council Bluffs, for appellant father.

Brian S. Rhoten, Council Bluffs, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Matthew Wilber, County Attorney, and Eric Strovers, Assistant County Attorney, for appellee State.

Marti D. Nerenstone, Council Bluffs, attorney and guardian ad litem for minor children.

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

VOGEL, P.J.

Christopher and Jennifer separately appeal the district court's order terminating their parental rights to their three children. We affirm the district court's termination of the father's parental rights because he did not challenge the reasonable efforts made by the Iowa Department of Human Services (DHS) until the termination hearing, visitation was discontinued as a result of his imprisonment, and he failed to maintain significant and meaningful contact with the children, such that termination was proper under Iowa Code section 232.116(1)(e) (2011). We also affirm the district court's termination of the mother's parental rights because she also did not challenge reasonable efforts until the termination hearing, the services provided—including visitation—were appropriate under the circumstances, and her actions resulted in a failure to maintain significant and meaningful contact with the children under section 232.116(1)(e).

I. Background Facts and Proceedings

Christopher and Jennifer are the parents of K.B., born in 2010, D.B., born in 2008, and T.B., born in 2006. This family came to the attention of the DHS in November 2010, when the Council Bluffs Police Department was dispatched to Christopher and Jennifer's home following a report of child endangerment by Jennifer's mother, Dawn. T.B. reported Christopher struck him in the left cheek and shoulder areas with a broom stick; T.B. had bruises in both places. T.B. reported D.B. was also hit with a broom stick. D.B. had several large bruises on his upper back, a long bruise on his upper-right thigh, and scrapes on his back and neck, along with bruises. Dawn also reported that about one week earlier

T.B. informed her that Christopher became angry with K.B., who would not stop crying, and threw a bottle at K.B.'s head. While officers were inside Christopher and Jennifer's house, they observed the unsanitary condition of the residence.[1] The children were taken into protective custody; T.B. and D.B. were placed with Dawn; K.B. was placed in foster care.

When DHS spoke with Christopher and Jennifer the following day, both stated they did not want D.B. and T.B. living with Dawn—who resided with her paramour Lyle—because both used methamphetamine and marijuana. DHS also learned from both parents that during the previous months, D.B. and T.B. had spent a great deal of time with Dawn and Lyle, explaining that the two would typically spend Monday through Friday with them and return home to Christopher and Jennifer's house on the weekends. Later that day, DHS contacted Dawn and Lyle, advising them of the allegations of drug use. Both denied the allegations and agreed to submit to a random drug test. D.B. and T.B. were taken to Children's Square Shelter that evening; they were later placed in the same foster home with K.B. On November 16, 2010, both D.B. and T.B. underwent hair stat tests; both tested positive for exposure to methamphetamine. Only Dawn submitted a random drug test; the results, however, were dilute and therefore not considered valid.

On December 29, all three children were adjudicated in need of assistance (CINA) under Iowa Code section 232.2(6)(b), (c)(2), and (n) (2009). A

[1] It was reported that the inside of the house was infested with cockroaches, there were mice—including one in K.B.'s baby food, there were no operable showers or tubs in the house, the house did not have gas service nor an operating furnace, the beds did not have appropriate bedding, there was trash near K.B.'s crib, the front porch was rotting, and K.B. had no clean clothing.

child abuse assessment was completed, and DHS determined the allegations of physical abuse, as well as denial of critical care, were founded as to T.B. and D.B., with perpetrators being Christopher, Jennifer, Dawn, and Lyle. Allegations of denial of critical care were founded as to K.B., with Christopher and Jennifer as perpetrators.

As a result of these findings, Christopher and Jennifer were each arrested. Jennifer pleaded guilty to two counts of child endangerment, was incarcerated for a short period of time, and then placed on supervised probation. In the summer of 2011 she moved into a women's residential correctional facility (RCF) as she was homeless. At the termination hearing, Jennifer testified she had secured a residence and would be moving into it at the end of that week. Christopher pleaded guilty to one count of child endangerment causing bodily injury, a class D felony. He was incarcerated for several months, off and on, for reasons associated with the criminal conviction, but not entirely clear from this record. Eventually he moved into an RCF as well. Jennifer has not had contact with the children since February 2011, and Christopher has not had contact with them since November 2010. All three children are currently placed in the same foster home, where they have been since April 2011.

A termination of parental rights hearing was held on November 9 and 15, 2011. The district court terminated Christopher and Jennifer's parental rights under Iowa Code section 232.116(1)(d) (adjudicated CINA, parents offered or received services to correct circumstances that led to adjudication but circumstances continue to exist); (e) (adjudicated CINA, removed from physical custody of parents at least six consecutive months, clear and convincing

evidence parents have not maintained significant and meaningful contact with child in previous six consecutive months); (f) (as to T.B.) (child four or older, adjudicated CINA, removed from physical custody of parents for last twelve consecutive months, clear and convincing evidence child cannot be returned home at present time); and (h) (as to K.B. and D.B.) (child three or younger, adjudicated CINA, removed from physical custody of parents for last six consecutive months, clear and convincing evidence child cannot be returned home at present time) (2011). Christopher and Jennifer separately appeal.[2]

II. Standard of Review

Our review in termination of parental rights proceedings is de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). Where parental rights are terminated on more than one statutory ground, we only need to find grounds under one section to affirm.[3] *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). The State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). 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.*

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[2] The guardian ad litem (GAL) argues the attorneys for both the mother and father failed to comply with our appellate rules for juvenile appeals. Under Iowa Rule of Appellate Procedure 6.902(1), termination-of-parental-rights cases are expedited. However, our rules still recognize that unpublished opinions are not controlling legal authority and citation to such unpublished opinions must include "electronic citation indicating where the opinion may be readily accessed online." Iowa R. App. P. 6.904(2)(c). Here the parties cite to several cases, only two of which are published. The remaining, unpublished cases do not include electronic citation.

[3] While we could affirm on any of the statutory grounds upon which the juvenile court relied, we choose to address the parents' separate arguments under section 232.116(1)(e) as well.

III. Father

A. Reasonable Efforts

Christopher argues DHS did not make reasonable efforts for reunification with his children. The State contends error was not preserved. Christopher had an "obligation to demand other, different, or additional services *prior to* a permanency or termination hearing." *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005) (emphasis added). As Christopher did not make such a demand prior to the termination hearing, he has not preserved this claim for our review on appeal.

B. Visitation

Christopher contends the district court erred in denying his continued and repeated requests for visitation with the children. The State again contends error was not preserved. Staci Machmueller, a DHS social worker, testified that although Christopher had been incarcerated during a majority of DHS's involvement, he did begin asking for visitation once he was at the RCF. However, "[t]he services required to be supplied [a parent] are only those that are reasonable under the circumstances." *In re S.K.*, 620 N.W.2d, 522, 525 (Iowa Ct App. 2000). The record shows Christopher did not have visitation with the children due to his incarceration. Additionally, in March 2011, T.B. and D.B.'s play therapist, Robin Stratton, noted it was her professional opinion "that due to [T.B. and D.B.'s] extreme fears and symptoms surrounding their parent's [sic] it would be in their interest that neither child [sic] have visits with either of their parent's [sic] at this time." DHS's decision to discontinue visitation with the

parents, based on the children's emotional well-being, was reasonable under the circumstances. We therefore affirm as to this issue.

C. Grounds under Iowa Code Section 232.116(1)(e)

Christopher contends the district court erred in finding clear and convincing evidence supported termination under Iowa Code section 232.116(1)(e). Termination is appropriate under this code section if,

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.
>
> (3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. *For the purposes of this subparagraph, "significant and meaningful contact" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.*

Iowa Code § 232.116(1)(e) (emphasis added.) Christopher's incarceration, failure to comply with and meet the requirements of the case permanency plan, and failure to maintain a place of importance in the children's life due to the children's fear of him, all contributed to his inability to maintain "significant and meaningful contact" with the children. With respect to Christopher's relationship with the children in the past year, Machmueller testified:

> It's not that Chris hasn't had the opportunity to have a relationship with the children. He hasn't engaged in services necessary or progress[ed] far enough with addressing his mental health needs and addressing the other services that he needs to address for that

> contact to happen. And the children's—and the children's situation and trauma does come into play.

To the contrary, Christopher contended DHS never intended to reunify him with his children. However, Christopher's failure to maintain significant and meaningful contact with the children was a result of his own poor choices—not the actions of DHS as he insisted at the termination hearing. We therefore affirm the district court's termination under section 232.116(1)(e).

D. Second Psychological Evaluation

Christopher also claims the district court erred in denying his request for a second psychological evaluation. The State again contends error was not preserved as to this issue. DHS paid for Christopher to have a psychological evaluation. The record reflects Christopher requested a second psychological evaluation at the September 30, 2011 permanency hearing. At that hearing, Christopher argued a second psychological evaluation was necessary because he was under the influence of methamphetamine at the time of the first evaluation, which may have affected the results. Following the hearing the district court ordered, "that Christopher and Jennifer obtain a psychological evaluation to include a parenting assessment to be paid for pursuant to Section 232.141 of the Code and follow all the recommendations to include any therapy or administration of medication." This appears to be a duplication of the court's previous orders—a February 3, 2011 dispositional order and July 7, 2011 review order—rather than an order for a second psychological evaluation. At the termination hearing, Christopher contradicted his previous testimony as he denied being under the influence of methamphetamine at the first evaluation.

DHS need only provide to a parent those services that are "reasonable under the circumstances." *S.K.*, 620 N.W.2d at 525. DHS already arranged for and Christopher already participated in one psychological evaluation. His assertion that he should be given a second test due to his poor choice to attend the first evaluation under the influence of methamphetamine, while at the same time claiming at the termination hearing he was not using methamphetamine during the first test, is without merit.

IV. Mother

A. Reasonable Efforts

Jennifer argues DHS did not make reasonable efforts for reunification with her children and the district court erred in denying her repeated requests for visitation with her children. The State again contends error was not preserved on either issue. At the termination hearing, Jennifer admitted she had never asked for additional services. She did, however, testify she made a request for additional visitation with Machmueller. We agree with the State that Jennifer did not preserve error as to her reasonable efforts claim because she failed to demand other, different, or additional services prior to the termination hearing. *A.A.G.*, 708 N.W.2d at 91.

B. Grounds under Iowa Code Section 232.116(1)(e)

Jennifer next contends the district court erred in finding clear and convincing evidence supported termination under Iowa Code section 232.116(1)(e). She specifically claims she was denied the opportunity to maintain "significant and meaningful contact" with her children. For purposes of section 232.116(1)(e), "significant and meaningful contact" includes, but is not

limited to "the affirmative assumption by the parents of the duties encompassed by the role of being a parent."

> This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

Iowa Code § 232.116(1)(e). This court has recognized:

> Visitation between a parent and a child is an important ingredient to the goal of reunification. However, the nature and extent of visitation is always controlled by the best interests of the child. This standard may warrant limited parental visitation.

In re M.B., 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). Jennifer's visitation with the children ceased in early 2011, based on her decisions to use inappropriate language and discipline of the children during supervised visitation, and her refusal to follow the guidance of those supervising visitations. Any failure to maintain "significant and meaningful contact" with the children through visitation resulted from the poor choices Jennifer made. In addition, Jennifer made meager efforts to comply with the case permanency plan. Machmueller and Juanita Hodgins, a Family Safety, Risk, and Permanency service provider, both testified Jennifer has made little or no progress in addressing her mental health needs. Machmueller stated Jennifer's failure to address her mental health needs impeded her ability to engage in services, which in turn served as a barrier to making progress in the case. Hodgins also noted in observing Jennifer with the children when supervised visitation was still occurring, that there was a lack of affection between Jennifer and the children. Hodgins also explained that since visitation stopped, there were only a couple of times Jennifer inquired about the

children at her weekly sessions with Hodgins. In addition to Jennifer's genuine lack of effort to maintain communication with the children, the district court also noted the evidence reflects the children have a fear of their mother and do not view her as their protector. Jennifer has not maintained a place of importance in her children's lives because she has engaged in behavior that triggers their fears of abuse, which contributed to the suspension of her visitation with the children. We find the State proved the grounds of Iowa Code section 232.116(1)(e) by clear and convincing evidence and therefore affirm as to this issue.

V. Conclusion

We affirm the district court's termination of Christopher's parental rights and the termination of Jennifer's parental rights as well.

AFFIRMED AS TO BOTH APPEALS.