

IN THE COURT OF APPEALS OF IOWA

No. 2-283 / 12-0323

Filed May 9, 2012

**IN THE INTEREST OF I.G., B.G.,
J.G., Q.A., and J.A.,
Minor Children,**

W.E.G., Father,
Appellant,

K.L.G., Mother,
Appellant.

Appeal from the Iowa District Court for Hardin County, Paul B. Ahlers,
District Associate Judge.

A father appeals the termination of his parental rights to three children. A
mother appeals the termination of her parental rights to those children, plus the
termination of her rights to two older children. **AFFIRMED ON BOTH APPEALS.**

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appellant-father.

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litem for minor children.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

TABOR, J.

These termination-of-parental-rights appeals involve five children, including six-year-old twins—Q.A. and J.A.—and their three younger half-siblings—J.G., I.G., and B.G. Krysti, the mother of all five children, claims that the Iowa Department of Human Services (DHS) did not make reasonable efforts to reunify the family. She also argues the juvenile court did not consider the long-range interests of her two older children. Eugene, the father of the three younger children, also raises a reasonable-efforts challenge, as well as claiming insufficient proof of statutory grounds, that he should be allowed six more months to work toward reunification, and that termination was not in the children's best interests.

Because the record shows DHS met the reasonable-efforts requirement of Iowa Code section 232.102(7) (2011); the State offered clear and convincing evidence in support of termination under section 232.116(1)(h); additional time would not assist the father; and termination was in the children's short-term and long-term best interests, we affirm the juvenile court.

I. Background Facts and Proceedings

Krysti gave birth to twins in September 2005. Their father is Cody.¹ Both Q.A. and J.A. currently receive mental health services and Q.A. attends a specialized school where he is placed in a classroom for children with behavioral disorders.

¹ Cody is not a party to this action and retains his parental rights to both children.

Eugene and Krysti were married in September 2009 and have three children: J.G., born in April 2008; I.G., born in February 2009; and B.G., born in February 2010. I.G. has a chromosomal disorder and muscular dystrophy, which requires close medical management. He also suffers developmental delays and some hearing loss, receives in-home services, and attends Head Start preschool. B.G. has developmental delays and autistic tendencies.

The family first came to DHS's attention in August 2009, based on a founded abuse report involving the denial of critical care and failure to provide adequate shelter for I.G. Investigators found "filthy conditions" and a lack of childproofing in the family's Eldora home.² DHS opened a second investigation in March 2010, involving the parents' failure to adequately nourish their infant, B.G. The youngest child was hospitalized and diagnosed with failure to thrive. DHS then placed B.G. with Eugene's aunt and uncle.

The juvenile court adjudicated all five children in need of assistance in October 2010. As of the November 10, 2010 disposition order, all parties agreed the children could not be returned to the care of Eugene and Krysti. All parties also agreed Q.A. and J.A. should live with Cody and his grandparents in Des Moines. DHS placed I.G. and J.G. with Eugene's parents in their Eldora home—where Krysti and Eugene would also temporarily reside. B.G. would remain with

² DHS extended in-home and family-centered services to the family, including daycare services for more than one year so that the parents could address issues leading to DHS involvement, such as cleaning the home. During this time the parents have also received services through Greenbelt Home Health Care, area education agencies, and Mid-Iowa Community Action.

Eugene's aunt and uncle. Eugene and Krysti had unsupervised visits twice weekly for two to four hours at the grandparents' house.

Because of marital difficulties, Krysti moved to Boone in February 2011. Eugene reunited with her a month later, leaving I.G. and J.G. with his parents. In April 2011—in response to a request from Eugene and Krysti—DHS resituated I.G. and J.G. into the home of Krysti's sister and brother-in-law, who also resided in Boone. In June 2011, Krysti struck I.G. in the face, causing a bruise. The assault occurred during a supervised visit and resulted in DHS issuing a founded child abuse report.

In August 2011, Eugene and Krysti moved to Iowa Falls, where Eugene enrolled in community college. The juvenile court observed that as a result of this move “the logistics of arranging supervised visits [with children in Des Moines and Boone became] a nightmare.” Because of the transportation challenges, the frequency of visitation decreased to once a week. DHS informed the parents that they could increase their visitations if they identified additional individuals to supervise the encounters, but the couple failed to do so.

On November 8, 2011, the juvenile court found all five children were still in need of assistance because the parents had not improved their ability to provide care, despite being offered a wide array of resources through DHS. The court noted the children were thriving in their current environments, despite the separation of the siblings.³ The court found that DHS had made reasonable

³ In December 2011, Eugene's aunt and uncle had a car accident, leaving them unable to continue caring for B.G, who was placed with I.G. and J.G. in the home of their maternal aunt and uncle in Boone.

efforts to reunify the family since removal, and no party had requested additional services or assistance that had not been offered or provided.

On November 30, 2011, the State and the children's guardian ad litem filed petitions to terminate parental rights for all five children. The juvenile court held a termination hearing on January 26 and February 7, 2012. In a February 9, 2012 order, it terminated Krysti's rights to all five of her children, and Eugene's rights to his three children. Both parents appeal.

II. Scope and Standard of Review

Our review is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We accord weight to the juvenile court's factual findings, especially as to witness credibility, but are not bound by them. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). If clear and convincing evidence supports the grounds for termination, we will affirm. *In re D.S.*, 806 N.W.2d 458, 465 (Iowa Ct. App. 2011). Evidence is "clear and convincing" when no "serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence" exist. *D.W.*, 791 N.W.2d at 706.

III. Analysis

A. Did DHS Make Reasonable Efforts to Reunify the Family?

Eugene contends DHS failed to make reasonable efforts to reunite him with his children. He criticizes the limitations imposed on visitation. In her separate appeal, Krysti generally challenges the reasonable-efforts finding, but does not assert any particular manner in which DHS fell short of its statutory obligation. The State argues that neither parent adequately raises this issue on

appeal. We elect to rule on the merits of this claim, despite the error preservation concerns. See *State v. Khouri*, 503 N.W.2d 393, 394 (Iowa 1993).

DHS is required by statute to “make every reasonable effort” to return children to their home as quickly as possible consistent with their best interests. Iowa Code § 232.102(7); *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). The children’s health and safety are the “paramount concern in making reasonable efforts.” Iowa Code § 232.102(10).

Throughout its involvement with this family, DHS extended numerous services to the parents, including referring the couple to a marriage counselor and referring Krysti to a women’s shelter when she relayed concerns of domestic violence. Considering the parents’ difficulty securing employment, DHS directed them to the workforce development office and suggested Eugene contact vocational rehabilitation services because of his functional illiteracy and limited skills. Neither parent took advantage of these services.

Eugene alleges DHS limited his opportunities to visit with the children. Apart from that allegation, neither parent identifies any additional services that DHS should have provided. Although DHS must make reasonable efforts toward reunification, each parent is equally obligated to demand other, different, or additional services to assist in reunification before termination. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005). In the absence of any additional claims of insufficient efforts, we address only visitation.

The parent’s own actions led to less frequent and more restricted visitations. First the parents moved from the Eldora home where they lived with

the children to Boone, which was sixty-seven miles away. After DHS placed I.G. and J.G. with relatives in Boone, the parents moved more than seventy miles away to Iowa Falls. This move also distanced Krysti from her two older children who remained in Des Moines. Neither move was prompted by a parent finding a job in the new location.

Krysti's abuse of I.G. also complicated the visitation arrangements. Her conduct resulted in DHS reducing the couple's twice-per-week unsupervised visits to once-per-week supervised sessions. We are not persuaded by Eugene's complaint that he and Krysti were denied sufficient visits. The record shows the couple skipped appointments or voluntarily shortened visits. In addition, the parents requested that they both be present at all visitations, which meant that Eugene's time with the children was affected by precautions taken by DHS after Krysti's abuse of I.G.

DHS provided reasonable assistance with transportation. The family safety, risk, and permanency (FSRP) services in-home provider drove the children to most meetings with the parents, and has provided transportation to Krysti when she visits the twins. Eugene and Krysti have a vehicle, and on at least one occasion, DHS provided gas to facilitate a trip to see their children. DHS explained the parents' choice to live so far away from their children, coupled with the requirement that all visits be supervised, took a toll on the department's resources. Still, DHS provided the family transportation assistance at least once a week. DHS encouraged both parents to submit other potential visitation supervisors to increase the visits, but neither elected to do so. Given the

circumstances of this case, we find the DHS efforts to facilitate visitations to be reasonable. See *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002).

B. Did Clear and Convincing Evidence Support the Grounds for Termination?

Eugene next contests the statutory grounds for termination. The juvenile court based its decision to terminate the father's rights on Iowa Code sections 232.116(1)(e) and (h). To affirm, we need to find facts to support just one of the sections cited by the juvenile court. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa Ct. App.1996) *overruled on other grounds by P.L.*, 778 N.W.2d at 39. The State presented clear and convincing evidence that I.G., J.G., and B.G. could not be returned to Eugene's care at the time of the termination hearing—satisfying the only challenged element of section 232.116(1)(h).

Throughout its involvement with the family, DHS found Eugene's parenting skills were poor. The workers did not believe that he was able to provide consistent and appropriate supervision during the visits. By his own admission, Eugene feels overwhelmed when caring for all three children. Two of the children have special needs. Considering the challenges posed in caring for I.G. and B.G.—in tandem with Eugene's limited parenting skills—the juvenile court was correct in finding that the father could not resume custody of the children. See *In re J.E.*, 723 N.W.2d 793, 799 (Iowa 2006) (noting special needs and best interests of each child must be evaluated, and terminating parental rights based on inability to provide a safe environment for children).

Eugene's request for six additional months to work toward reunification will yield no different result, and the delay would negatively impact the children. Granting this extension would require our finding that at the end of six months, the need for removal will no longer exist. *A.A.G.*, 708 N.W.2d at 92 (citing Iowa Code section 232.104(2)(b)). "We do not gamble with the children's future by asking them to continuously wait for a stable biological parent, particularly at such tender ages Children simply cannot wait for responsible parenting." *D.W.*, 791 N.W.2d at 707–08 (internal quotation marks omitted). These parents had more than two years to establish a safe home for their family, but failed to do so. Despite any minimal progress that may be gleaned from the record, we foresee that the need for termination would still exist six months down the road—with the children sacrificing time that could be spent in a stable environment. See *A.A.G.*, 708 N.W.2d at 92 (advising courts that "if the plan fails, all extended time must be subtracted from an already shortened life for the children in a better home").

C. Was Termination in the Best Interests of the Children?

Eugene insists termination of his parental rights is not in the best interests of his three children. In a similar vein, Krysti argues terminating her parental rights to her oldest two children does not take into consideration their long-term care.

The parents' contentions relate to the best-interests framework set out in section 232.116(2). That provision requires us to give "primary consideration" to the children's safety; to the best placement for furthering their long-term nurturing

and growth; and to their physical, mental, and emotional condition and needs. The parents' past performance can foreshadow their ability to provide future care for their children. *In re T.T.*, 541 N.W.2d 552, 556 (Iowa Ct. App. 1995).

Because Krysti does not challenge the best-interests aspect of the court's order in regard to her three youngest children, we consider only whether termination of Eugene's rights is in the best interests of J.G., I.G., and B.G. The record reveals that Eugene's mental capacity affects his ability to care for these three children. See Iowa Code § 232.116(2)(a). The juvenile court recognized Eugene is functionally illiterate and has "limited mental capacity that makes him incapable of having unsupervised time with the children." While standing alone, the father's cognitive deficit would not be grounds for terminating his parental rights, it is a contributing factor when we consider his capability to ensure the short-term safety and long-term welfare of these three children. See *D.W.*, 791 N.W.2d at 708.

In determining whether termination serves the children's best interests, we also consider whether they have become integrated into a new family, the extent that their familial identity now lies with the foster family, and whether the foster parents are willing to adopt. See Iowa Code § 232.116(2)(b). J.G. and I.G. have been in the care of a maternal aunt and uncle since April 2011. B.G. joined the siblings in December. Testimony indicated the children are doing well in that home, and they have bonded with their aunt and uncle, who are willing to adopt all three children. Given these circumstances, we conclude it is in the children's

best interests to terminate Eugene's rights at this time. See *In re T.J.O.*, 527 N.W.2d 417, 421–22 (Iowa Ct. App. 1994).

We now turn to Krysti's best-interests argument concerning her older children. J.A. and Q.A. have lived with their father's family since October 2010. In its termination order, the court found credible evidence "that there is not a particularly strong bond between Krysti and the [A.] children." According to the FSRP worker's testimony, the twins typically do not want to visit Krysti and Eugene: "They'll stall, delay, negotiate whether they need to go or not before they are actually willing to get in the car and attend the visit with me." The juvenile court also found uncontroverted evidence that Cody and his grandparents have provided a stable home for the twins. They are involved in specialized schooling and mental health services in Des Moines. Because they live in the same home as their father, they are also bonded to him. No similar connection can be found between the twins and their mother.

When we look to the long-range interests of children, we contemplate what the future holds for them if they are returned to the parents—considering the parents' past performance as indicative of the quality of care that can be expected in the future. *J.E.*, 723 N.W.2d at 798 (quotation marks omitted). Krysti's past performance has resulted in three founded abuse reports against her, based on neglect, inadequate living conditions, and, most recently, physical abuse. She offers little assurance that her future care of the twins would be any different. The twins should not be kept in limbo while waiting for responsible parenting. See *id.* at 800.

Given the bleak outlook that either parent will be able to provide appropriate care for their children in the near or distance future, termination of the parental rights of Eugene and Krysti is in the best interests of the children.

AFFIRMED ON BOTH APPEALS.