

IN THE COURT OF APPEALS OF IOWA

No. 2-411 / 12-0652
Filed May 23, 2012

**IN THE INTEREST OF Z.B. and T.B.,
Minor Children,**

A.P.B., Mother,
Appellant,

T.B. SR., Father,
Appellant.

Appeal from the Iowa District Court for Floyd County, Gregg R. Rosenblatt, District Associate Judge.

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

Collin M. Davison of Heiny, McManigal, Duffy, Stambaugh & Anderson, P.L.C., Mason City, for appellant-mother.

DeDra Schroeder until withdrawal, and then Russell Schroeder, Jr., of Schroeder Law Office, Osage, for appellant-father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Normand Klemesrud, County Attorney, for appellee-State.

Cynthia Schuknecht, Charles City, attorney and guardian ad litem for minor children.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

MULLINS, J.

A mother and a father separately appeal a juvenile court order terminating their parental rights to two children, Z.B. (born November 2008) and T.B. (born June 2010). Both parents argue that the State failed to prove the statutory grounds for termination. The mother also argues that termination was not in the children's best interests, while the father asserts he was not provided reasonable reunification services. We affirm both appeals.

I. Background Facts and Proceedings.

The parents first came to the attention of the Iowa Department of Human Services (DHS) on July 13, 2009. On this date, Z.B. was removed from parental care due to concerns of marijuana usage by the parents, and unsafe and inadequate housing. The parents stipulated to Z.B. being adjudicated a child in need of assistance (CINA), and were provided services that eventually resulted in Z.B. being returned to their care. The case was closed on May 25, 2011.

This case was initiated almost two months later. On July 24, 2011, the parents left their one and two-year-old children alone in their apartment while they went shopping. A neighbor observed the parents leave and believed the children were left inside the apartment. The neighbor knew that the electricity had been turned off and saw that no windows were left open, even though it was a hot and humid day. The neighbor knocked on the parents' apartment door but no one answered. The neighbor then spoke with other residents of the building, and decided to call the police. When the police arrived, they were able to gain access to the apartment through a backdoor. When they opened the backdoor,

the officers smelled a strong foul odor and observed several flies. The officer entered through the kitchen and observed rotten and spoiled food on the floor and counters as well as trash and dirty clothes throughout the apartment. The officers discovered the children unattended in an upstairs bedroom with the door closed. This room also contained dirty clothes and trash on the floor within the reach of the children. Both children were found wearing incorrectly-sized dirty diapers. The parents did not return to the apartment until about fifteen minutes after the police had arrived. The neighbor estimated that the parents had been gone for thirty minutes before the police arrived. The officers removed the children from the home, and contacted the Iowa Department of Human Services (DHS). As a result of this incident, the parents were charged with child endangerment. DHS also determined a child protective assessment was founded for denial of critical care: failure to provide proper supervision and failure to provide adequate shelter. The children were placed into family foster care.

On July 26, 2011, the State filed a petition alleging the children to be CINA. The children were adjudicated CINA under Iowa Code sections 232.2(6)(b) and (g) (2011) on September 7, 2011. The juvenile court continued the children's placement in family foster care.

Following removal, the parents were uncooperative with services and inconsistent with visitation. The parents were provided two three-hour supervised visits per week, but missed or cut short several visits. During the attended visits, the parents struggled to stay focused on their children, made phone calls, and were not open to assistance with parenting skills.

On September 19, 2011, the parents were evicted from their apartment. The parents resided in a hotel and with friends temporarily. In October 2011, each parent was hospitalized for psychiatric evaluation after reporting suicidal thoughts.

On November 7, 2011, the parents moved to New Jersey. The parents claimed that they were told to leave by their attorneys in order to avoid being arrested and jailed on their child endangerment charges. The parents have no intention to return to Iowa. The parents have not had a visit with the children since November 1. The parents were offered weekly phone contact with the children, but have only called the foster home ten times.

On October 26, 2011, the State filed a petition seeking to terminate the mother and the father's parental rights. The petition came to a hearing on February 17, 2012.

At trial, the father testified by telephone that he was recovering from surgery on his foot, was receiving social security disability payments of \$750 per month, and was currently living with his cousin in a three-bedroom apartment. The mother also testified by telephone. She stated that she was in school and attending classes in medical technology. The mother testified that she was living with her mother in a two-bedroom townhouse apartment. Both parents testified to having strong support systems in New Jersey.

On March 21, 2012, the juvenile court terminated parental rights to both parents under Iowa Code sections 232.116(1)(b), (d), (e), (h), and (i). The mother and the father separately appeal.

II. Standard of Review.

We review proceedings terminating parental rights 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. Statutory Grounds.

Both parents assert 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 only challenged element is whether the State presented clear and convincing evidence that the children cannot presently be returned to the care of the parents. See Iowa Code § 232.116(1)(h)(4).

The parents are currently fugitives from Iowa for child endangerment charges, and have no intention to return to Iowa. As a result, the parents have not seen their children since November 2011. While in New Jersey, the parents have not maintained consistent contact with their children or DHS. DHS has been unable to verify the parents are receiving any services to address concerns regarding housing, mental health, and parenting skills. Home studies have not been requested or completed on the parents' alleged residences in New Jersey. We believe the State has adequately proved this ground.

IV. Best Interests.

The mother also challenges whether termination was in the children's best interests. In making this determination, we "give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child." *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010) (quoting Iowa Code § 232.116(2)).

At the time of the termination hearing, the children had been removed from the mother's care for almost seven months. For the first three months the mother was very inconsistent in her attendance to visitations and struggled to consistently focus on her children during visits. Since November 2011, the mother has not seen her children face-to-face and has only had intermittent telephone communication. The mother is currently a fugitive on child endangerment charges and has no intent to return to Iowa. "Children simply cannot wait for responsible parenting." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). 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). We find termination was in the children's best interests.

V. Reasonable Efforts.

The father further contends the State failed to show that reasonable reunification efforts were made because DHS failed to follow up with the parents once they moved to New Jersey. See Iowa Code §§ 232.102(7), (10)(a) (setting forth reasonable efforts). However, the father did not request other, different, or

additional services to the juvenile court and has not identified in his appeal what services should have been provided to him. 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 toward reunification, a parent has an equal obligation to demand other, different, or additional services prior to a permanency hearing 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 DHS did consistently contact the parents while in New Jersey in order to receive and provide updates. In addition, the parents failed to maintain contact with their children, and as stated above are not in a position to have their children returned to their care. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (holding the reasonable efforts requirement is not viewed as a strict substantive requirement of termination, but must be shown by the State as a part of its ultimate proof the child cannot be safely returned to the care of a parent).

VI. Conclusion.

We affirm the decision by the juvenile court to terminate the parental rights of the mother and the father to Z.B. and T.B.

AFFIRMED ON BOTH APPEALS.