

IN THE COURT OF APPEALS OF IOWA

No. 2-817 / 12-1097
Filed October 17, 2012

**IN THE INTEREST OF D.T., H.T.,
J.R., Z.T., and J.T.,
Minor Children,**

G.T., Mother,
Appellant,

J.T., Father of Z.T. and J.T.,
Appellant.

Appeal from the Iowa District Court for Poweshiek County, Randy S. DeGeest, District Associate Judge.

A mother and father separately appeal the termination of their parental rights to their children. **AFFIRMED ON BOTH APPEALS.**

Jennifer Meyer of Jennifer Meyer Law, P.C., Marshalltown, for appellant-mother.

Fred Stiefel, Victor, for appellant-father of Z.T. and J.T.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Rebecca Petig, County Attorney, for appellee.

Dustin Hite, Oskaloosa, for father of J.R.

Terri Menninga, Pella, for father of D.T. and H.T.

Jane Odlund, Newton, attorney and guardian ad litem for D.T., J.R., Z.T., and J.T.

Diane Crookham-Johnson, Oskaloosa, attorney and guardian ad litem for
H.T.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

TABOR, J.

A mother and father separately appeal the termination of their parental rights to their children. The parents claim the Department of Human Services (DHS) failed to use reasonable efforts to return their children. In addition, the mother asserts the DHS adopted an adversarial position that prevented reunification. Because the mother failed to preserve her claim and the DHS made reasonable efforts to reunify the father with his children, we affirm the termination of their parental rights.

I. Background Facts and Proceedings

The mother has five children: D.T., H.T., J.R., Z.T., and J.T. The father is mother's current husband and parent to the mother's two youngest children, Z.T. and J.T. The juvenile court terminated their parental rights in June 2012 based on each parent's inability to exercise a reasonable degree of care in supervising the children and the mother's inability to adequately care for the children due to drug abuse and imprisonment. See Iowa Code § 232.2(6)(c), (n) (2011). At the time of termination, the mother's oldest child was fourteen and the father's children, Z.T. and J.T., were five and four years old, respectively.

The mother has a long history of drug abuse. The DHS removed the oldest child from the mother's home in May 2010 because of her use of methamphetamine and marijuana. A month later, the juvenile court adjudicated all of the offspring as children in need of assistance (CINA) because the mother and father tested positive for illicit drugs and lacked the ability to supervise the children. Since being removed from the mother's custody, the four youngest

children have been in relative placement then foster care, and the oldest child entered foster care after time in relative placement, shelter care, and at a psychiatric medical institute for children (PMIC). The children have formed strong bonds with their foster families, and all three sets of parents fostering the children are willing to make the placements permanent through adoption.

The case permanency plan to allow the children to safely return home, adopted in July 2010, required the mother and father to participate in family safety, risk, and permanency (FSRP) services; substance abuse evaluations and treatment; abstinence from drug use; and anger control counseling. The DHS offered services to assist the mother and father in these requirements, including substance abuse evaluation and treatment and mental health evaluations and counseling.

Since losing custody of her children, the mother has complied with visitation plans. But her eldest two children have chosen to cease visits with their mother, and she has respected their decisions. According to the record, the mother did not request additional or different services from those already provided by DHS in this time period. Case worker documentation shows that the mother's behavior and demeanor were highly emotional, often erratic, and seemingly out of control at times. In the past two years, the mother has alternated between periods of sobriety and continued methamphetamine abuse. The most recent relapse, in December 2011, resulted in her pleading guilty to four class "D" felonies. She is now serving an indeterminate five-year prison sentence.

The father's response to services recently improved. He participated in anger control counseling, apparently stopped using illegal drugs, and was receptive to parenting skills instruction by case workers during visits. Although his progress had been generally positive since summer 2011, the father also threatened foster parents and case workers, was arrested for burglary, denied one of his children has developmental delays, and stated that the additional needs were being suggested to the child by others during this time period. Until her death in December 2011, the father had lived with his mother in her rented home and relied on her for his basic necessities. At the time of the termination hearing, the father planned to move in with his sister and her family in Fort Dodge and similarly rely on them for support.

The county attorney filed termination petitions for all five children in January 2012, and the father subsequently filed a request for more visitation time. The court held a hearing on the matter in February 2012 and denied the request. The court conducted evidentiary hearings on April 4, April 18, and April 26, 2012, and granted the petitions terminating the parental rights of the mother and father to their respective children on June 5, 2012 pursuant to Iowa Code section 232.116(1)(f). The mother and father filed separate appeals.

II. Scope and Standard of Review

We review proceedings to terminate parental rights *de novo*. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012). We give weight to the juvenile court's factual findings, especially when considering the credibility of witnesses, but we are not bound by them. *Id.* We will uphold an order terminating parental rights if there is

clear and convincing evidence of grounds for termination under Iowa Code § 232.116. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). 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.*

III. Analysis

On appeal, both parents claim the DHS failed to use reasonable efforts to return the children. In addition, the mother asserts the DHS adopted an adversarial position that prevented reunification with her children. We address each parent's appeal in turn.

A. The Mother's Appeal

The DHS is obliged to make reasonable efforts to reunite a minor adjudicated as a child in need of assistance with his or her parent. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005). By the same token, parents must ask for additional, different, or other services before permanency or termination proceedings if they are not satisfied with the services currently provided. *Id.*; see *also* Iowa Code § 232.99(3). Therefore, to preserve for appeal the challenge that DHS failed to use reasonable efforts toward reunification, the parent must have demanded a change in the services. *A.A.G.*, 708 N.W.2d at 91. Here, the record contains no demands by the mother for any different or additional services beyond those being provided by the DHS. The record also shows the DHS asked the mother whether she needed additional services, yet she failed to request any changes at that time.

The mother additionally claims the State assumed an adversarial role that prevented reunification with her children. The State must balance its competing duties to protect children from parents unable to care for them and to provide reasonable services toward reunifying the children with their parents. *In re L.E.H.*, 696 N.W.2d 617, 620 (Iowa Ct. App. 2005). If these duties are not properly balanced, a danger arises that an adversarial posture by the State could compromise and undermine reunification efforts. *Id.* It follows then that a claim the State took on an oppositional position is a claim the State failed to make reasonable efforts toward reunification and requires the parent to request different or additional services for preservation. While we sympathize with the mother's struggle with the cycle of drug abuse, sobriety, and relapse and do not doubt she loves her children, we find that she did not preserve this claim for appeal. She did not request different or additional services from those offered and provided through the DHS.

B. The Father's Appeal

The father also claims the DHS failed to make reasonable efforts toward reuniting him with his children. But unlike the mother, the father did request the DHS provide different services. Although the documents related to the CINA case were not included in our record, the available documents indicate the father requested additional visitation with his children during the CINA proceedings. He also asked for more visitation time in filings after the county attorney initiated termination proceedings. Because he sought additional services, the father preserved this claim for appeal.

The State's duty to make reasonable efforts toward reunification is not "a strict substantive requirement of termination." *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). "Instead, the scope of the efforts by the DHS to reunify parent and child after removal impacts the burden of proving those elements of termination which require reunification efforts." *Id.* "A child's health and safety shall be the paramount concern in making reasonable efforts." Iowa Code § 232.102(10)(a).

The father claims the DHS failed to make reasonable efforts toward reunification by ignoring a July 2011 district court order to increase his visitation with his children and consistently denying his requests for more visitation time. The court order was not included in the termination record, so we cannot verify its exact content. But our record does contain termination hearing testimony by a social worker stating the DHS changed its recommendation from reunification to termination of parental rights in August 2011 after a staff review of the case. The social worker did not provide specific reasons for the change in recommendation.

Our review of the documentation on record associated with this time period shows that although the father had been taking positive steps toward adhering to the case permanency plan, a number of incidents involving the father caused the DHS concern. In May 2011, a DHS report to the court stated the father engaged in outbursts with some caregivers, giving them pause about his parenting and anger control skills. Two months later, the Foster Care Review Board changed its recommendation to disfavor returning the children home based on concerns about the safety of the home as well as the children's need for permanency and stability. In August 2011, a guardian ad litem reported to the

court the father was threatening foster parents and caregivers over transportation disputes.

Considering the evidence of the father's continued difficulty in controlling his temper and providing stable parenting, we find the DHS made reasonable efforts to reunite him with his children. The DHS provided him with appropriate services, including supervised visits, anger control counseling, drug abuse evaluation, and parenting skills education. The father contends the State did not reward his promising performance during his limited visitation time with his children. We commend the father for the effort and progress he made, but we cannot overlook the reality that his children had been in state care for more than twenty months by the time the county attorney filed termination petitions. In his appeal, the father is not even asking that his children be immediately returned to his custody: he asserts the court should have granted him an additional six months to show his good intentions and abilities. Our courts have consistently recognized the importance of permanency and stability to a child's best interests. *See, e.g., In re P.L.*, 778 N.W.2d 33, 38–39 (Iowa 2010).

At this point Z.T. and J.T. have been out of their parents' care for more than two years and are in stable, nurturing homes with families willing to adopt them. The father is neither willing nor able to assume their custody now, especially given his pending burglary charge. These children deserve a sense of belonging and home, and it is not in their best interests to leave them in continuing limbo. Because the children have been out of the home for more than

two years and the record does not show the father is ready to provide a stable environment, we affirm the termination of his parental rights.

AFFIRMED ON BOTH APPEALS.