IN THE COURT OF APPEALS OF IOWA

No. 2-879 / 12-1405
Filed October 31, 2012

IN THE INTEREST OF T.G.,
Minor Child,

T.G., Father,
Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott, District Associate Judge.

A father appeals the termination of his parental rights. **AFFIRMED.**

Jennifer Meyer of Jennifer Meyer Law, P.C., Marshaltown, for appellant father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Michael K. Jacobsen, County Attorney, and Scott Nicholson, Assistant County Attorney, for appellee State.

Nicholas Bailey of Bailey Law Firm, P.L.L.C., Mitchellville, for appellee mother.

Meegan Langmaid-Keller of Keller Law Office P.C., Altoona, attorney and guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

POTTERFIELD, J.

T.A.G., biological father of T.G., appeals the termination of his parental rights. He contends the State failed to provide reasonable efforts for reunification and that the court erred in granting the guardian ad litem's request to waive reasonable efforts. He also contends the State, through the Department of Human Services (DHS), adopted an adversarial position preventing his reunification with T.G. We affirm, finding the district court properly waived reasonable efforts and the adversarial position issue was not preserved for appeal.

1. Facts and Proceedings

T.G., born in 2007, was first adjudicated a child in need of assistance (CINA) in 2008. This adjudication stemmed from a domestic altercation between T.A.G. and T.G.'s mother, M.S., which resulted in injury to T.G. Shortly thereafter, a sex abuse report was founded against T.A.G. regarding his improper genital touching of T.G. A no-contact order was put in place, preventing contact between T.A.G. and M.S. and between T.A.G. and T.G. T.A.G. had previously been convicted as a sex offender, and has a long history of drug use, domestic abuse, and homelessness. During the CINA hearing in October 2010, T.A.G. entered into a stipulation to participate in substance abuse treatment; mental health counseling; random drug screens; family, safety, risk, and permanency services; supervised visitation; and to follow through with all DHS recommendations. While some reports showed his attendance at substance abuse groups and mental health counseling sessions, and some of his drug tests showed negative results, DHS was concerned about ongoing drug

use. T.A.G. had regular supervised visits with T.G. during 2008. This first CINA case was closed in July of 2011 as T.G. was again in the care of M.S. T.A.G. had no contact with T.G. from at least July of 2009 until the 2012 termination proceeding and continually denied his daughter's allegation of sexual abuse.

T.G. was removed from her home with M.S. again in October of 2011 and remained removed throughout the proceedings. She was adjudicated CINA again in November of 2011 after she was neglected by M.S. due to drug use. M.S. was in jail at that time for violation of the no-contact order between herself and T.A.G. T.A.G. was also jailed for this violation and for assault. M.S. admitted to using drugs while caring for T.G. and ultimately consented to the termination of her parental rights. T.G. was successfully placed with her maternal aunt and uncle.

The 2011 CINA petition included a stipulation by the parties to participate in services including random drug screens and substance abuse evaluation or treatment, though T.A.G. was incarcerated and unable to be present to sign. Services were postponed during his incarceration. In December of 2011, a dispositional hearing was held. T.G.'s placement with her maternal aunt and uncle was continued, and the no contact order with T.A.G. remained in force.

In February of 2012, in a separate hearing, the court ruled reasonable efforts would not be required regarding the pursuit of unification between T.A.G. and T.G. The court noted this waiver took the burden of initiating services from DHS and placed it on the parties, who could avoid termination by individually pursuing services. T.A.G. was present at the hearing on the waiver of

reasonable efforts. He did not request other services at that hearing or in the following months before the termination trial.

At the termination trial in April of 2012, the judge found T.A.G.'s behavior and testimony were at times inappropriate and bizarre. The court noted:

> To try placing the child in custody of [T.A.G.] at this time would expose her to a life barely on the edge, at best, but more likely past the edge and into waste, violence and tragedy. Barely self-sufficient, [T.A.G.] at age forty-four recently improved his own position to that of living with a roommate and working a temporary job. Still unable to support, provide, and care for a child, he still poses the greater risk of sexual abuse, uncontrolled anger, chronic substance abuse, and criminality. To place [T.G.] with him would disrupt a happy, successful, beneficial, and contented life.

T.A.G. appeals, arguing the court erred in waiving the requirement of reasonable efforts and that the State, through DHS, "adopted an adversarial position that prevented" him from reunifying with T.G.

2. Analysis

"Our review of termination of parental rights proceedings is de novo. We are not bound by the juvenile court's findings of fact, but we do give them weight, especially in assessing the credibility of witnesses." *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010).

a. Waiver of Reasonable Efforts

T.A.G. contends reasonable efforts were not made in his case, and that the district court erred in granting the guardian ad litem's request to waive these efforts. This order was entered in February 2012, four months before the trial on the petition to terminate parental rights. In its December 2011 dispositional order, the district court noted that failure by the parties to identify a deficiency in

services provided might preclude them from challenging the services in the termination of parental rights proceeding.[1]

In *In re C.B.*, our supreme court discussed the evolving requirement that the State make reasonable efforts toward reunification of the family, noting:

> [T]he Adoption and Safe Families Act of 1997. . . eliminated the reasonable effort requirement for certain types of parental behavior. *See* 42 U.S.C. § 675(5)(C). In response, our legislature enacted amendments to our comprehensive statutes to permit waiver of reasonable efforts when aggravating circumstances exist. *See* 1998 Iowa Acts ch. 1190, § 17 (codified at Iowa Code § 232.102(12) (1999)). These amendments not only reflect the critical role of reasonable efforts from the very beginning of intervention, but recognize a child's right to appropriate custodial care and the important element of time.

Id. at 493. Although the requirement that the State expend reasonable efforts toward reunification is not a "strict substantive requirement of termination," reasonable efforts are part of the State's "proof the child cannot be safely returned to the care of a parent." *Id*. Where the district court has ordered the requirement waived, the State need not show reasonable efforts, and the order is reviewable in the appeal of the termination ruling.[2] *Id*. at 493–94 (noting the reasonable effort requirement is eliminated for "certain types of parental behavior" and where not waived, "in considering the sufficiency of evidence to support termination, our focus is on the services provided by the state").

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[1] In *In re C.B.*, 611 N.W.2d 489, 494 n.1 (Iowa 2000), the court stated:

> Iowa Code section 232.99(2A), as amended by 1998 Iowa Acts chapter 1190, section 10, now provides that at the beginning of each dispositional and subsequent hearing the juvenile court shall "advise the parties" that the failure to identify a deficiency in services or to request additional services may preclude the party from challenging the sufficiency of the services in a termination proceeding.

[2] The ruling in the CINA proceedings waiving reasonable efforts was issued separately from the dispositional order. *See In re Long*, 313 N.W.2d 473, 476 (Iowa 1981) (stating that a dispositional order is a "final, appealable order").

In order to waive reasonable efforts, the court must find clear and convincing evidence that aggravated circumstances exist. Iowa Code § 232.102(12) (2011). Aggravated circumstances can be found through any of several factors, including where "[t]he court finds the circumstances described in section 232.116, subsection 1, paragraph 'l', are applicable to the child." *Id*. Iowa Code section 232.116 subsection 1 paragraph "i" reads as follows:

> i. The court finds that all of the following have occurred:
> (1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.
> (2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.
> (3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

In its order granting the motion to waive reasonable efforts, the court found all of the factors under section 232.116(1)(i) were established by clear and convincing evidence. It noted a finding of sexual abuse had been made against T.A.G., which he still had not begun to account for, and that T.A.G. had not seen T.G. for more than two years prior to the hearing. The court further noted that T.A.G. had been offered services but did not follow through with them. It also found T.A.G.'s refusal to admit to the sexual abuse matter had prevented him from beginning treatment.

> Due to his not admitting, he had no sex offender risk assessment and no therapy for it. He has not begun to account for the founded sexual abuse. In addition to such services that could be extended to him and work to be done by him on the sex abuse matter, he would need to have a mental health evaluation, counsel for substance abuse, provide random drug samples for screening, and complete FSRP services. He has done none of these. No more direct remedial or reunification services are available until he

> undertakes those steps. . . . [T.A.G.] says he wants to act as a father. . . . Waiver would not mean he cannot begin participating in needed services, and follow through with them to try making participating in [T.G.'s] life possible.

We agree with the district court; clear and convincing evidence of aggravated circumstances was shown warranting waiver of reasonable efforts.

Since the order waiving reasonable efforts is supported by clear and convincing evidence, we need not address T.A.G.'s companion claim that he was not afforded reasonable efforts.

b. Adversarial Position of DHS

T.A.G. next alleges the State, through DHS, adopted an adversarial position that prevented reunification with T.G. Though T.A.G. alleges error was preserved "on the record," our review of the proceedings reveals nothing more than insinuation of adversity during the cross-examination of T.G.'s social worker. The district court did not address this issue in its order. Because the district court did not address the issue, we will not address it for the first time on appeal. *See In re V.M.K.*, 460 N.W.2d 191, 193 (Iowa Ct. App. 1990) (noting we will not address issues not addressed below).

AFFIRMED.