

IN THE COURT OF APPEALS OF IOWA

No. 3-605 / 13-0732

Filed June 26, 2013

**IN THE INTEREST OF C.L. AND A.P.,
Minor Children,**

**M.L., Father,
Appellant,**

**A.L., Mother,
Appellant.**

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A mother and father separately appeal the termination of their parental rights. **AFFIRMED.**

Sarah Stork Meyer of Clemens, Walters, Conlon & Meyer, L.L.P., Dubuque, for appellant father.

Daniel A. Dlouhy, Dubuque, for appellant mother.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Joshua Vander Ploeg, Assistant County Attorney, for appellee State.

Colista Anglese of Hammer, Simon & Jensen, P.C., Dubuque, attorney and guardian ad litem for minor children.

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

POTTERFIELD, J.

A mother and father appeal separately from the termination of their parental rights. The mother appeals from the termination of her rights to two children, A.P. and C.L.; the father appeals the termination of parental rights to the one child he fathered, C.L.¹ We affirm the termination rulings as to both the mother and the father.

I. Facts and proceedings.

This court previously heard an appeal by the father contesting C.L.'s adjudication as a child in need of assistance (CINA) in this case. *In re C.L.*, No. 12–1836, 2012 WL 6190820 (Iowa Ct. App. Dec. 12, 2012). We incorporate those facts here:

The family came to the attention of the Iowa Department of Human Services [DHS] in May 2012 when C.L.'s three-year-old half-sibling A.P. was found to have an unexplained, non-accidental skull fracture and numerous bruises. The family consists of the parents of C.L., who are married, C.L., and A.P. A.P.'s injuries occurred sometime during the evening of May 4, 2012, while he was at his mother's home or his paternal grandmother's home. At the time, a court order prevented any contact between C.L.'s parents because of domestic violence. C.L.'s father was residing with his mother in the same trailer park as C.L.'s mother. The only people who had access to A.P. on the evening of May 4 were his mother, C.L.'s father, and C.L.'s paternal grandmother.

The court issued temporary removal orders concerning both children in June, and they were placed with the maternal grandparents. Both the mother and C.L.'s father denied any knowledge of how A.P. sustained the injuries, but suggested the child suffered the skull fracture from banging his head against a wall. The explanations given by A.P.'s mother and stepfather were not consistent with the medical evidence. Following a child protection assessment, [DHS] issued a founded report of physical abuse with C.L.'s father as the perpetrator. It also found the mother and stepfather denied critical care to A.P. and failed to provide adequate medical care to the child.

¹ The parental rights of A.P.'s father were also terminated, but he does not appeal.

Following a contested removal hearing in June, the court found returning the children home would be contrary to their welfare because of the allegations of physical abuse. The court ordered the children to remain in [DHS]'s custody for continued relative placement. The State then petitioned to have both children adjudicated in need of assistance under Iowa Code section 232.2(6)(b) and (c)(2) (2011). After a contested removal and adjudication hearing in August, the court found clear and convincing evidence supported the State's allegations and adjudicated both children in need of assistance under section 232.2(6)(b) and (c)(2). The court continued the children's placement with C.L.'s relatives.

In September, the court authorized [DHS] to place the children in foster care after C.L.'s grandparents advised [DHS] the children needed to be removed from their home. Later in September the court held a disposition hearing. The court noted there were no concerns about the care the parents provided during visitation, but visits were still fully-supervised "due to the concerns regarding the severity of [A.P.]'s injuries and the lack of any appropriate explanation by the parents." The court confirmed the adjudication of the children in need of assistance and ordered they remain in [DHS]'s custody for foster care placement. The court also ordered continued visitation at [DHS]'s discretion and continued services to facilitate reunification.

Id. at *1. In December of 2012, the mother was sentenced to probation for child endangerment. She pleaded guilty to medical neglect of A.P. Throughout the proceedings leading to termination, neither parent has admitted to any fault for A.P.'s injuries. DHS and the court continually informed the parents that unless they recognize their role in A.P.'s injuries, their parental rights could be terminated. The State petitioned to terminate the parental rights of the mother and father on February 27, 2013. On March 19, April 5, and April 16, 2013, hearings were held on the petition. The court noted the ongoing problem with the parties' failure to acknowledge and address the cause of the injuries to A.P. in its termination order.

[The father] has continued to steadfastly deny any involvement with [A.P.]'s injuries. In his testimony, [the father] indicated that he was

willing to acknowledge that [A.P.] was injured and acknowledge that [A.P.] blames him for the injuries, but would go no further than that. [The father] felt such an acknowledgment was sufficient to comply with the expectations of [DHS] and should have resulted in progress regarding his interactions with [C.L.]. . . .

The Court finds [the father]'s "acknowledgment" to simply be a matter of semantics. Since the outset of the case, the parents have been put on notice that identifying how [A.P.] was injured was crucial for any progress to be made regarding the amount of interactions and supervision level. The removal/adjudication order entered August 20, 2012, found both children to be at risk "given the parents' inability to identify how the injuries occurred or who inflicted them." . . .

[The father]'s "acknowledgment" that [A.P.] was injured and that [A.P.] believes he did it, falls far short of these clearly stated, and often repeated, expectations. The language used throughout the case has been plain and unambiguous. If progress regarding interactions was going to be realized, an explanation by [the father] or [the mother] as to how [A.P.] received his injuries was needed. Although [the mother] pleaded guilty to a charge of medical neglect regarding [A.P.]'s injuries, she continues to deny they were caused intentionally.

[The mother] has made it very clear her loyalty remains with [the father]. Despite the significant amount of bruising, the severity of the skull fracture, and the medical opinions that the injuries were inflicted, [the mother] has refused to accept the medical conclusions and simply dismissed the opinions of the medical professionals who treated [A.P.]. Despite all of this, [the mother] was not even willing to concede that there was a possibility [A.P.]'s injuries were inflicted. When [the mother] was initially called to the stand, she testified as follows:

"Q: Do you feel that [A.P.] was actually physically abused?

A: I do not believe that, no."

When [the mother] was recalled to the stand, she testified as follows:

"Q: Do you believe that it is a possibility that some of the injuries that [A.P.] had were intentionally inflicted? A: No, sir."

[The mother] also refused to believe [A.P.]'s statements regarding being hurt by [the father] and being fearful of [the father]. Despite [A.P.] making these statements to different people at different times throughout the case, [the mother] felt it was the result of other people telling [A.P.] what to say or that [A.P.] did not like [the father] because [the father] was the disciplinarian of the home.

The court concluded the children could not be safely returned to the father and mother's home, and terminated the parental rights of both parents under Iowa Code section 232.116(1)(h). Both parents appeal, arguing the court lacked clear and convincing evidence that termination was in the best interests of the children. The father also argues the court erred in failing to grant him additional time before termination, and in denying his request for additional visitation.

II. Analysis.

We review proceedings for the termination of parental rights *de novo*, giving weight to the juvenile court's factual findings, especially those regarding credibility. *In re A.B.*, 815 N.W.2d 764, 773 (Iowa 2012).

A. *Clear and convincing evidence.*

In the father's first appeal, this court clearly laid forth the need for the father to address his role in A.P.'s injuries.

While we recognize the father has done well in supervised visitation, he has failed to address his role in the injuries A.P. received. See *In re C.H.*, 652 N.W.2d 144, 150 (Iowa 2002) (noting a parent's failure to address the parent's role in abuse may hurt the parent's chances of regaining custody). "The requirement that a parent acknowledge and recognize abuse is essential for any meaningful change to occur." *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App.1999). Although the court ordered the father to cooperate with reunification services, follow through with mental health evaluation recommendations, and participate in anger management counseling, these services "are not likely to be effective" as long as the father continues to deny the abuse of A.P. and his part in it. See *id.*; see also *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988) (stating meaningful change cannot occur without a parent's recognition of the abuse).

C.L., 2012 WL 6190820, at *2. Both parents have failed to acknowledge any role in A.P.'s injuries, though the mother did plead guilty to medical neglect. Both children are very young. They need and deserve permanency. There is clear

and convincing evidence neither child can be returned to either parent's custody; termination is in the best interests of the children. See Iowa Code 232.116(1)(h)(4).

B. Additional time.

The father next argues the district court should have allowed him additional time to reunify with C.L. Under Iowa Code section 232.104(2)(b), the court may continue placement of a child for an additional six months instead of proceeding to termination. In this order, the court must "enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child . . . will no longer exist at the end of the . . . period." Iowa Code § 232.104 (2)(b). The district court and our court previously instructed the father as to what changes he needed to make to avoid termination of his parental rights. Throughout the proceedings, he failed to meaningfully address the abuse issue.

We do not believe these children should be forced to suffer indefinitely in parentless limbo. To rule that these children must await the maturity of their parents would keep them in limbo to see if additional time would provide them with stable, nurturing parents, absent the serious marital conflicts that caused physical abuse to both the children and their mother.

In re K.M.R., 455 N.W.2d 690, 694 (Iowa Ct. App. 1990). The father has had months to address his involvement with A.P.'s injuries while his very young child, C.L., has continued to require stability and permanency. The father has not shown what additional services would allow for a different outcome after an extension of time. Iowa Code § 232.104(2)(b) (stating an order for extension of time will include specific factors which show why the basis for removal "will no

longer exist at the end of the additional six-month period”); see also *In re C.H.*, 652 N.W.2d 144, 151 (Iowa 2002) (“Given [the father]’s past performance, we are not convinced additional time or alternative services will change his conduct.”). We find the district court properly declined to allow the father additional time for reunification.

C. Reasonable efforts.

Finally, the father argues DHS failed to make reasonable efforts towards reunification. DHS must make reasonable efforts to return the child to the child’s home as is consistent with that child’s best interests. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). This “includes visitation designed to facilitate reunification while providing adequate protection for the child.” *Id.* Here, DHS was concerned with the household history of domestic abuse, and the father’s inability to address the cause of the severe injuries sustained by A.P. Failing to do so, he was told, would prevent unsupervised visitation, as DHS felt C.L. might not be safe in the father’s care. He was told what was required to increase visitation and he failed to comply. DHS provided reasonable services for reunification.

AFFIRMED.