

IN THE COURT OF APPEALS OF IOWA

No. 3-730 / 13-0890
Filed July 24, 2013

**IN THE INTEREST OF R.W.,
Minor Child,**

**A.W., Mother,
Appellant,**

**J.S., Father,
Appellant.**

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

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

Timothy K. Wink of Schweitzer & Wink, Columbus Junction, for appellant mother.

Sara Strain Linder of Tindal Law Office, P.L.C., Washington, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Alan Ostergren, County Attorney, and Kevin McKeever, Assistant County Attorney, for appellee State.

Stephen W. Newport of Newport and Newport, P.L.C., Davenport, attorney and guardian ad litem for minor child.

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

DOYLE, J.

A mother and father separately appeal the termination of their parental rights to their eleven-month-old child, R.W. We affirm on both appeals.

I. Background Facts and Proceedings

This family came to the attention of the Iowa Department of Human Services (DHS) in July 2012,¹ following reports that the mother had left R.W. (then one month old) at the home of a family friend, Tonya Leibbrand, because she could not care for the child. The mother tried to take R.W. back, only to return the child to Tonya's within an hour. The mother was then hospitalized for suicidal thoughts. She has a history of mental health issues, including suicidal depression.

The court entered an ex parte removal order in August 2012. The child was adjudicated to be in need of assistance in October 2012. There have been no trial returns to the home.

DHS initiated reunification services. Initially, the mother stated she only wanted photographs of the child. The mother participated in only thirteen of fifty-five visits offered throughout these proceedings. She stated 9:00 a.m. was too early to wake up to call to arrange visits. She changed residences "at least six" times throughout these proceedings and "generally refused" to provide information to DHS regarding where she was living. "At one point, she

¹ The mother has a history of involvement with DHS. She gave birth to her first child in July 2010. That child was removed from her care in August 2010, the mother has not seen the child since that time, and her parental rights to the child were terminated. "[S]imilar services were offered in the prior termination of parental rights case," and the mother's "attitude in that case was similar to her attitude in this case." That is, the mother has been "ambivalent about whether she wanted to be a parent."

completely dropped out of her child's life." She was unemployed until approximately three weeks prior to the termination hearing.

The father, a registered sex offender, was incarcerated throughout the entire case² and has no relationship with the child.

The State filed a petition to terminate parental rights in March 2013. The guardian ad litem recommended termination of parental rights. Following the termination hearing in May 2013, the court entered an order terminating the mother's parental rights pursuant to Iowa Code sections 232.116(1)(e), (g), and (h) (2013), and the father's parental rights pursuant to sections 232.116(1)(e) and (h). The mother and father now appeal.

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 section 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.*

² The father was initially placed in Fort Dodge, then Newton, and eventually Anamosa. He was transferred due to altercations with inmates and staff members, and was placed in solitary confinement.

III. Discussion

On appeal, both parents claim DHS failed to use reasonable efforts to reunify them with their child and that the statutory grounds for termination have not been met. We address each parent's appeal in turn.

A. The Mother's Appeal

The mother claims the State failed to make reasonable efforts toward reuniting her with the child in declining to allow her unsupervised weekend visitations and in restricting her paramour at the time, a known child sex offender, from having contact with the child. 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).

Here, we believe it is incredulous for the mother to contest DHS's denial of her requests for more extensive visits when she only visited the child once or twice every month and refused to provide information to DHS about her various residences. As the juvenile court noted—and we agree—"It is not in the child's best interest to expand visitation and allow unsupervised visitation or weekend visitation when a parent refuses to allow the Department of Human Services to assess the home and who is residing in the home." Considering the evidence of the mother's unresolved mental health issues, sporadic attendance at supervised visitations and lack of interaction with the child at those visits, overall instability,

impaired decision-making, lack of credibility, and continued difficulty providing stable parenting, we find the State made reasonable efforts to reunite her with the child.

We further find clear and convincing evidence supports termination of the mother's parental rights under section 232.116(1)(h).³ As the juvenile court observed:

The child's mother has made absolutely no progress toward reunification. The child's mother's decision-making is extremely poor. She refuses to participate in visitation because it would be difficult for her. She testified that it would be difficult for her to see her child leave the visits; thus, she put her own needs above the need of her child to have a parent involved in her life. [The mother] has a distorted view of her ability to safely care for the child. If returned to her custody, the child would be subject to adjudicable harm, including a failure to provide appropriate supervision, unstable living environment, unaddressed mental health needs of [the mother], and [she] would continue to expose the child to individuals who present safety concerns.⁴

We wholeheartedly agree with these findings, and we adopt them as our own.

R.W. has been out of the mother's care for nearly ten months, since she was less than two months old. The mother is unable to assume custody of the child now or at any time in the foreseeable future. Because R.W. deserves a sense of belonging and certainty, and the record does not show the mother is ready or able to provide a stable environment for the child, we affirm the termination of her parental rights.

³ To affirm, we need only find termination appropriate under one subsection. See *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.").

⁴ In this regard, the juvenile court acknowledged the mother's prior relationships with at least three known child sex offenders.

B. The Father's Appeal

The State is obliged to make reasonable efforts to reunite a minor adjudicated 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). At the same time, a parent must ask for additional, different, or other services before permanency or termination proceedings if dissatisfied with the services currently provided. *Id.*; see also Iowa Code § 232.99(3). Accordingly, 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. The State asserts error was not preserved on the father's claim for additional services. Indeed, the record contains no demands by the father for any different or additional services until the termination hearing. The court noted the father had not requested any additional services. We conclude the father failed to preserve error on this claim.

The father does not contest the termination of his parental rights under section 232.116(1)(h). In any event, we find clear and convincing evidence supports termination of the father's parental rights under that section.⁵ The record clearly supports the father's inability to provide a safe environment for the child, and "returning"⁶ the child to his custody is not an option—both literally (he is incarcerated) and figuratively (he "is a stranger to the child"). Instead of

⁵ The State concedes the juvenile court improperly terminated the father's parental rights pursuant to section 232.116(1)(e) where termination under that subsection was not sought in the State's petition as a ground to terminate parental rights. To affirm, however, we need only find termination appropriate under one subsection. See *S.R.*, 600 N.W.2d at 64.

⁶ The child has never been in the father's care, but "return" to custody is the statutory language.

contesting termination on this ground, he now seeks additional time. Although the issue was not specifically addressed by the juvenile court, we find there is no reason to delay the child the permanency she needs and deserves. We affirm the termination of the father's parental rights.

AFFIRMED ON BOTH APPEALS.