

IN THE COURT OF APPEALS OF IOWA

No. 3-818 / 13-1022
Filed September 5, 2013

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

**R.H., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Joe E. Smith, Judge.

A father appeals the termination of his parental rights to his children.

AFFIRMED.

Karmen R. Anderson of Bandstra Law Firm, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John Sarcone, County Attorney, and Kevin Brownell, Assistant County Attorney, for appellee.

Michelle Saveraid of Youth Law Center, Des Moines, attorney and guardian ad litem for minor children.

Stephie Tran, Des Moines, for mother.

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

MULLINS, J.

A father appeals the termination of his parental rights. He contends the State failed to make reasonable efforts to reunify the family. Specifically, he argues the State failed to provide him with sufficient, timely mental health services. Because the father failed to make a timely request for additional services, error is not preserved and we affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

Z.H. and B.H. came to the attention of the Iowa Department of Human Services (DHS) in 2011 due, in part, to safety concerns stemming from the father's anger management issues. The father admits he "intentionally hit" the mother while she was holding one of the children—then a baby—in her arms. There were also concerns about the parents' mental health and substance abuse. The State filed a child-in-need-of-assistance (CINA) petition in July 2011 and the children were adjudicated to be CINA in November 2011.

The father was offered a myriad of services during the course of the CINA proceedings. He began receiving family safety, risk and permanency services in August 2011. He completed a substance abuse evaluation and attended outpatient substance abuse treatment.¹

The father was provided a psychosocial evaluation, which took place at various appointments between October 2011 and January 2012. The record shows the father attended four appointments, and cancelled or failed to show for three appointments. The psychosocial assessment notes the missed

¹ The father admits he continues to use marijuana on a regular basis.

appointments may lead to incomplete information. Among other services, the assessment recommended the father attend individual therapy, couples therapy, and parenting classes. The father also completed an attachment assessment, which recommended he attend parenting classes, anger management, and dyadic therapy.

The father failed to follow through on recommendations for mental health services. The record shows the DHS worker repeatedly asked whether he had set up counseling appointments and reminded him of the importance of doing so. In the May 2012, the father replied that “his mental health issues were due to his drug use, and that this had been addressed through treatment.” The father also claimed he could not afford to attend counseling because his insurance did not cover it, although the record shows the father gambled and paid approximately \$100 per week on a limousine purchase. At the termination hearing, the father testified he decided not to spend his money on individual therapy because he thought it would be better to “spend that money on my kids or put it up for my kids’ college tuition or something that could be useful in the future.”

The State filed a petition to terminate the mother’s and the father’s parental rights on November 12, 2012. The termination hearing was held on April 29, 2013. On June 10, 2013, the juvenile court entered its order terminating both the mother’s and the father’s parental rights to the children pursuant Iowa Code sections 232.116(1)(d) and (h) (2011). The father filed a timely appeal.

II. STANDARD OF REVIEW.

We review termination of parental rights de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give the juvenile court's fact-findings weight, although they are not binding. *Id.* This is especially true with regard to witness credibility. *Id.*

III. ANALYSIS.

The father's sole contention on appeal is that the State failed to make reasonable efforts to reunify the family. Specifically, he argues the State failed to provide him with services to address his mental health issues. He claims these mental health issues are so severe that he could not comply with other services.

Iowa Code section 232.102(5)(b) requires the State to make reasonable efforts to preserve the family before removing the child from the home. After removal, the State must make reasonable efforts to reunify the family as quickly as possible. Iowa Code § 232.102(7). In determining whether reasonable efforts have been made, the court considers "[t]he type, duration, and intensity of services or support offered or provided to the child and the child's family." *Id.* § 232.102(10)(a)(1).

The reasonable efforts requirement is not viewed as a strict substantive requirement at termination. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Instead, it impacts the State's burden of proving those elements of termination that require reasonable efforts. *Id.* The State must show reasonable efforts as part of its proof the child cannot be safely returned to the parent's care. *Id.*

While the State has an obligation to make reasonable efforts, it is the parent's responsibility to demand services if they are not offered. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). A parent's challenge to the sufficiency of the services offered should be made at the time the services are offered. *In re C.D.*, 508 N.W.2d 97, 101 (Iowa Ct. App. 1993). Likewise, any special accommodations that must be made for a parent with a mental health disability should also be raised at the removal or review hearing. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). "It is too late to challenge the service plan at the termination hearing." *Id.*

The State argues the father failed to preserve error on his reasonable efforts challenge because he never requested any specific services before termination. We agree. Aside from a May 24, 2012 order requiring the DHS to provide bus tokens or passes to the mother to allow her to access services, no additional services were requested or ordered during the CINA proceedings. At each stage of the proceedings, the juvenile court consistently found reasonable efforts were being made.

The father argues he preserved error by informing the DHS worker he could not afford individual therapy. Our supreme court has noted that while a dialogue between the parent and the DHS may help the parties comply with the case permanency plan, if a parent is not satisfied with the DHS's response, the parent must present a challenge to the service plan to the court. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002); see also Iowa Code § 232.99(3) (requiring the court at any dispositional review or permanency hearing to inquire whether any

additional services are needed and advise the parties that failure to request additional services may preclude the party from challenging the sufficiency of the services in a termination-of-parental-rights proceeding). The father failed to raise the deficiency in his services with the juvenile court and therefore has failed to preserve error on his claim. Accordingly, we affirm.

AFFIRMED.