

**IN THE COURT OF APPEALS OF IOWA**

No. 6-333 / 06-0380

Filed May 10, 2006

**IN THE INTEREST OF J.L.S. and S.S.,  
Minor Children,**

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

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Appeal from the Iowa District Court for Linn County, David M. Remley,  
Judge.

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

**REVERSED AND REMANDED.**

Richard L. Pazdernik, Jr. of Nazette, Marnier, Wendt, Knoll & Usher,  
L.L.P., Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant  
Attorney General, Harold Denton, County Attorney, and Kelly Kaufman, Assistant  
County Attorney, for appellee.

Natalie Cronk, Iowa City, for mother.

Judith Jennings Hoover of Hoover Law Office, Marion, guardian ad litem  
for minor children.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

**SACKETT, C.J.**

Bradley, the father of Jasmine, born in 1995, and Samantha, born in 1997, appeals from the order terminating his parental rights to his daughters.<sup>1</sup> He contends the State did not make reasonable efforts to place the children in his custody, clear and convincing evidence does not support termination, and termination is not in the children's best interest. On de novo review, we reverse the termination order as to Bradley.

**BACKGROUND FACTS AND PROCEEDINGS**

Bradley and Margie divorced in 1998, the girls were placed in Margie's primary physical care, and Bradley had weekend visitation. In December of 2002, following allegations of lack of care and supervision, the State filed a child-in-need-of-assistance petition concerning Jasmine and Samantha. In January of 2003 the parties stipulated the children were in need of assistance. At the dispositional hearing in February, Margie and Bradley were ordered to complete substance abuse evaluations. In May of 2003, Bradley was arrested for operating while intoxicated (OWI) third offense. When Bradley went for a substance abuse evaluation in July, he tested positive for cocaine. He failed to complete outpatient treatment successfully in July and August.

In March of 2004 Margie was arrested and jailed for public intoxication. The children were removed from her care and placed with their maternal aunt and uncle. Jasmine and Samantha have remained in this relative placement

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<sup>1</sup> The mother's parental rights to Jasmine and Samantha also were terminated. She is not a party to this appeal. She has three other children: a son, born in 1990, and a daughter, born in 1992, who live with their father, Eric, and a daughter, born in 2003, who was removed at the same time as Jasmine and Samantha and placed in the care of her father, Everett.

since their removal in March of 2004. Bradley continued to exercise weekend visitation with the girls after their removal from Margie's care. In June of 2004, Bradley was arrested for a second OWI third offense. His visitation was changed to supervised. In July, Bradley was sentenced on the May 2003 OWI charge and he appealed. In November of 2004, while the appeal was pending, Bradley was arrested for a third OWI third offense. In March of 2005 Bradley pled guilty to the two pending OWI third offense charges and was ordered to report to the Nelson Center at the end of May. Just prior to reporting to the center, Bradley tested positive for cocaine. While at the Nelson Center, Bradley successfully completed intensive outpatient substance abuse treatment and was released on parole in November of 2005.

Efforts to reunify Jasmine and Samantha with their mother, Margie, progressed through 2004 and 2005, with the State considering the possibility of a trial home placement. Continuing concerns about Margie's association with a man with a lengthy history of criminal activity, domestic abuse, and substance abuse, along with Margie's substance abuse and lack of proper supervision of the girls prevented any trial home placement or reunification. In September of 2005, the State petitioned to terminate both parents' rights.

Bradley exercised two hours of supervised visitation weekly from May of 2005 through December, but the supervision was reduced to drop-in supervision early in the fall. The visitation went well and was expanded to four-hour visits in late 2005. In January of 2006, the four-hour visits were changed to unsupervised. Visitation took place in Bradley's home with his wife, Michelle,

and two children. Jasmine and Samantha have a good relationship with Michelle and their two half-siblings.

At the termination hearing in February of 2006, the service provider who provided supervision for visitation indicated she was ending her work with the family because she had no concerns about the girls' safety or Bradley's parenting skills. The case worker testified Bradley was following the expectations of his parole, the visitations were going well, and the girls had a healthy bond with Bradley. She acknowledged the case permanency plan only sought reunification of the girls with their mother. She expressed some concern about Bradley's past substance abuse. She testified there were no further services the Department of Human Services could provide. She never observed Bradley with the girls. She was asked about the progression from supervised to unsupervised visitation and if, in the normal progression Bradley would be nearing the trial home placement stage. She replied, "If it weren't for the fact that the girls had been out of the home for approximately two years, yes." She noted that increasing visitation to full day, then overnight "could take a considerable amount of time."

Bradley testified he has been clean and sober since before entering the Nelson Center in May of 2005. He attends two Alcoholics' Anonymous meetings weekly and also sees a psychiatrist. He testified he was told by the case worker that only reunification of the girls with their mother was being pursued. He also said he asked for extended visits and longer visitation, but the case worker denied his requests.

In terminating Bradley's parental rights, the court concluded in part:

Based upon Brad's long history of substance abuse, his longstanding denial that he had a substance abuse problem, his

refusal or failure to obtain treatment until he was incarcerated two years later, and the short period of time since his release from the Nelson Center in November, 2005, Brad is at high risk to relapse. While Brad is to be commended for the very recent changes in his life, it is far too soon to determine whether he can sustain a sober lifestyle. The children have been waiting more than 22 months for permanency.

The court concluded the children could not be returned to the custody of either parent at that time or in the foreseeable future and that the State made reasonable efforts to eliminate the necessity of removal and facilitate successful reunification. It further concluded termination of parental rights and placement of the children for adoption was in their best interest.

## **ANALYSIS**

**A. Reasonable efforts.** Bradley first contends the services provided were not tailored toward reunification of the girls with him. He argues he requested additional visitation time and less supervision and the supervising service provider supported additional time and less supervision, yet the case worker continually denied his requests for additional visitation. The guardian ad litem's reports also reveal Jasmine and Samantha requested increased visitation with their parents. The case worker testified she only looked at reunification with Margie, not Bradley. She never observed Bradley with Jasmine and Samantha. She testified there were no further services the Department could provide to Bradley.

Reasonable services must be provided to attempt to reunite a family before the State can terminate parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). The reasonable efforts concept would broadly include a visitation arrangement designed to facilitate reunification while protecting the

children from the harm responsible for the removal. *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996).

Before the termination hearing, Bradley had progressed rapidly from supervised, to semi-supervised, to unsupervised visitation. The length of his visits doubled. The supervising service worker did not have any concerns with Bradley's parenting ability. Jasmine and Samantha were bonded with their father, stepmother, and half-siblings. There is no evidence the half-siblings are not well cared for in the home of Bradley and his wife. While we recognize Bradley had a serious drinking problem, the evidence reveals he has participated successfully in treatment, attends Alcoholics Anonymous meetings, and has maintained sobriety for nearly a year. We conclude the refusal to grant his requests for increased visitation with a view toward placing the girls in his home was unreasonable. We find reasonable efforts were not made to reunify Jasmine and Samantha with Bradley.

**B. Clear and convincing evidence.** The court terminated Bradley's parental rights under Iowa Code section 232.116(1)(f) (2005). Bradley next contends the State did not establish by clear and convincing evidence that Jasmine and Samantha could not be placed in his home as provided in Iowa Code section 232.102. See Iowa Code § 232.116(1)(f)(4). To support termination of a parent's rights, the court must determine that a child would suffer harm if returned to the parent's care. *In re J.R.*, 478 N.W.2d 409, 412 (Iowa Ct. App. 1991); see *In re Chad*, 318 N.W.2d 213, 219 (Iowa 1982). That a child would suffer harm by a return to a parent must be shown by clear and convincing evidence. *In re D.P.*, 465 N.W.2d 313, 315 (Iowa Ct. App. 1990).

In this case, the children were removed from Margie's care, not Bradley's. Much of the evidence and much of the court's ruling deal with Margie's problems and why the children could not be returned to her care. In contrast, Bradley has complied with case permanency plan requirements, has consistently exercised visitation, and has made significant positive changes in his life. The service provider who supervised visitation did not see any problems with Bradley's parenting abilities. He has two younger children in his home and there is no evidence these children are subject to harm. The main reasons cited by the case worker were Bradley's past drinking problems and that the children had been out of the home for nearly two years. We do not find Jasmine and Samantha would be at risk of adjudicatory harm, as set forth in section 232.2(6), if placed in Bradley's care. Consequently, there is not clear and convincing evidence they cannot be returned to his care "as provided in section 232.102." Iowa Code § 232.102(1)(f)(4).

**C. Best interest.** Bradley also contends the State failed to establish terminating his parental rights is in Jasmine and Samantha's best interest. We consider the physical, mental, and emotional needs of a child in evaluating their best interest. See *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996). In evaluating the best interest of a child, we consider both the immediate and long-term interest. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). We "afford a rebuttable presumption that the best interest of a child is served when custody is with the natural parents." *In re N.M.*, 491 N.W.2d 153, 156 (Iowa 1992).

In this case, Bradley has demonstrated his ability to parent Jasmine and Samantha to the satisfaction of the service worker who supervised visitation. Bradley is employed and maintains a home with his wife and two young children. Jasmine and Samantha are bonded with Bradley, his wife, and their two step-siblings. Although Jasmine and Samantha were removed from their mother's care nearly two years before the termination hearing, they are not young children for whom an additional few months before placement back with a parent will represent a significant portion of their lives. We find termination of Bradley's parental rights is not in the best interest of Jasmine and Samantha.

We reverse the order terminating Bradley's parental rights to Jasmine and Samantha and remand to the juvenile court to direct the State to move expeditiously toward reunification.

**REVERSED AND REMANDED.**