

IN THE COURT OF APPEALS OF IOWA

No. 6-707 / 06-1146
Filed September 7, 2006

**IN THE INTEREST OF E.S., J.S., M.G., and J.J.G.,
Minor Children,**

J.G., Father,
Appellant,

S.G., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Gregory D. Brandt,
District Associate Judge.

A mother and father appeal from the order terminating their parental
rights. **AFFIRMED.**

Jane White of Parrish, Kruidenier, Moss, Dunn, Boles, Gribble & Cook,
L.L.P., Des Moines, for appellant father.

Nancy L. Pietz, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John Sarcone, County Attorney, and Jon Anderson, Assistant
County Attorney, for appellee State.

Michael Bandstra, Des Moines, for minor children.

Considered by Huitink, P.J., and Mahan and Eisenhauer, JJ.

MAHAN, J.

Suzanne appeals from the order terminating her parental rights to Elyn, Jason, Mackenzie, and J.J. Jeff appeals from the order terminating his parental rights to Mackenzie and J.J. We affirm.

I. Background Facts and Proceedings

Suzanne is the mother of Elyn, born in April 1997; Jason, born in May 1998; Mackenzie, born in June 2000; and J.J., born in August 2002. Jeff is the father of Mackenzie and J.J.¹ The children were removed from their parents' care in February 2005, following a founded report of physical abuse of Elyn, Jason, and J.J. by Suzanne, Jeff, and the children's maternal grandfather. The children were adjudicated children in need of assistance (CINA) in April 2005.

A dispositional order filed in July 2005 continued custody with the Iowa Department of Human Services (DHS) for foster care placement due to a continued risk of physical abuse. The order indicated that reasonable efforts included prior CINA and mediation services,² parenting classes, individual therapy, and in-home services. A review order filed in October 2005 continued custody with DHS for placement in foster care.

Following a permanency hearing in January 2006, the court found reasonable efforts had been made to eliminate or prevent the need for removal of the children from the home. The court further found a sufficient basis to believe

¹ The father of Elyn and Jason does not appeal the termination of his parental rights.

² The family was initially brought to the attention of DHS in 2002, after confirmed allegations of physical abuse. The case was closed in October 2003. In March 2004 a report of denial of critical care was confirmed based on an incident where fire medics discovered deplorable living conditions in the home.

the need for removal would be resolved within six months if the parents cooperated with services and took responsibility for the physical abuse of the children. Separate visitation for Suzanne was ordered because she had indicated she would be establishing a separate residence. The court indicated the parties had not requested additional services. Placement in foster care was continued in a March 2006 permanency review order. The court ordered visitation at the discretion of DHS because Suzanne and Jeff were still residing together.³

The guardian ad litem filed a petition to terminate parental rights on March 2, 2006. The petition sought termination of Suzanne's and Jeff's parental rights to J.J. pursuant to Iowa Code section 232.116(1)(h) (2005) (child three years of age or younger, adjudicated CINA, removed from home for six of last twelve months, and cannot be returned home), and to the other children pursuant to section 232.116(1)(f) (child four years of age or older, adjudicated CINA, removed from home for twelve of last eighteen months, and cannot be returned home).

Following a hearing in May 2006, the juvenile court entered an order on July 6, 2006 terminating Suzanne's and Jeff's parental rights pursuant to sections 232.116(1)(f) and (h). The court concluded that although Suzanne had been generally compliant with services offered, "she is in no better position to parent her children than she was at the beginning of this case. . . ." Concerning Jeff, the court concluded he

³ Despite repeated assertions by Suzanne that she and Jeff would be establishing separate residences, they continued to reside together at the time of the termination hearing.

has chosen to disassociate himself with this case and his children as he has not participated in services nor visited his children since March 11, 2006, even knowing that a petition to terminate his parental rights had been filed nine (9) days earlier. Jeff was the perpetrator of a majority of the abuse in the home and has not progressed with his therapy nor participated appropriately in the therapy of his children.

Suzanne and Jeff filed separate appeals.

II. Standard of Review

Our review is de novo. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). The grounds for termination must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the best interests of the children. *In re J.J.S., Jr.*, 628 N.W.2d 25, 28 (Iowa Ct. App. 2001).

III. Mother's Appeal

Suzanne argues the juvenile court erred in terminating her parental rights pursuant to sections 232.116(1)(f) and (h). She further contends termination was not in the children's best interests.

As her sole argument related to the statutory grounds for termination, Suzanne contends that her parental rights should not have been terminated because she was compliant with the recommended services. She does not address whether clear and convincing evidence was presented that the children could not be returned to her custody at the present time, see Iowa Code §§ 232.116(1)(f)(4), (h)(4), other than to state she was employed, had a home, and was continuing to attend individual therapy.

On our de novo review of the record, we conclude clear and convincing evidence supports termination on statutory grounds. Since the removal of the

children in February 2005, there have been no trial periods at home. Suzanne and Jeff had four semi-supervised visits of six to eight hours in length over an eleven-day period in May-June 2005. The semi-supervised visitation was ended because J.J. returned from a visit with what appeared to be an adult bite mark that Mackenzie reported had been inflicted by Jeff, J.J. returned from an eight-hour visit in what appeared to be the same diaper he had worn to the visit, Jeff and Suzanne did not have food for the children to eat during one extended visit and fed them popcorn for lunch,⁴ and Jeff threatened to give the children a “whoopin” if they did not stop certain behaviors.

The in-home therapist who supervised visitation reported that Suzanne relied on Jeff to provide the discipline for the children and that she tended to be passive and did not interact with the children. Once Jeff stopped coming to visits in March 2006, the in-home therapist routinely had to intervene during Suzanne’s visitation and set rules and boundaries for the children. The length of Suzanne’s visits was decreased, and visitations were moved from her home to the in-home therapist’s office prior to the termination hearing. The changes were made due to Suzanne’s inability to adequately supervise and interact with the children. The in-home therapist described Suzanne as being “overwhelmed” with all the children, and opined that the family would be back in juvenile court if the children were returned to her care.

As established by the foregoing, Suzanne’s compliance with services does not automatically translate into clear and convincing evidence the children could

⁴ Jeff and Suzanne apparently told the children they did not have money for food. That same evening following the visit, Elyn and her foster mother reported seeing Jeff and Suzanne at McDonald’s.

be returned to her immediate care. “We must reasonably limit the time for parents to be in a position to assume care of their child because patience with the parents can soon translate into intolerable hardship for the child.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Once the statutory limits established in section 232.116 have passed, “the rights and needs of the child rise above the rights and needs of the parents.” *Id.* We affirm the termination of Suzanne’s parental rights on statutory grounds.

Even if the statutory requirements for termination are met, the decision to terminate must still be in the children’s best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). These children suffered extensive physical abuse at the hands of their parents. The therapists involved in the case described the children’s ongoing problems and recommended termination. The record reveals that the ongoing juvenile court process has impacted the children negatively. We conclude termination of parental rights is in the best interests of the children.

We affirm the juvenile court’s order terminating Suzanne’s parental rights.

IV. Father’s Appeal

Jeff waives any claim of error concerning the statutory grounds for termination by failing to raise such claims in his appeal. See Iowa R. App. P. 6.14(1)(c). Therefore, we affirm the termination of his parental rights on statutory grounds.

Jeff argues the juvenile court erred by finding clear and convincing evidence that termination was in the children’s best interests. For reasons similar to those outlined above, in addition to the conclusions of the juvenile court

quoted earlier in this opinion, we conclude termination of Jeff's parental rights was in the children's best interests.

Jeff raises the following additional arguments on appeal: (1) the juvenile court erred in allowing the admission of the CINA files without proper identification of the documents contained in the file and (2) the juvenile court erred in finding reasonable efforts had been made. We conclude Jeff's argument regarding the admission of evidence is moot because of his failure to argue the statutory grounds for termination have not been met. See *In re D.A.W.*, 552 N.W.2d 901, 903 (Iowa Ct. App. 1996) (concluding a mother's challenge to the admission into evidence of CINA files was moot where she admitted the allegations supporting the grounds for termination). We further conclude Jeff failed to preserve error on the reasonable efforts issue because he never contested reasonable efforts at any prior proceeding and he failed to raise it at the termination hearing. *In re J.L.W.*, 570 N.W.2d at 781.

We affirm the termination of Jeff's parental rights.

AFFIRMED.