

IN THE COURT OF APPEALS OF IOWA

No. 6-760 / 06-1257
Filed September 21, 2006

**IN THE INTEREST OF S.B. AND J.B.,
Minor Children,**

**J.B. AND C.B., Parents,
Appellants.**

Appeal from the Iowa District Court for Des Moines County, Mark Kruse,
District Associate Judge.

Parents appeal the district court's order terminating their parental rights for
two of their children. **AFFIRMED.**

Emily S. Dean of Saunders, Humphrey, Johnson & Dean, L.L.P., Fort
Madison, for appellants.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, and Pamela Dettmann, County Attorney, for appellee.

Toby Gordon, of Schulte, Hahn, Swanson, Engler & Gordon, Burlington,
guardian ad litem for the minor children.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

VOGEL, P.J.

Carla and Jim are the parents of Stephanie and Joshua, ages ten and four at the time of hearing. They appeal the district court's order terminating their parental rights to both children, arguing that reasonable reunification services were not provided and termination was not in the children's best interests. Upon our de novo review, *In re J.J.S., Jr.*, 628 N.W.2d 25, 28 (Iowa Ct. App. 2001), we affirm the termination order.

Carla and Jim have a long history with the Iowa Department of Human Services (DHS), beginning in 1995 when a lack of supervision of the children was reported.¹ Carla is mentally low functioning, limiting her ability to do many tasks relating to care of the children and herself. She has a history of mental illness, domestic violence, and criminal activity. Jim also has been diagnosed as low functioning, with schizophrenia, and obsessive-compulsive disorder, as well as having a history of domestic violence. The most current founded child abuse report occurred in July 2003, when then eight-year-old Stephanie was found wandering by railroad tracks and picked up by a driver from Illinois. Jim had placed Stephanie, who is developmentally delayed and autistic, in the care of her nine-year-old brother, Blake, who is also low functioning and was unable to care for his sister. Stephanie was gone from the home for over one hour before the police returned her. When a DHS worker came to the home in September 2003, Jim exhibited such extreme verbal aggression and threats that DHS sought and was granted an ex parte order to remove the children. Stephanie and Joshua

¹ Jim and Carla have three other children that were also removed from their care but are not the subject of this appeal.

were subsequently adjudicated children in need of assistance (CINA) under Iowa Code section 232.2(6)(c)(2) (2003) (children are likely to suffer harm due to parent's failure to exercise care in supervising children) on October 2, 2003.

Jim, Carla, and the children received numerous services between the time of adjudication and the termination hearing on July 5, 2006, including: DHS supervision, supervised/semi-supervised visitation, child abuse assessments, medication management, individual mental health counseling, marriage counseling, psychiatric treatment, vocational rehabilitation, payee services, home and community-based waiver services, family foster care, and residential placement. Jim and Carla were inconsistent with attending visitation with the children, especially with Stephanie whose visits were separate due to her behavioral issues when visiting with her siblings present. Jim and Carla also demonstrated recurring problems with budgeting and spending beyond their means, often resulting in unpaid bills. A persistent cause of Jim and Carla's difficulties appears to be their arguments and physical aggression. They have missed several counseling appointments, either joint marital sessions or individual mental health sessions, and terminated any counseling altogether as of June 2006. Jim and Carla have also stated many times that they don't believe they can care for Stephanie because of her special needs and behavioral issues. Needless to say, Jim and Carla's stability both as individuals and as parents has been a primary concern of the service providers, DHS, and the court during the pendency of this case. The State filed a petition to terminate Jim and Carla's parental rights to Stephanie and Joshua on May 26, 2006, pursuant to Iowa Code sections 232.116(1)(f) (child is four or older, child CINA, removed from

home for twelve of last eighteen months, and cannot be returned home) and 232.116(1)(h) (child is three or younger,² child CINA, removed from home for six of last twelve months, and cannot be returned home). The hearing was held on July 5, with all parties present and represented by counsel. The district court ruled on July 20, 2006, that (1) DHS made reasonable efforts to reunite the family, and no other services were requested by the parents that were not provided; (2) clear and convincing evidence existed that the children could not be returned home; and (3) termination was in Stephanie's and Joshua's best interests due to the excellent strides in their development made while in the care of their foster homes. Jim and Carla appeal.

The first issue asserted on appeal is that Jim and Carla were not provided services to promote reunification with their children. The district court found, and we agree, that Jim and Carla were offered and received reasonable services and did not request additional services. A parent is not entitled to rely upon an allegation that DHS failed to provide reasonable services, where (s)he did not timely request such services. See *In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000). Therefore, we find the issue of reasonableness of services provided has not been preserved for our review.

Finally, Jim and Carla argue that termination is not in the children's best interests. Even where there is a statutory basis to terminate parental rights, the termination must still be in the best interest of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In making that determination we consider both the children's long-range and immediate interests. *In re M.N.W.*, 577 N.W.2d

² At the time the petition was filed, Joshua was three years old.

874, 875 (Iowa Ct. App. 1998). We use the parents' past performance to assess their ability to provide future care, giving substantial weight to case history records. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

With regard to Stephanie, the record reflects that her parents virtually eliminated their relationship with her by failing to attend visitation regularly and only attending two visits since April 2006. Jim and Carla questioned their ability to care for Stephanie on many occasions due to her heightened level of needs. Both parents demonstrated difficulty throughout the case addressing their own needs, much less an ability to parent Stephanie. In turn, Stephanie has shown great progress in the care of her foster parents. She is bonded to her foster family and has made much progress with her behavioral issues due to the intensive services, stability, and security found in her foster placement. Joshua is also extremely bonded with his foster mother and her extended family. His developmental delays continue to be addressed and he shows positive improvements. It appears that both foster families intend to adopt their respective child, giving both Stephanie and Joshua consistent caregivers able to tend to their immediate and long-term needs. We conclude that the termination of Jim and Carla's parental rights is in the best interests of Stephanie and Joshua and affirm the district court's order.

AFFIRMED.