**IN THE COURT OF APPEALS OF IOWA**

No. 9-002 / 08-1825
Filed February 4, 2009

**IN THE INTEREST OF E.M.-T., Minor Child,**

**S.T., Father,**
Appellant.

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Appeal from the Iowa District Court for Floyd County, Gerald W. Magee, Associate Juvenile Judge.

A father appeals from a juvenile court order terminating his parental rights to his child. **AFFIRMED.**

Cynthia J. Foos, Assistant Public Defender, Mason City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant County Attorney, Jesse Marzen, County Attorney, and David A. Kuehner, Assistant County Attorney, for appellee.

DeDra Schroder, Charles City, for mother.

Stacey Oleson, Charles City, intervenor, pro se.

Rodney Mulcahy, Charles City, for intervenor Temple.

Marilyn Dettmer, Charles City, guardian ad litem for minor child.

Considered by Mahan, P.J., and Miller and Doyle, JJ.

**MILLER, J.**

Shannon is the father of three-year-old Elizabeth. He appeals from an October 2008 ruling terminating his parental rights to her.[1] We affirm.

This family first came to the attention of the Child Protective Services Unit of the Iowa Department of Human Services (DHS) in January 2007 due to concerns about drug use in the home and unsanitary living conditions. At that time, Shannon and Elizabeth were residing in the upstairs portion of Shannon's grandmother's home. Plastic baggies with drug residue, two unlabeled prescription pill bottles, and pornography were found in their upstairs living space, which was dirty and cluttered. A child protective assessment resulted in a founded child abuse report. Shannon agreed to participate in voluntary services. He and Elizabeth lived with his parents for a short period of time. They later moved into his parents' old house on their farm.

Shannon tested positive for methamphetamine use in March 2007. Hair stat testing subsequently revealed that Elizabeth had been exposed to methamphetamine. Elizabeth was removed from her father's care and placed with her paternal grandparents. She was adjudicated a child in need of assistance (CINA) in May 2007 pursuant to Iowa Code sections 232.2(6)(c)(2) and (o) (2007).

Shannon began drinking alcohol when he was in high school and has been convicted of operating while intoxicated three times. He admitted to using methamphetamine once or twice a month for the past three or four years. He

[1] The order also terminated the parental rights of Elizabeth's mother. She has not appealed the termination of her parental rights.

began participating in outpatient substance abuse treatment after Elizabeth was removed from his care. Unfortunately, Shannon's participation in treatment and compliance with drug testing soon became sporadic. His parents commenced proceedings for involuntary substance abuse commitment in July 2007. As a result of those proceedings, Shannon was ordered to participate in outpatient treatment. However, he was unsuccessfully discharged from an outpatient treatment program in late August 2007 due to nonparticipation. He then tested positive for methamphetamine in October 2007 and January 2008.

The State filed a petition to terminate parental rights in March 2008. At an April 2008 permanency hearing, Shannon admitted to drinking alcohol on at least two occasions since January 2008 but denied using illegal substances. The juvenile court thereafter entered a permanency order denying Shannon's request to continue Elizabeth's placement with her paternal grandparents for an additional six months. The court directed the State to proceed with the termination of parental rights proceedings and modified Elizabeth's placement, transferring her "legal care, custody and control" to her maternal aunt with whom Elizabeth's half-sister resided.[2] In doing so, the court determined the State had made reasonable efforts, including supervised visitation, to accomplish permanency.

[2] Elizabeth's paternal grandparents and maternal aunt intervened in the juvenile court proceedings after the State filed its petition to terminate parental rights. The paternal grandparents sought guardianship of Elizabeth in the event the court denied Shannon's request for an additional six months to achieve reunification with her. The maternal aunt, on the other hand, wanted to adopt both children should their parents' rights be terminated.

Following a hearing, the juvenile court entered an order terminating Shannon's parental rights to Elizabeth pursuant to Iowa Code sections 232.116(1)(h) and (*l*). Shannon appeals.

> We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

*In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Shannon's only claim on appeal is that the juvenile court "erred when it did not order expanded visitation despite [his] progress in reunification goals and repeated requests for expanded visitation." The State argues Shannon did not preserve error on this issue. We do not agree.

"Parents should demand services prior to the termination hearing. Challenges to services should be made when the case plan is entered." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997) (citations omitted). Our review of the record reveals Shannon requested both expanded and unsupervised visitation at the permanency hearing. The juvenile court denied that request in its May 2008 permanency order, which Shannon did not appeal. He did, however, raise the issue again at a subsequent permanency review hearing and at the termination hearing. The juvenile court's order terminating Shannon's parental rights rejected his reasonable efforts argument, specifically finding "that those services enumerated and efforts by DHS have been reasonable." We therefore conclude error was preserved and proceed to the

merits of the appeal. *Cf. id*, 570 N.W.2d at 781 (questioning whether parent preserved error on reasonable efforts claim when it was not raised at the termination hearing).

"Reasonable efforts to reunite the parent and child are required prior to termination." *In re T.C.*, 522 N.W.2d 106, 108 (Iowa Ct. App. 1994). "Visitation between a parent and child is an important ingredient to the goal of reunification." *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). Thus, "[t]he reasonable efforts concept would broadly include a visitation arrangement designed to facilitate reunification while protecting the child from the harm responsible for the removal." *Id*. The nature and extent of visitation is always controlled by the best interests of the child, which may warrant limited parental visitation. *Id.*

Here, Shannon was initially afforded liberal visitation. When Elizabeth was first removed from his care and placed with his parents, he was able to visit her daily under his parents' supervision.[3] He helped feed her dinner and put her to bed almost every night. Despite his extensive contact with her, he continued to abuse illegal drugs and alcohol during that time period. He tested positive for methamphetamine in October 2007 and January 2008. He absconded from a court-ordered outpatient treatment program and subsequently failed to participate in recommended group sessions, although he did eventually attend weekly individual sessions.

[3] After Elizabeth's care was transferred to her maternal aunt in the juvenile court's May 2008 permanency order, Shannon's visitation with Elizabeth was reduced to two supervised visits per week.

We have recognized that

> [v]isitation . . . cannot be considered in a vacuum. It is only one element in what is often a comprehensive, interdependent approach to reunification. If services directed at removing the risk or danger responsible for a limited visitation scheme have failed its objective, increased visitation would most likely not be in the child's best interests.

*Id.* Shannon has not demonstrated an ability to make those changes in his life essential to proper parenting, as demonstrated by his continued dependency on methamphetamine and alcohol well into the life of this case. Although we acknowledge he experienced a period of sobriety and maintained full-time employment in the months preceding the termination hearing, such changes simply came too late. Our supreme court has recognized that children "should not be forced to endlessly await the maturity of a natural parent." *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *Id*.

There was no evidence presented at the termination hearing that increased visitation would help Shannon respond to the various services offered by DHS designed to eliminate the need for Elizabeth's removal and assist him in becoming a better and sober parent. Instead, the evidence showed that when Shannon did have liberal visitation with Elizabeth, he failed to respond to services, as evidenced by his relapse with methamphetamine in October 2007 and January 2008 and admitted alcohol use prior to the April 2008 permanency hearing. *See C.B.*, 611 N.W.2d at 494 (stating our focus is on the services provided by the State and the parent's response to those services, not on the

services the parent now claims DHS failed to provide). We therefore conclude upon our de novo review that the visitation arrangement implemented in this case did not cause DHS "to fall short of its obligation to provide reasonable efforts to reunite parent and child." *M.B.*, 553 N.W.2d at 345.

Furthermore, while we commend Shannon's recent efforts in overcoming his substance abuse addiction, those efforts are insufficient in light of his lengthy history of substance abuse, past failed attempts at treatment, and relapses during this case. *See In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) (stating evidence of a parent's past performance may be indicative of the quality of the future care that parent is capable of providing). At the time of the termination hearing, Shannon still relied on his parents to assist him in meeting his own daily needs. He admitted that his mother was present at the vast majority of his visits with Elizabeth and provided much of her care during those visits. We thus agree with the juvenile court that Elizabeth could not be returned to Shannon's care at the time of the termination hearing despite the State's reasonable efforts at reunification. *See* Iowa Code § 232.116(1)(h); *C.B.*, 611 N.W.2d at 493 (stating the State must show reasonable efforts as part of its ultimate proof the child could not be safely returned to the parent's care). We further conclude, as the juvenile court did, that termination of Shannon's parental rights is in Elizabeth's best interests.

**AFFIRMED.**