

IN THE COURT OF APPEALS OF IOWA

No. 9-879 / 09-1354
Filed November 12, 2009

**IN THE INTEREST OF A.G.M.,
Minor Child,**

**M.A.N., Father,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Brian Michaelson, Associate Juvenile Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Francis J. Cleary, Sioux City, for appellant father.

Martha McMinn, Sioux City, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and David A. Dawson, Assistant County Attorney, for appellee State.

Richard Kallsen, Sioux City, for minor child.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

A father appeals from the order terminating his parental rights. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

J.M. is the mother and M.N. is the putative father¹ of A.G.M., born in September 2008.² The parents are unmarried and live apart, but have had an ongoing relationship. The child lived with the mother. M.N. has a lengthy criminal history.

The child came to the attention of the Iowa Department of Human Services (Department) in October 2008 after the child was taken to the emergency room following a minor injury. The mother initially told the medical staff the child had fallen off a rocking chair and was unconscious, but the parents later told the staff two other stories as to why the child was brought in. The mother's behavior at the hospital was described as odd. The parents then neglected to take the child for a follow-up appointment several days later as instructed by the treating physician, and the incident was reported to the Department due to concerns the child might be at risk.

A Department social worker followed up with the mother after the report, and the mother revealed that she was a victim of domestic violence perpetrated by M.N. The mother's mother, who was present at the time, indicated concerns about the parents' ability to care for the child. The Department then filed an application for temporary removal of the child from the parents' care. On

¹ M.N.'s paternity has never been established through testing, but the mother identifies M.N. as the child's father and M.N. acknowledges paternity.

² The mother has not appealed from the termination of her parental rights.

October 31, 2008, the court ordered that the child be temporarily removed from the parents' care with custody transferred to the Department for placement in foster care.

On November 4, 2008, the State filed a petition alleging the child was a child in need of assistance (CINA) and requested continued removal of the child from the care of the mother. Following a hearing, the court entered an order adjudicating the child CINA, but finding the child should be returned to the mother's care under the supervision of the Department. The court ordered the Department to prepare a case permanency plan.

The child was subsequently returned to the mother's care, but the Department's social worker advised the mother that M.N. was not to have visitation with the child without the supervision of the Department or service providers. However, when the Department's worker conducted a drop-in at M.N.'s residence in December, the worker found the mother and child there.

In January 2009, several incidents and domestic disputes between the parents necessitated police involvement. One incident, where the child was present, resulted in M.N.'s arrest for simple domestic assault. A no-contact order was then issued. On January 27, 2009, the Department again sought removal of the child from the mother's care because the parents refused to participate in services and because of their on-going domestic violence issues. The court then ordered the child be temporarily removed from the parents' care with custody transferred to the Department for placement in foster care.

In February 2009, M.N. requested visitation with the child. The worker discussed M.N.'s recent police reports and M.N.'s alcohol related issues. The

worker advised M.N. he could not have contact with the mother due to the existing no-contact order, and that he needed to schedule a substance abuse evaluation before visits could begin. The worker stressed to M.N. that if he continued to see the mother or if he did not schedule an evaluation, visitation with the child would be in jeopardy. Thereafter, M.N. participated in a substance abuse evaluation, and it was recommended that he attend an extended outpatient program. M.N. was offered two dates to begin treatment, but he was arrested on an outstanding warrant and served ten days in jail. He could have begun treatment on the evening he was released from jail, but he opted not to participate. The no-contact order between the parents was dismissed thereafter.

A dispositional and temporary removal hearing was held on March 4, 2009. There, the court discussed the points of the case plan with the parents, noting that both parents were to attend individual counseling and couples counseling. The court allowed a weekly supervised visitation with both parents present. The court also told both parents to seek employment to prove they could financially support the child's needs. The court then entered its dispositional order continuing the child's removal. The court found that reasonable efforts had been made by the Department to alleviate the need for the child's out-of-home removal, but there continued to be concerns with regard to the parents' following through with services. Additionally, the court noted that domestic violence was still an issue. The court also found that the parents continued to abuse alcohol. The court emphasized the importance of the parents' participation in and follow-through with services.

M.N. began outpatient treatment in March. The parents appeared to be making progress, but in April both parents began being evasive with the Department about their living situations and substance use. M.N. was evicted from his residence and began living with his parents. The mother was evicted shortly thereafter and moved in with M.N. and his parents.

Following a second dispositional review hearing, the court entered an order finding that the parents continued to demonstrate a lack of stability, commitment, or ability to provide for the child. The court noted additional police contacts due to domestic violence and that the parents had been inconsistent in their attendance at individual therapy. The court again found the child could not be returned to the parents at the time and reasonable efforts had been made by the Department.

M.N. was unsuccessfully discharged from treatment on June 17, 2009. His therapist reported M.N.'s attendance had dropped off and he made no progress during treatment. The therapist opined M.N. was not ready to accept responsibility for his actions in dealing with his addiction. The therapist further opined that M.N. would need to attend an inpatient treatment center to work on his addiction, attend three AA/NA meetings weekly, and abstain from all mind-altering substances.

On June 17, 2009, M.N. presented for an assessment with a different substance abuse treatment provider. M.N. tested positive for methamphetamine.³ The clinical supervisor's assessment stated M.N.'s self-

³ It is unclear whether this positive test was related to epinephrine given to M.N. during a dental procedure.

report of alcohol use was inconsistent at times, citing M.N.'s conflicting statements that he had discontinued his alcohol use when the Department became involved in his life and that he had used alcohol within the last two weeks. The supervisor found M.N. appeared to be externally motivated for change based on the child's removal from the home and the Department's involvement in his life. The supervisor opined M.N. was at a high risk for relapse due to his limited insight and continued alcohol use, despite system and treatment involvement. The supervisor noted M.N. was unemployed and had a limited support system. The supervisor recommended M.N. attend a weekly group session with continued assessment to determine if additional services would be appropriate.

On June 20, 2009, M.N. was again arrested following a domestic dispute. The mother tried to call 911, but M.N. restrained her from calling for help. M.N.'s parents arrived and called the police. When police officers arrived, the mother had some minor cuts on her lower lip as well as on her left temple above her eye. The mother refused to give a statement, and M.N. was arrested for interference with a 911 call. M.N. was transported to the jail, and his personal property was inventoried. A schedule III drug was found in a container attached to M.N.'s key ring. The drug did not match the other schedule III drugs prescribed to M.N. M.N. was also charged with possession of a schedule III drug without a prescription and a serious domestic assault. An order of protection was issued against M.N. following the incident, and the Department stopped all visitations with M.N. The parents' relationship ended shortly thereafter.

In July M.N. admitted to the Department's worker that he had been drinking, but he denied having an addiction or a need for treatment. M.N. continued to attend his outpatient substance abuse groups.

On July 14, 2009, the State filed its petition to terminate the parents' parental rights. A contested hearing on the matter was held August 18, 2009. At the hearing, it was reported M.N. had been attending therapy and following his therapist's recommendations. M.N.'s therapist also found M.N. was externally focused and did not appear to be fully open and honest about his usage. M.N. testified he had ended his relationship with the mother, was in treatment, and was willing to take the necessary steps to parent the child. He testified he would participate in a batterer's education program, but testified he did not think he needed such a program because he really did not do anything. He also testified he did not think the child should have been removed in the first place. He requested he be given additional time to be reunified with the child. He did not request any further services be provided to him. M.N.'s father testified M.N. was living with him and his wife, and would be allowed to continue living with them so long as M.N. followed the rules. M.N.'s father also testified he kicked M.N. out of the home on several occasions for violating the rules.

On August 21, 2009, the juvenile court entered an order terminating M.N.'s parental rights to the child pursuant to Iowa Code section 232.116(1)(e) (2009) (child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child) and pursuant to section 232.116(1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home). M.N. appeals.

II. Scope and Standards of Review.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Evidence is clear and convincing when it leaves "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). Our primary concern in termination cases is the best interests of the child. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

III. Discussion.

On appeal, M.N. argues the State failed to establish by clear and convincing evidence grounds for termination and that reasonable efforts for reunification with M.N. were made. Additionally, M.N. contends the court erred in determining termination was in the child's best interests. We address each argument in turn.

A. Reasonable Efforts.

M.N. argues the State failed to provide him with reasonable services intended to facilitate reunification with the child. "While the State has the obligation to provide reasonable reunification services, the [parent] ha[s] the obligation to demand other, different, or additional services prior to the termination hearing." *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). When a parent alleging inadequate services fails to demand services other than those provided, the issue of whether services were adequate is not preserved for

appellate review. *Id.*; *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). M.N. does not point to any unfulfilled requests for services and does not specify what additional services would have facilitated reunification. Therefore, the issue was not preserved for our review.

B. Grounds for Termination.

When the juvenile court terminates parental rights on more than one statutory ground, we only need to find grounds to terminate under one of the sections cited by the court in order to affirm the court's ruling. *S.R.*, 600 N.W.2d at 64. In this case, we choose to focus our attention on section 232.116(1)(h) as the basis for termination. Section 232.116(1)(h) permits termination of parental rights if all of the following have occurred:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Here, M.N. does not dispute the first three elements of section 232.116(1)(h). Rather, he contends the State failed to prove by clear and convincing evidence that the child could not be returned to his custody. We disagree.

The legislature incorporated a six-month limitation for children in need of assistance aged three and below. Iowa Code § 232.116(1)(h)(3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are

promoted by termination of parental rights.” *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the State having been legislatively set, we are obligated to heed the statutory time periods for reunification.

The child first came to the attention of the Department in October 2008. The child has never been in M.N.’s care, and the child was removed from the mother’s care for the second time in January 2009 after a domestic violence incident between the parents. By the time of the termination hearing in August 2009, the child had been out of the parents’ custody for over seven months, a month longer than the statutory time period for reunification, and the child had been in foster care almost all of the child’s life. Despite the offer of services and substance abuse treatment, M.N. continued to engage in criminal activity and abuse substances. We commend the recent progress the father has made in attempting to overcome his abuse of alcohol, but it is far too early to have any confidence that he will be able to maintain sobriety and a commitment to change.

[A] good prediction of the future conduct of a parent is to look at the past conduct. Thus, in considering the impact of a drug addiction, we must consider the treatment history of the parent to gauge the likelihood the parent will be in a position to parent the child in the foreseeable future. Where the parent has been unable to rise above the addiction and experience sustained sobriety in a noncustodial setting, and establish the essential support system to maintain sobriety, there is little hope of success in parenting.

In re N.F., 579 N.W.2d 338, 341 (Iowa Ct. App. 1998) (citations omitted). We are sympathetic to the father’s struggle to maintain sobriety, and recognize that many are able to successfully free themselves from the tenacious grip of addiction. Yet the interests in permanency for the child must prevail over the father’s uncertain

battle with alcohol. See *id.* We have repeatedly followed the principle that the statutory time line must be followed and a child should not be forced to wait for the parent to overcome their addiction. *Id.* M.N.'s frequent relapses during the pendency of this case along with his continued criminal activities evidence the child will not be able to return to the father's custody within a reasonable period of time considering the child's age and need for a permanent home.

"When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). "At some point, the rights and needs of the child rise above the rights and needs of the parents." *Id.* We conclude the State proved by clear and convincing evidence that the child could not be returned to his custody.

C. Best Interests.

M.N. also argues termination was not the child's best interests. As stated above, our primary concern in termination cases is the best interests of the children. *A.S.*, 743 N.W.2d at 867. "A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Those best interests are to be determined by looking at the child's long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the child if the child is returned to the parents. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parents' past

performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

Here, the evidence establishes the child will not be able to be placed in M.N.'s custody within a reasonable period. At the time of trial, the child had been in the same foster home for eight out of the eleven months of the child's life. The child is integrated into the foster home and has bonded with and is attached to the foster mother. The foster mother wishes to adopt the child. On our de novo review of the entire record, we find termination of M.N.'s parental rights is in the best interests of the child.

IV. Conclusion.

Upon our de novo review, we find the father failed to preserve his reasonable efforts issue for our review, clear and convincing evidence supports termination of the father's parental rights under Iowa Code section 232.116(1)(h), and termination is in the child's best interests. We therefore conclude the district court did not err in terminating the father's parental rights.

AFFIRMED.