

IN THE COURT OF APPEALS OF IOWA

No. 3-661 / 13-0790
Filed August 7, 2013

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

**J.E., Father,
Appellant.**

Appeal from the Iowa District Court for Franklin County, Peter B. Newell,
Judge.

A father appeals the termination of his parental rights to his two-year-old
son. **AFFIRMED.**

Larry W. Johnson of Walters & Johnson, Iowa Falls, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Dan Wiechmann, County Attorney, and Brent J. Symens,
Assistant County Attorney, for appellee.

Randy Johansen, Sheffield, for mother.

Megan Rosenberg, Hampton, attorney and guardian ad litem for minor
child.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

A father appeals the termination of his parental rights, contending the State did not provide reasonable efforts to facilitate reunification with his son. Because the father refused to participate in mental health and substance abuse treatment to address the danger he posed to his son, the State did not fall short of its reasonable-efforts obligation by denying less restrictive visitations.

I. Background Facts and Proceedings

Naomi and Jonathan are the parents of T.E., who is now two years old. The family came to the attention of the Iowa Department of Human Services (DHS) based on several instances of domestic violence between Naomi and Jonathan. T.E. was present during at least one verbal and physical altercation that took place in the hotel room where Naomi and Jonathan were living.

On October 4, 2011, the State filed a petition alleging T.E. was a Child in Need of Assistance (CINA). During a hearing two weeks later, parties agreed to continue the CINA proceedings. But on November 10, 2011, after both parents violated the DHS safety plan by being together in T.E.'s presence, the court authorized T.E.'s removal. Six days later, the court ordered T.E. remain in DHS custody; Naomi and Jonathan participate in a family centered psychological evaluation; Naomi participate in domestic violence counseling; and Jonathan "undergo a substance abuse evaluation and follow any recommendations for treatment." On December 6, 2011, Naomi and Jonathan stipulated to a finding that T.E. was a CINA. During a hearing the following month, the court learned

despite Naomi's report to DHS that she was no longer in a relationship with Jonathan, the two had traveled together to New York City for New Year's Eve.

A mental health report of both parents, submitted during an April 3, 2012 review hearing, revealed Jonathan has been charged with arson, kidnapping, carrying a concealed weapon, theft, and assault. Jonathan admitted to previous hospitalizations for mental health reasons, extensive prior drug use, and spending two and a half years in prison for arson. Jonathan has been diagnosed with intermittent explosive disorder and antisocial personality disorder.

On August 21, 2012, the court held another review hearing, where it learned Naomi had been arrested in June for operating while intoxicated (OWI), arrested in July for assault, and was inconsistent in her visits with T.E. While Jonathan was consistent in his visitations with T.E. and submitted to mental health and substance abuse evaluations, Jonathan continued to refuse services offered by the State.

During an October 30, 2012 permanency hearing, the parties revealed Naomi was recently arrested twice for driving while revoked. Jonathan still refused mental health treatment or other services offered. After the hearing, he posted several threatening messages on Facebook, prompting DHS to move his visitations with T.E. to the Franklin County Sheriff's Office.

The juvenile court held a termination hearing on January 22 and April 22, 2013. Naomi and Jonathan attended both dates, represented by counsel, as did T.E.'s guardian ad litem (GAL) Megan Rosenberg. On May 13, 2013, the

juvenile court terminated the parental rights of both Jonathan and Naomi under Iowa Code section 232.116(1)(h) (2013).¹ Only Jonathan appeals.

II. Scope and Standard of Review

We review proceedings terminating parental rights de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). Although we are not bound by the juvenile court's fact findings, we do give them weight, especially concerning witness credibility. *Id.*

III. Analysis

Jonathan asserts the DHS failed to offer him adequate opportunity to demonstrate his ability to parent T.E. Citing his completed substance abuse and mental health evaluations, he contends it was "impossible for [him] to comply with the [DHS] request because the professionals with whom he interviewed did not recommend treatment as the [DHS] had required." Jonathan concludes he could not follow the court's orders and DHS expectations when professionals would not cooperate with his attempts to receive treatment.

The State argues by not previously requesting services, Jonathan did not preserve error on this issue. The State contends the DHS was justified in

¹ Section 232.116(1)(h) authorizes termination if the court finds each of the following:

- (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.

refusing to expand Jonathan's visitation based on his mental health and substance abuse evaluations, which presented the steps Jonathan would need to take to move toward less restrictive visits with his son. The State asserts Jonathan's choice not to undergo treatment is what caused visitations with his son to stagnate.

The GAL acknowledges Jonathan's consistent visitation with T.E., but highlights Jonathan's refusal to comply with the mental health and substance abuse recommendations. Because Jonathan was unable to achieve the stability in his own life needed to raise T.E., the GAL believes the juvenile court properly terminated Jonathan's parental rights.

Despite Jonathan's failure to cite authority for his argument on appeal, we interpret his contention as a reasonable-efforts challenge. When a child is removed from the parents' care, the State is responsible for making "every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interest of the child." Iowa Code § 232.102(7). "Reasonable efforts" means those efforts which "make it possible for the child to safely return to the family's home." *Id.* § 232.102(10)(a). The State must exert reasonable efforts to reunite parent and child before parental rights are terminated. *In re A.B.*, 554 N.W.2d 291, 294 (Iowa Ct. App. 1996).

What constitutes reasonable services varies, depending on the requirements of each case. *In re C.H.*, 652 N.W.2d 144, 147 (Iowa 2002) (noting focus is generally on services to improve parenting). When determining whether reasonable efforts were made, the court must consider the type, intensity, and

duration of services offered and the relative risk of the child remaining with the parents versus removal. Iowa Code § 232.102(10)(a). “The concept of reasonable efforts broadly includes a visitation agreement designed to facilitate reunification while protecting the child from the harm responsible for the removal.” *C.H.*, 652 N.W.2d at 147 (internal quotation marks omitted).

Jonathan’s regularity in attending visits with his son does not, standing alone, warrant increasing the visitation time or moving toward less restrictions when such changes pose a risk to T.E.’s safety. See *In re A.S.*, 743 N.W.2d 865, 869 (Iowa Ct. App. 2007) (finding DHS provided reasonable efforts despite refusing to provide father increased visitation with child in part because of concern for child’s safety). Because of Jonathan’s threats, DHS concern for T.E.’s safety justified restricting visitations to the sheriff’s office. Those threats emphasize the underlying theme throughout these proceedings—Jonathan’s refusal to participate in mental health and substance abuse treatment.

Jonathan underwent mental health and substance abuse evaluations² and now claims he was hamstrung by his mental health recommendation, which he asserts “did not recommend treatment as the Department had required.” The father apparently is referring to the March 26, 2012 family-centered psychological evaluation by Dr. George Harper. During the evaluation, Jonathan reported to Dr. Harper his use of several drugs, including heroin, cocaine, methamphetamine, and marijuana. He admitted using marijuana on March 17,

² The record varies as to the number of assessments, in some places suggesting Jonathan completed two evaluations for mental health and three for substance abuse. For this appeal, the parties focus on a particular mental health evaluation and a substance abuse evaluation.

2012, and having multiple OWI convictions. Jonathan also noted receiving mental health treatment several times before, and being hospitalized and prescribed medications for anxiety and bipolar disorders. When Dr. Harper asked Jonathan for examples of how he might discipline T.E., Jonathan suggested he would “dress him up funny and make him eat with his mouth open in front of his girlfriend,” a method Jonathan claims his own father used.

Dr. Harper found Jonathan has serious difficulty in thinking logically and coherently. Dr. Harper also found Jonathan lacks parenting skills and suffers from a narcissistic personality disorder that could increase the risk of neglect or abuse in caring for T.E. Jonathan has declined mental health assistance in the past because he does not believe he needs it. Dr. Harper recommended several forms of treatment:

Jon is in need of intensive mental health treatment to include a psychiatric evaluation and individual psychotherapy. It will be imperative that a copy of this report be made available to his mental health providers. Jon is very likely to be in need of psychotropic medications to help regulate his moods [A]ssuming that he is put on medication which is beneficial, it is recommended that he participate in individual therapy with a licensed mental health provider

The record does not show the DHS refused to offer services to carry out Dr. Harper’s recommendations. Nor does it show any request by Jonathan for help in following through with the recommendations. “If a parent has a complaint regarding services, the parent must make such challenge at the removal, when the case permanency plan is entered, or at later review hearings.” *C.H.*, 652 N.W.2d at 148 (noting complaints of inadequate service must be made not only to social worker but also to juvenile court).

This is not a case where Jonathan simply did not ask for additional services—he actively refused to undergo treatment, according to Dr. Harper, service providers, and his own testimony during the termination hearing.³ Contrary to Jonathan’s claim on appeal that his “attempts to achieve [treatment],” were thwarted by providers, the lack of services was of his own choosing.

The record reveals many examples of Jonathan’s unstable mental condition. On January 16, 2013, he was arrested for violating the order prohibiting contact with Naomi. On another occasion, he sent 600 text messages to Naomi over a 24-hour period. Jonathan also told the DHS he was going to marry Rosenberg—T.E.’s GAL—over Christmas, and posted a status about his love for her on Facebook. While Jonathan denies he would ever hurt T.E., he threatened to leave with T.E. if his parental rights were terminated. On one visit, Jonathan showed the service provider a toy for T.E. he made out of a power drill.

We do not overlook Jonathan’s efforts to spend time with his son. But we cannot ignore the danger signals in this record. Jonathan’s mental health is not stable, yet he continues to decline treatment. Given the obvious risks to T.E., the DHS rightfully refused to offer less restrictive visitation. See *A.S.*, 743 N.W.2d at 869. The State did not fall short of its reasonable-efforts obligation. We therefore affirm the order terminating parental rights.

AFFIRMED.

³ Jonathan resists substance abuse treatment because he thinks “it’s counter-productive to the path I’m taking as of now,” reasoning it would place him back in a negative environment.