

IN THE COURT OF APPEALS OF IOWA

No. 3-926 / 13-1190
Filed October 2, 2013

**IN THE INTEREST OF M.R.,
Minor Child,**

**B.T. JR., Father,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko,
Associate Juvenile Judge.

A father appeals an order terminating his parental rights. **AFFIRMED.**

Joseph W. Kertels, Juvenile Law Center, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Patrick Jennings, County Attorney, and Diane M. Murphy,
Assistant County Attorney, for appellee.

Amanda Van Wyhe of Vriezelaar, Tigges, Edington, Bottaro, Boden &
Ross, L.L.P., Sioux City, for mother.

Angela Kayl, Sioux City, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

TABOR, J.

An incarcerated father appeals the termination of his parental rights to his seven-year-old daughter. The father raises three issues on appeal: (1) the Department of Human Services (DHS) failed to make reasonable efforts to reunify the family, (2) the State failed to prove statutory grounds for termination by clear and convincing evidence, and (3) the juvenile court erred in denying his request for additional time for reunification. Finding no merit in his three claims, we affirm the termination of parental rights.

I. Background Facts and Proceedings

M.R. most recently came to the attention of the DHS in 2011¹ due to her mother's positive drug test.² The State filed a child-in-need-of-assistance (CINA) petition and application for temporary removal in March 2012. The DHS placed M.R. with the mother's cousins on March 22, 2012. The juvenile court adjudicated M.R. as a CINA in April 2012. At the time of the hearing, M.R.'s father, Bobby, was incarcerated for possession with intent to deliver methamphetamine but advised the DHS he would participate in whatever services were recommended. Bobby was released from prison in June 2012 and appeared at a July 2012 dispositional hearing.

But by February 2013, Bobby was again arrested and faced the possibility of additional prison time. On March 1, 2013, the court held a permanency

¹ The juvenile court first adjudicated M.R. and her half-sister, V.R., as children in need of assistance in 2009. M.R.'s father did not actively participate in those proceedings because he was incarcerated for third-offense possession of marijuana.

² The mother has consented to termination of her parental rights.

hearing; Bobby was not present because he was incarcerated, but was represented by counsel. Bobby's counsel requested a home study be completed for M.R.'s paternal grandmother; the court granted his request. Bobby's counsel renewed the request for a home study for the paternal grandmother on June 5, 2013, and the court again ordered the home study be completed.

On June 20, 2013, the State filed a petition to terminate parental rights. The juvenile court held a termination hearing on July 1, 2013. At that hearing, the State presented paper exhibits and the parties stipulated that if called to testify DHS case worker Tami Divis would say M.R. was integrated into a pre-adoptive home and that termination was in her best interest.

Bobby attended the hearing, but offered no evidence. His counsel reiterated the home study for the paternal grandmother, twice previously ordered by the court, had not yet been completed. Counsel continued: "The father's requesting in the event his rights are terminated that his mother be considered for placement." His counsel also informed the court that Bobby was recently sentenced for "possession of controlled substances and probation violation charges." Counsel estimated Bobby would be "out within the next six to nine months assuming everything goes the way it should." Counsel said Bobby was only "going to be asking the court for additional time to comply" with DHS recommendations.

On July 12, 2013, the court terminated the father's parental rights pursuant to Iowa Code sections 232.116(1) (b) and (f) (2011). The father filed a timely appeal.

II. Standard of Review

We review termination of parental rights de novo. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We give the juvenile court's fact findings weight, especially in regard to witness credibility, though they are not binding on us. *Id.*

III. Analysis

A. Did The DHS Satisfy the Reasonable Efforts Requirement?

The DHS is required to "make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child." Iowa Code § 232.102(7); *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). The reasonable-efforts concept focuses on services to improve parenting. *C.B.*, 611 N.W.2d at 493. But it also includes visitation designed to facilitate family reunification while protecting the child from harm. *Id.* Our supreme court does not interpret the reasonable-efforts mandate as a strict substantive requirement that must be satisfied before a parent's rights may be terminated. *See id.* The question is how do DHS efforts to reunify parent and child after removal impact the elements of termination. *Id.* The State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent. *Id.*

Bobby contends on appeal the DHS failed to satisfy the reasonable-efforts requirement because the case workers did not facilitate visitation between him and M.R. He also points out the DHS failed to complete a home study for M.R.'s paternal grandmother.

We turn first to the home-study issue. It is undisputed the DHS did not complete the home study for possible placement of M.R. with Bobby's mother, despite court orders to do so. But we question whether the DHS failure to follow that directive constitutes a lack of reasonable efforts under section 232.102(7). Bobby's counsel asked at the termination hearing for the paternal grandmother to be considered a placement option if Bobby's parental rights were terminated. The home study was not a reasonable effort toward reunification of Bobby and M.R. Moreover, the absence of the home study did not detract from the State's proof of the statutory elements of termination.³

Turning to the visitation issue, we recognize visitation is extremely important in achieving reunification, but its nature and extent is always controlled by the best interest of the child. *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). This standard may warrant limits on parental visitation. *Id.* Bobby was incarcerated for a majority of the CINA proceedings. While a parent's imprisonment does not absolve the DHS of its statutory mandate to provide reunification services, it would be reasonable for the DHS to consider the child's age, bonding with the parent, and the place of confinement when determining if visits were appropriate. *In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000).

³ Iowa Code section 232.117(3) lists the options for placement of children if the court terminates parental rights. The juvenile court has the authority to place the children with the DHS, a suitable child-placing agency, or a relative or other suitable person. *Id.* "There is no statutory preference for a relative. The paramount concern is the best interest of the children." *In re R.J.*, 495 N.W.2d 114, 117 (Iowa Ct. App. 1992). M.R. has been with the mother's cousins since March of 2012. The juvenile court concluded she feels secure there. According to the record, the current placement is "ready, willing, and able to permanently integrate [M.R. and her half-sister] into their family." It would not be in the best interest of M.R. to take her from the stable environment she is in now. See Iowa Code § 232.116(2), (3).

Most critically, Bobby never sought visitation with his daughter during the CINA proceedings. Parents must demand services before the termination hearing. *In re C.H.*, 652 N.W.2d 144, 148 (Iowa 2002). The juvenile court noted “[s]ervices were offered/provided to Bobby, but little could be done toward reunification while Bobby remained incarcerated.” Because Bobby did not seek visitation or any other services, we decline to find the DHS failed to make reasonable efforts toward reunification.

B. Did The State Prove A Ground for Termination By Clear and Convincing Evidence?

The juvenile court terminated Bobby’s parental rights pursuant to Iowa Code section 232.116(1)(b)⁴ and (f)⁵. He argues the State did not offer clear and convincing evidence to terminate because the DHS did not make reasonable efforts to facilitate visitation. He also argues he did not abandon M.R.

We need only find one ground to affirm the termination. See *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010) (holding where the juvenile court bases termination on multiple grounds, the appellate court may affirm on any ground supported by clear and convincing evidence). At the termination hearing, Bobby did not argue he was able to care for M.R. at the present time. He had just been sentenced for a drug offense and faced at least six months in prison. His only

⁴ Under section 232.116(1)(b), termination is proper if “[t]he court finds that there is clear and convincing evidence that the child has been abandoned or deserted.”

⁵ Under section 232.116(1)(f), termination is proper if the court finds the child is four years of age or older, has been adjudicated CINA, has been removed for twelve consecutive months, and cannot be returned at the present time.

request was for additional time. The State satisfied the elements of section 232.116(1)(f).

C. Did The Juvenile Court Err in Not Granting the Father Additional Time?

Finally, Bobby argues the court should have given him more time to complete his prison sentence and comply with DHS recommendations. The State argues Bobby did not preserve error because his request for additional time was not reflected in the termination order. Because the request appears in the hearing transcript, we will address it as though it was preserved.

To grant a parent a reprieve from termination, a juvenile court must be able to “enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period.” Iowa Code § 232.104(2)(b). It would have been impossible for the court to justify a six-month extension on this record. Bobby’s earliest chance for release was six months after the termination hearing. Upon his release, he would need even more time to demonstrate his parenting ability, given that he has never cared for M.R.

The juvenile court noted Bobby has “continued to engage in criminal activities, knowing that he would likely be separated once again from his daughter.” The court found Bobby has not provided any physical, emotional, or financial support to M.R. The court put it bluntly: “[M.R.] has never been

important to her father and never will be.” No additional period of time is likely to change that stark reality.

AFFIRMED.