

IN THE COURT OF APPEALS OF IOWA

No. 6-650 / 06-1071
Filed November 16, 2006

IN THE INTEREST OF J.A.A.B., Minor Child,

S.R.N., Mother,
Appellant,

B.A.B., Father,
Appellant.

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

A mother and father appeal the juvenile court decision terminating their parental rights. **AFFIRMED.**

Alexander M. Esteves of Law Office of Alexander M. Esteves, P.C., Sioux City, for appellant mother.

Molly Vakulskas Joly of Vakulskas Law Firm, P.C., Sioux City, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Dewey Sloan, Assistant County Attorney, for appellee State.

Maxine Buckmeier, Sioux City, guardian ad litem for minor child.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

ROBINSON, S.J.**I. Background Facts & Proceedings**

Shaun and Brent are the parents of Jaden, who was born in July 2004. Both parents have a lengthy history of substance abuse, domestic violence, and criminal involvement. Brent assaulted Shaun in April 2005, while under the influence of drugs, and while Jaden was present. In June 2005, Shaun jumped out of a car at a busy intersection and assaulted Brent, who was in a car at the same intersection. Jaden was present in the car with Shaun at the time of the assault. Jaden was subsequently removed from the parents' care and placed in foster care.

Jaden was adjudicated to be a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b) (2005) (parent is imminently likely to neglect child), (c)(2) (child is likely to suffer harm due to parent's failure to supervise), and (n) (parent's drug abuse results in child not receiving adequate care). The court ordered the parents to obtain psychosocial evaluations, complete a substance abuse treatment program, and participate in counseling for domestic violence.

Shaun participated in a psychological evaluation. She was diagnosed with an antisocial personality disorder. The report noted Shaun's "personality characteristics are likely not going to allow for sustained and positive involvement in services offered." The report also stated, "History and personality certainly does not suggest ability to adequately parent." Shaun continued to have problems with substance abuse and violent behavior. She had difficulty with services due to her volatile and belligerent behavior. Shaun's visitation was

discontinued in January 2006 after a drug test was positive for methamphetamine, and she stated she planned to continue using drugs.

Brent also had a psychological evaluation. He was diagnosed with an adjustment disorder and personality disorder with antisocial features. The report stated Brent "has not been able to display the likelihood of establishing and maintaining a reasonable sober relationship that would have hope for a healthy environment for a child." Brent reported his last use of illegal drugs was on July 30, 2005. The parents continued to have incidents of domestic violence through July and August 2005. After this time, however, Brent began to make progress with services. He completed intensive outpatient treatment and participated in parenting skill and co-dependency sessions. He attended a batterer's education program and intermittently attended individual therapy.

In January 2006, the State filed a petition seeking to terminate the parents' rights. The same month, Brent filed a request for unsupervised visitation with Jaden. The State and guardian ad litem resisted the request, pointing to Brent's long history of substance abuse and domestic violence. The juvenile court denied the request, in light of the pending petition to terminate.

In June 2006, the juvenile court entered an order terminating the parents' rights. The court terminated Shaun's parental rights under sections 232.116(1)(d) (child CINA for neglect, circumstances continue despite the receipt of services), (e) (child CINA, removed for six months, parent has not maintained significant and meaningful contact), (h) (child is three or younger, CINA, removed for at least six months, and cannot be returned home), and (l) (child CINA, parent has substance abuse problem, and child cannot be returned within a reasonable

time). The court concluded Shaun was not capable of parenting Jaden. The court noted, "Shaun has a severe, chronic substance abuse problem coupled with chronic mental health issues which, at times, presents a danger to herself as well as to others as evidenced by her prior acts."

Brent's parental rights were terminated under sections 232.116(1)(d) and (h). The court found Brent had made positive changes in his life. The court noted, however, his long history of substance abuse and domestic violence, stating:

Currently, he has been sober for approximately nine months. This is not enough time to determine whether or not he can maintain a healthy lifestyle free of drugs and domestic violence or if this is a brief interlude in just another cycle. Jaden's life cannot remain on hold while more time is given to Brent to see if he can maintain a healthy lifestyle. It was less than a year ago when Brent was using drugs and assaulting Jaden's mother. Jaden is in need of a stable and secure life now.

The court was also concerned about Jaden's safety if placed with Brent; Shaun had stated she would rather see Jaden dead than placed with Brent.¹ In addition, the court stated it was suspicious that Brent continued to have relationships with Shaun and Sheila, a former girlfriend, because of the abusive nature of their relationships in the past.

Shaun and Brent each appealed the termination of their parents rights.

II. Standard of Review

¹ Social worker Alisha Sims testified Shaun had made this statement. Shaun denied the statement, and said she had remarked she would rather be dead than see Jaden placed with Brent. At the termination hearing, Shaun testified she had changed her mind and wanted Jaden placed with Brent.

The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the best interest of the child. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

III. Shaun

A. Shaun claims the State did not engage in reasonable efforts to reunite her with Jaden. She asserts she was not offered services specifically for her dual diagnoses of chemical dependency and serious mental health problems. She believes the Department of Human Services failed to offer her services for her mental health problems.

The State has an obligation to make reasonable efforts, but it is a parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). It is too late to challenge the service plan at the termination hearing. *In re M.B.*, 595 N.W.2d 815, 818 (Iowa Ct. App. 1999). We determine Shaun failed to request other or additional services prior to the termination hearing and has failed to preserve this issue for our review. Even if the issue had been preserved, however, we would find the services offered to Shaun in this case were reasonable.

B. Shaun contends the State did not present sufficient evidence to terminate her parental rights under sections 232.116(1)(d) or (e). On appeal, she has not challenged the termination of her parental rights under sections 232.116(1)(h) or (l), and we determine she has waived these issues. See Iowa R. App. P. 6.14(1)(c) ("Failure in a brief to state, to argue, or to cite authority in

support of an issue may be deemed waiver of that issue.”). We conclude Shaun’s parental rights were properly terminated under sections 232.116(1)(h) and (l).

Furthermore, the evidence in the case clearly supported termination of Shaun’s parental rights based on the four Iowa Code sections cited by the juvenile court. Shaun admitted Jaden could not be returned to her care in the near future because she had not yet fully addressed her substance abuse and mental health issues.

III. Brent

A. Brent claims the State did not provide reasonable efforts to reunite him with Jaden. In particular, he claims the juvenile court should have granted his request for unsupervised visitation. Reasonable services must be provided to attempt to reunite a family before the State can terminate parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). Reasonable efforts include a visitation arrangement designed to facilitate reunification while protecting the child from the harm responsible for the removal. *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). The nature and extent of visitation is controlled by the best interests of the child. *Id.*

The juvenile court carefully considered the matter after a hearing in February 2006 and in light of the pending petition to terminate the parents’ rights.

The court found:

Absolutely no harm will come to Jaden to keep visitations at status quo until the court has heard and ruled on the pending petition. In fact, if the court should grant this motion and then terminate the parental rights, then more potential harm will come to Jaden.

The court was also concerned about Jaden's safety due to the violent relationship between Brent and Shaun. Under the facts in this case, we conclude unsupervised visitation would not have been in Jaden's best interests.

B. Brent contends the State did not present sufficient evidence to support the termination of his parental rights. We find there is clear and convincing evidence in the record to support the termination of Brent's parental rights. We look to a parent's past performance because it may indicate the quality of care the parent is capable of providing in the future. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

Brent has two older children, and he was involved in juvenile court proceedings with these children as well. Brent and Brenda are the parents of Blake, who was born in 1992. Brent was caring for Blake in 2003 while Brenda was in prison, but due to Brent's paranoid and aggressive behavior, occasioned by his drug use, Blake was removed from his care. Blake is in a long-term foster care placement. Brent continues to have supervised visitation with Blake.

Brent and Sheila are the parents of Ethan, who was born in June 1997. Brent and Sheila used illegal substances, and had a very violent relationship. Among other incidents, Brent tied Sheila up with an electrical cord, threatened to kill her, and then assaulted her. Ethan was removed from their care, and eventually, the parents' rights to Ethan were terminated. During the present termination hearing, Brent testified he was again in contact with Sheila, as they are both working through recovery from methamphetamine addiction.

Brent was able to remain drug-free for a period of time while he was in services for Ethan, but he relapsed when he became involved with Shaun, who

he met in a substance abuse treatment program. Brent's relationship with Shaun followed the pattern of his earlier relationships, in that it involved substance abuse and domestic violence. The juvenile court noted that notwithstanding the services Brent received through these three cases, "he has been unable to maintain stability/sobriety for any significant period of time." Based on Brent's extensive problems in the past, we agree that there has not been a sufficient showing that Brent has permanently turned his life around. We conclude Jaden could not be returned safely to Brent's care at the present time, and Brent's parental rights were properly terminated.

C. Brent asserts termination of his parental rights is not in Jaden's best interests. Jaden needs stability in her life, and she should not be forced to wait longer for Brent to be able to be a reliable parent. Jaden has been in foster care for about one-half of her life. Patience with parents can soon translate into intolerable hardship for their child. *C.K.*, 558 N.W.2d at 175. Brent is still working on his recovery, and as noted above, it is speculative at best that he could maintain long-term sobriety and effectively parent Jaden. We conclude termination of Brent's parental rights is in Jaden's best interests.

We affirm the decision of the juvenile court.

AFFIRMED.

Vaitheswaran, J., concurs; Sackett, C.J., concurs in part and dissents in part.

SACKETT, C.J. (concurring in part and dissenting in part)

I concur in part and dissent in part.

The juvenile court recognized that Brent's case was difficult and commended him for his positive changes but terminated Brent's parental rights anyway. The majority has affirmed despite evidence Brent has complied with the State's requirements for his daughter's return and the social worker most involved in his case recommended against termination.

While I recognize we must consider Brent's history, and Brent's is not good, this alone does not support termination. Since the dispositional hearing, Brent has made a genuine effort to overcome his substance abuse issues. Brent has successfully engaged in all of the requirements of his case plan, he has exercised all of his visitation with Jaden, has been actively involved in his recovery, and has sought out additional services. He consistently attends AA meetings. He helped bring a group called "Dads in Recovery" to his area and co-facilitates its meetings.

Jennifer Stinton, Brent's social worker, who worked with him for some four years and recommended termination of his parental rights in an earlier case, made at least five recommendations for Brent to have unsupervised visits with Jaden in the months leading up to the termination proceedings. Each of these requests was denied. I believe the State failed to exercise reasonable efforts in denying Stinton's recommendation.

Stinton, Brent's therapist, and Brent's recovery group recognized Brent's new internal motivation for overcoming his addiction. Stinton noted genuine change in Brent after having the opportunity to observe his progress over the

four-year period. Stinton had worked for DHS for eight years and is currently employed with Transition Services of Iowa. She supervised many of the visits between Brent and Jaden and provided services to Brent for skill development in anger management, codependency, addiction, parenting and relationships. Stinton testified that this time “Brent has voluntarily engaged in his own recovery,” and “has found a great deal of reward” in his own recovery. She testified Brent’s parenting skills are appropriate and she recommended his parental rights not be terminated.

Brent has remained substance free for about nine months. His attendance at AA provides him with a support system should he relapse. I give substantial weight to the recommendation of Stinton, a qualified social worker, who has known and worked with Brent for four years. She recommends that his parental rights not be terminated. I recognize there is no assurance that Brent may not relapse, but believe he has done all he can to assure it will not happen.

The statutory provisions for termination grant parents in Brent’s situation an opportunity to correct the deficiencies that led to the removal. Brent has corrected the deficiencies. There is not clear and convincing evidence to support termination, and I would reverse.

Brent has become a member and a leader in a community of others who work every day to conquer their addictions. What message does the majority send them?

I would remand to order that Brent have unsupervised visits with Jaden and that further efforts be made to unite the two of them.

As to Shaun, I concur with the majority that the State proved the grounds to terminate her parental rights by clear and convincing evidence.