

IN THE COURT OF APPEALS OF IOWA

No. 8-804 / 08-1169
Filed October 15, 2008

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

**M.V.O., Father,
Appellant,**

**S.N.M.W., Mother,
Appellant.**

Appeal from the Iowa District Court for Lee (South) County, Gary
Noneman, District Associate Judge.

A father and mother appeal separately from the order terminating their
parental rights. **AFFIRMED.**

John Wright of the Wright Law Firm, Fort Madison, for appellant father.

Thomas Marion of Norman & Marion, Keokuk, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, Michael Short, County Attorney, and David Andrusyk,
Assistant County Attorney, for appellee State.

Kendra Abfalter, Keokuk, for minor child.

Considered by Huitink, P.J., and Vogel and Eisenhauer, JJ.

HUITINK, P.J.

M.O., father, and S.W., mother, appeal separately from the order terminating their parental rights concerning E.O.

I. Background Facts and Prior Proceedings

E.O. was born in January 2007. He was removed from parental care one week after his birth, after testing positive for illegal drugs. S.W. admitted using marijuana throughout her pregnancy, and M.O. tested positive for marijuana and cocaine immediately following E.O.'s birth. E.O. was adjudicated a child in need of assistance (CINA) on January 19, 2007, pursuant to Iowa Code section 232.2(6)(c)(2) (2005) (child is likely to suffer harm due to parent's failure to exercise care in supervising child), (n) (parent's drug or alcohol abuse results in child not receiving adequate care), and (o) (illegal drugs found in child's body as a consequence of parent's action or omission).

E.O. was initially placed with relatives, but was subsequently placed in foster care. E.O. has remained in the same foster home since March 2007. Both parents have been provided supervised visitation with E.O. In addition to visitation, both parents were offered a number of services intended to facilitate E.O.'s return to their care.

On February 28, 2008, the State filed the present petition to terminate S.W.'s and M.O.'s parental rights. Following a hearing on the merits of the State's petition, the juvenile court terminated S.W.'s and M.O.'s parental rights pursuant to Iowa Code section 232.116(1)(h).

II. Standard of Review

We review termination of parental rights de novo. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Grounds for termination must be proved by clear and convincing evidence, and our primary concern is the child's best interests. *Id.*

III. Merits

Statutory Grounds. The parents contend the evidence does not support termination under section 232.116(1)(h). Section 232.116(1)(h) provides that parental rights can be terminated if the State proves by clear and convincing evidence that (1) the child is three years or younger, (2) the child has been adjudicated in need of assistance, (3) the child has been removed from home for six of last twelve months, and (4) the child cannot be returned home. The first three elements are not in dispute.

Upon our de novo review, we find the record includes clear and convincing evidence indicating E.O. could not have been returned to parental care at the time of the termination hearing. We agree with the trial court's observation that "[t]he sheer lack of responsibility for themselves, let alone for their child, is in many ways mind-boggling to an ordinary reasonable person." Caseworkers and the guardian ad litem reported that both parents lack the requisite parenting skills to provide for E.O.'s basic needs. S.W. has not obtained stable housing. In addition, the record indicates both parents have unresolved substance abuse and domestic violence issues. "When the issue is a parent's drug addiction, we must consider the treatment history of the parent to gauge the likelihood that the parent will be in a position to parent the child in the foreseeable future." *In re N.F.*, 579 N.W.2d 338, 341 (Iowa Ct. App. 1998). "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.” *Id.*

Reasonable Services. S.W. also claims the State failed to provide adequate services to facilitate reunification. We disagree.

While the State bears the obligation to offer reasonable reunification services, a parent has the responsibility 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.*

E.O. was removed when he was less than a week old, and he is currently twenty-one months old. S.W. and M.O. have received a variety of services since E.O.’s removal, including parent skill training, supervised visitation, mental health evaluations, substance abuse evaluations and services, outpatient substance abuse services for M.O., inpatient substance abuse services for S.W., Incredible Years Program, foster care, family centered services, and Birth to Five services. Based on our de novo review of the record, we conclude it is not the sufficiency of the services provided, but rather the parents’ failure to avail themselves of the services offered that has necessitated termination of their parental rights.

Best Interests. Even where there is a statutory basis to terminate parental rights, the termination must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). For the same reasons cited earlier, we find termination of M.O.’s and S.W.’s parental rights is in E.O.’s best interests.

The juvenile court's order terminating M.O.'s and S.W.'s parental rights is affirmed.

AFFIRMED.