

IN THE COURT OF APPEALS OF IOWA

No. 3-389 / 13-0340
Filed April 24, 2013

**IN THE INTEREST OF B.H.,
Minor Child,**

**M.G., Father,
Appellant.**

Appeal from the Iowa District Court for Fremont County, Craig M. Dreismeier, District Associate Judge.

A father appeals from the termination of his parental rights. **AFFIRMED.**

Ashley A. Kissel of Sell Law, P.L.C., Glenwood, for appellant mother.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, and Margaret E. Johnson, County Attorney, for appellee State.

Vicki Danley, Sidney, for appellee mother.

Katherine Kaminsky Murphy of Katherine J. Kaminsky, P.L.C., Glenwood, attorney and guardian ad litem for minor child.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DOYLE, P.J.

A father appeals from the termination of his parental rights. We affirm.

I. Background Facts and Proceedings.

M.G. is the father of B.H., born in early 2011. The child came to the attention of the Iowa Department of Human Services (Department) in December 2011 due to domestic abuse issues between the child's parents, as well as issues related to the use and misuse of prescription drugs.¹ The child was removed from the parents' care and placed in the care of a relative.

The father obtained his first substance abuse evaluation in January 2012, and inpatient substance abuse treatment was recommended. The child was subsequently adjudicated a child in need of assistance (CINA) in January 2012, and the court directed the father to participate in the inpatient substance abuse treatment program. Additionally, the court directed the father to participate in domestic violence counseling; to follow-through with mental health treatment from his provider; to submit to random drug testing; to participate with family safety, risk, permanency services; and to maintain suitable housing and verifiable income.

Shortly thereafter, the father moved to a different town where his sister resided. There, he obtained another substance abuse evaluation from a different provider, which recommended he participate in intensive outpatient treatment. By the time of the April 2012 review hearing, the father still had not started substance abuse treatment. However, he had made some progress, including providing clean drugs samples and following through with treatment of his mental

¹ Termination of the mother's parental rights is not at issue in this appeal.

health issues. Additionally, the father's sister was approved for placement of the child in her care, and the father then had frequent contact with the child.

Nevertheless, the father's progress declined. By the time of the October 2012 permanency hearing, the father had moved to a different town to live with his brother, and his contact with the child diminished. He was also in custody for three separate third-degree burglary charges. He had been unsuccessfully discharged from his substance abuse treatment and had not pursued other treatment options. The father had failed to follow through with the random drug testing, and he admitted to having smoked marijuana. The juvenile court directed the State to file a petition for termination of the father's parental rights, which it subsequently filed in November 2012.

The father was released from jail in late November 2012, and as a requirement of his pretrial release, he completed another substance abuse evaluation. That evaluation again recommended inpatient treatment. Additionally, it was recommended the father participate in outpatient treatment until he was able to get placement into the inpatient treatment program. However, the father declined to participate in the outpatient program prior to placement in inpatient treatment because he did not feel it was necessary.

A hearing on the State's termination of parental rights petition was held in January 2013, not quite one year from the child's CINA adjudication. The father was then participating in inpatient treatment. The Department's caseworker testified that she did not believe it was appropriate for the child to be returned to the father's custody at that point because he had not completed the court's recommendations, and she also testified she believed termination of the father's

parental rights was in the child's best interests. She testified the child was doing well in relative placement, where the child had already lived a third of her life, and the relatives wished to adopt the child.

In February 2013, the juvenile court entered its order terminating the father's parental rights. The father now appeals. We review his claims de novo. See *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

II. Discussion.

On appeal, the father claims the State failed to make reasonable efforts to reunify him with his child, and it failed to prove the grounds for termination by clear and convincing evidence. Additionally, he asserts the district court erred in finding termination of his parental rights was in the child's best interests and in not giving him additional time to work towards reunification. Beyond these general statements, the father's brief does not set forth "findings of fact or conclusions of law the district court made with which [the father disagreed with] and why," as directed under paragraph number 8 on Form 5 provided under Iowa Rule of Appellate Procedure 6.1401. That paragraph explicitly goes on to explain: "*General conclusions, such as 'the trial court's ruling is not supported by law or the facts' are not acceptable. Include supporting legal authority for each issue raised . . .*" See Iowa R. App. P. 6.1401. We note that two of father's claims are also unsupported by any citation to authority.

As a general rule, "we will not speculate on the arguments [appellant] might have made and then search for legal authority and comb the record for facts to support such arguments." *Hylar v. Garner*, 548 N.W.2d 864, 876 (Iowa 1996). In most cases the appellant's "random mention of an issue, without

elaboration or supporting authority, is insufficient to raise [the] issue for [an] appellate court's consideration." *State v. Mann*, 602 N.W.2d 785, 788 n.1 (Iowa 1999) (citing *Soo Line R.R. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 689 (Iowa 1994)). Nevertheless, given the stake of an innocent child in this action, we are hesitant to find the father failed to preserve error with respect to these issues. We therefore bypass the error preservation concerns and proceed to the merits. *State v. Taylor*, 596 N.W.2d 55, 56 (Iowa 1999).

A. Reasonable Efforts.

We first address the father's challenge that the juvenile court erred in finding the State made reasonable efforts to reunite him with the child.

"Reasonable efforts" are defined as

the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family's home. . . . If returning the child to the family's home is not appropriate or not possible, reasonable efforts shall include the efforts made in a timely manner to finalize a permanency plan for the child.

Iowa Code § 232.102(10)(a) (2011). In making reasonable efforts, the paramount concern is the health and safety of the child. *Id.*

The State, through the Department, 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." *Id.* § 232.102(7). Nevertheless, "[w]hile the State has the obligation to provide reasonable reunification services, the [parent has] 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. *See id.*; *see also In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994). Here, there is no evidence the father ever requested additional services other than those provided, thus he failed to preserve error on this issue. *See id.*

However, even assuming, *arguendo*, the father had properly preserved this issue for our review, we would still find he was provided more than adequate services to promote reunification with his child. The record here shows that the Department has offered or provided the father numerous services to reunify him with his child, including substance abuse and mental health treatment, among other things. We conclude the State met its burden in making reasonable efforts for reunification.

B. Grounds for Termination.

The father's parental rights were terminated pursuant to the grounds stated in Iowa Code section 232.116(1) paragraphs (e), (h), and (l). We need only find termination proper under one of these grounds to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). We choose to focus our attention on section 232.116(1)(h). Under that paragraph, parental rights may be terminated if the court finds by clear and convincing evidence (1) the child is three years of age or younger, (2) the child has been adjudicated a CINA, (3) the child has been removed from the physical custody of his 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, and (4) there is clear and convincing

evidence that the child cannot be returned to the custody of the child's parents at the present time. See Iowa Code § 232.116(1)(h).

It is often said in our termination cases that “the law requires a full measure of patience with troubled parents who attempt to remedy a lack of parenting skills.” *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000) (internal quotation marks and citation omitted). But that statement is tempered with the reality that such patience has been built into the statutory scheme of chapter 232. *Id.* As noted above, the legislature incorporated a six-month limitation for a child adjudicated CINA aged three and younger. Iowa Code § 232.116(1)(h). Our supreme court has stated that “the legislature, in cases meeting the conditions of [Iowa Code section 232.116(1)], 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 section 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.

Here, the child was born in 2011 and was under three years old at the time of the hearing on the State's petition for termination of the parents' parental rights. The child was removed from the father's custody at the end of 2011, and the child had not been returned to his custody and had thus been removed from the father's physical custody for at least six months. After the child's removal, the child was adjudicated CINA. The first three elements of paragraph (h) are clearly met under the explicit facts of the case.

Finally, we agree with the juvenile court that the State proved by clear and convincing evidence that the child could not be returned to the father's custody at

the time of the termination of parental rights hearing, satisfying the fourth element of the ground set forth in paragraph (h). The father still had not completed substance abuse treatment, despite being directed to do so as early as January 2012. While we hope the father is successful in his latest attempt at treatment, his efforts have been simply too little too late for us to have any confidence in the father's sobriety at this time or for the foreseeable future. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. Children simply cannot wait for responsible parenting." *In re C.H.*, 652 N.W.2d 144, 151 (Iowa 2002) (internal quotation marks and citations omitted). Upon our de novo review, we agree with the juvenile court that the State proved grounds for termination of the father's parental rights under Iowa Code section 232.116(1)(h), and we therefore affirm on this issue.

C. Best Interests and Additional Time.

Finally, for the reasons stated above, we find the best-interests framework in Iowa Code section 232.116(2) supports termination of the father's parental rights. It is well-settled law that we cannot deprive a child of permanency after the State has proved a ground for termination under section 232.116(1) by hoping the father will someday learn to be a parent and be able to provide a stable home for his child. See *P.L.*, 778 N.W.2d at 41. The father has not demonstrated an ability to continue his sobriety beyond a few months, and there is no evidence in this record to establish that additional time would yield any different result. "Children should not suffer the 'endless limbo' of foster care." *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995) (citation omitted). When, as here, a parent is not capable of changing to allow his child to return home,

“termination is necessary. A parent must be able to meet the present needs of [his child], as well as have the capacity to adapt to [the child’s] future needs.” *Id.* Under the facts and circumstances of this case, and considering “the child’s safety,” “the best placement for furthering the long-term nurturing and growth of the child,” and “the physical, mental, and emotional condition and needs of the child” as directed by Iowa Code section 232.116(2), we agree with the juvenile court that termination of the father’s parental rights was in the child’s best interests, and we find no error or abuse of discretion in the juvenile court’s decision not to grant the father additional time. We accordingly affirm the juvenile court order terminating the father’s parental rights.

AFFIRMED.