IN THE COURT OF APPEALS OF IOWA

No. 3-532 / 13-0575
Filed May 30, 2013

IN THE INTEREST OF M.T.,
Minor Child,

J.T., Father,
Appellant.

Appeal from the Iowa District Court for Mahaska County, Randy S. DeGeest, District Associate Judge.

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

Michael S. Fisher of Fisher Law Office, Oskaloosa, for appellant father.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, Rose Anne Mefford, County Attorney, and Amy Zenor, Assistant County Attorney, for appellee State.

Terri Menninga, Pella, for appellee mother.

Diane Crookham-Johnson of Crookham-Johnson Law Office, P.L.L.C., Oskaloosa, attorney and guardian ad litem for minor child.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VAITHESWARAN, P.J.

The district court terminated a father's parental rights to his child pursuant to Iowa Code sections 232.116(1)(d) (2013) (requiring proof that child was previously adjudicated in need of assistance and parents were offered or received services to correct the circumstances that led to the adjudication but the circumstances continued to exist), (i) (requiring proof of several elements including proof that the child was abused or neglected and the offer or receipt of services would not correct the conditions that led to the abuse or neglect), and (*l*) (requiring proof of several elements including proof that parent had a severe substance-related disorder and clear and convincing evidence that the child could not be returned to the custody of the parent within a reasonable period of time). On appeal, the father contends: (1) "[his] parental rights should not have been terminated because there was no showing of clear and convincing proof that [he] lacked the ability to properly provide a safe home for [the child]"; (2) "[his] parental rights should not have been terminated as no clear and convincing evidence existed that the child could not be returned to his custody at the time of the termination hearing"; (3) "the parental rights . . . should not have been terminated as reasonable efforts were not afforded to allow him to be reunited with his child"; and (4) "[t]he Court erred in that no clear and convincing proof existed to show that termination of [his] parental rights was in the [child's] best interests."

As a preliminary matter, the State suggests that the father waived his challenge to the evidence supporting the cited grounds for termination by failing to properly tie his first three arguments to those grounds. While the State's

contention is appealing at first blush, we believe the father's first two arguments challenge the evidence supporting the district court's implied but necessary finding under all three grounds that reunification was not possible. *See In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (stating parent "clearly implicated those elements of the grounds for termination dealing with the evidence to show the child cannot be returned home because the parent has not improved enough to justify reunification"). As for the father's third argument, the reasonable efforts mandate is a substantive part of the State's proof with respect to all three grounds. *Id.* at 493. Accordingly, we decline to find that the father waived his challenge to the sufficiency of the evidence supporting the grounds for termination, and we will proceed to the merits, reviewing the record de novo.

Issues I and II—Prospects for Reunification

The Department of Human Services first became involved with the family in 2004 based on the mother's substance abuse. A second child-in-need-of-assistance proceeding was initiated in 2009 due to concerns about home conditions and both parents' substance abuse. In January 2012, the department opened a third case based on concerns that another child's medical needs were not being met. The department later learned that the mother was again using methamphetamine. While the father had separated from the mother and was living on his own, he stated his apartment was not suitable to accommodate his son. His child was placed with a relative, in anticipation of transitioning him to the father's apartment after it was upgraded.

Meanwhile, an investigator learned that the child was exposed to a person listed on the sex abuse registry. The child was removed from the relative's care

and was placed in foster care. At the same time, the father's weekly supervised visits with the child were reduced from four to two hours. The father did well during the visits, but, in the summer of 2012, his addictions got the better of him. He began using alcohol in violation of his probation agreement, and he tested positive for marijuana in his system. As a result, his probation was revoked and he served thirty days in jail.

On his release in October 2012, the father commendably did not test positive for marijuana or other illegal substances and his probation officer did not express any recent concerns. But he also failed to obtain a mandated substance abuse evaluation until a week before the termination hearing,[1] and he admitted to consuming at least one beer following his release. While he did not view alcohol as a gateway to marijuana and methamphetamine use, he acknowledged that abstinence from alcohol was a term of his probation.

Given the father's long history of substance abuse, the role of that substance abuse in the child's 2009 adjudication, the provision of services to address the issue, and the father's continuing lapses in sobriety, we conclude reunification was not a viable option.

Issue III—Reasonable Efforts

The department has an obligation to make reasonable efforts towards reunification. *Id.* The father contends "[h]e was never given the opportunity to show that he was a good father and had the ability to keep [the child] safe." To the contrary, the department arranged for weekly supervised visits, advised the

[1] The evaluation report had not been completed as of the date of the termination hearing.

father on needed repairs to the apartment, and encouraged him to address his addictions. Notably, the department initiated services as early as 2004 and afforded him drug-abuse treatment in 2009. We conclude the department satisfied its reasonable efforts mandate.

Issue IV—Best Interests

The father contends termination was not in the child's best interests. He acknowledged, however, that the child was out of his care for twenty-one months between 2009 and 2011 and was out of his care in 2012 through the termination hearing in February 2013. Given the father's lengthy absences from the child's life, we conclude termination was in the child's best interests.

AFFIRMED.