

IN THE COURT OF APPEALS OF IOWA

No. 3-692 / 13-0742

Filed July 24, 2013

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

**A.K., Mother,
Appellant,**

**A.H., Father,
Appellant.**

Appeal from the Iowa District Court for Johnson County, Deborah F. Minot, District Associate Judge.

A father and mother appeal the termination of their parental rights.

AFFIRMED.

Amy L. Evenson of Larson & Evenson, Iowa City, for appellant mother.

Shawn M. Fitzgerald of Johnston, Stannard, Klesner, Burbidge, & Fitzgerald, P.L.C., Iowa City, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Janet M. Lyness, County Attorney, and Emily Voss, Assistant County Attorney, for appellee State.

Brandon Schrock of Linn County Advocate, Inc., Cedar Rapids, attorney and guardian ad litem for minor child.

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

VOGEL, P.J.

A father and mother separately appeal the termination of their parental rights. The mother asserts the State failed to prove by clear and convincing evidence that the child cannot be safely returned to her care and it is not in the child's best interests to terminate. Both the father and mother assert they should be provided an additional six months to work toward reunification.

I. BACKGROUND FACTS AND PROCEEDINGS.

A.H., born in April 2012, was removed from the parents' care in June 2012 following a report to police of a domestic situation where the father left the home with the child after an argument with the mother, and the father did not have any supplies for the baby. The officer reporting to the scene asked the mother who watched the child, and her three-year-old half-sister, J.L.,¹ when the mother was at work. The officer was concerned as he knew the father was on the sex offender registry and was not to be left alone with the children. The mother initially stated the father watched the children as it was approved by the sheriff's office, but she later changed her story to report her wheelchair-bound neighbor and her father watched the children. The officer contacted the department of human services (DHS).

The police were called back to the couple's home the next day due to another domestic dispute. When DHS arrived, a safety plan was developed with the mother agreeing to stay at her father's house with the children while the

¹ J.L. is not the biological child of the father. There was a previous child-in-need-of-assistance case involving J.L. based on domestic violence between J.L.'s father, who is currently incarcerated, and the mother. There remains a child-in-need-of-assistance case open for J.L. related to the events that gave rise to this case.

assessment was pending, not allow the father to have contact with J.L., and supervise all contact between the father and A.H. However, the father left a message for the social worker later that day stating the mother would not be abiding by the safety plan. The social worker contacted the mother who confirmed she would not follow the safety plan. DHS also got a report from the doctor for A.H. stating the parents had failed to bring the child to two scheduled appointments.

The DHS applied for temporary emergency removal of both children, which was granted June 29, 2012. The children were placed in foster care. Child-in-need-of-assistance petitions were filed July 3, 2012, for both children, and after a hearing, the court found substantial evidence that there was imminent danger to the children's life and health and the continuation of the children in the parents' home was contrary to their welfare because

the children have been exposed to [the father], who is a child sex offender on the sex offender registry,^[2] without adequate supervision; the children were staying in a home where [J.L.] was sexually abused by a non-relative in the middle of the night, while her mother and [the father] were sleeping nearby;^[3] there is evidence of domestic discord between the parents that has been both verbal and physical; the parents were not honest and cooperative with police and DHS during the investigations leading up to the removal; and the parents refuse to agree to abide by a Safety Plan that would have allowed the children to remain in the custody of their mother. The Court finds that reasonable efforts to prevent or eliminate the need for the children's removal were made

² The father was convicted of sexually abusing his two-year-old half-sister when he was fourteen or fifteen years old. He was adjudicated for the offense of assault with intent to commit sexual abuse. He was eventually placed in the state training school until he was eighteen. He is required to register as a sex offender, though he has four convictions for violations of the sex offender registry, which has resulted in probation, prison, and jail. He was ordered to complete adult sex offender treatment, but he failed to comply.

³ Three weeks before the children's removal, the parents reported to police that J.L. stated she was sexually abused by an adult roommate who lived in the home with the mother and father. The roommate was also on the sex offender registry.

through the offer of Safety Services and a Safety Plan, both of which were rejected by the parents.

The parents and the children's guardian ad litem stipulated that the children are in need of assistance, and the court entered an adjudicatory order accordingly. At the dispositional hearing at the end of August, the court found that reasonable efforts had been made to alleviate out of home placement, but returning the children to a parental home would be contrary to their welfare. It adopted the case permanency plan submitted by DHS and noted the goal was reunification with the mother. The case permanency plan included requirements for separate supervised visitation for both parents; the mother was to obtain suitable housing, complete a psychological evaluation and follow through with treatment recommendations, and obtain employment; and the father was to complete a psychosexual evaluation and follow through with treatment, and maintain his employment and housing.

After six months of services, DHS reported it was still not in a position to place A.H. back into the care of either parent. DHS reported a lack of progress with either the mother or father. DHS had concerns about the mother's discipline methods and inability to have emotional control when she is overwhelmed. She still did not have independent housing or employment. While she did have semi-supervised visits for a short time, it was changed back to fully supervised when she was not honest about the whereabouts of the children. The mother reported not bonding with A.H., which was concerning, and stated she was just giving up because nothing was going right. There were also concerns about the mother's ability to tell the truth until she was caught in a lie. The father had missed ten

visits with A.H. for various reasons, and he was exhibiting boundary issues with the social worker including text messaging her in the middle of the night and leaving irate voice messages. He also changed housing to live with his new girlfriend and reported various places of employment.

The State filed the petition to terminate both the father and mother's parental rights at the end of December. A hearing was held January 29-30, and March 8, 2013. The court terminated the rights of both parents as to A.H. pursuant to Iowa Code section 232.116(1)(h) (2011)—(1) the child is three years of age or younger, (2) has been adjudicated a child in need of assistance, (3) has been removed from the physical custody of the parents for at least six months of the last twelve months, or for the last six consecutive months, and (4) there is clear and convincing evidence the child cannot be returned to the custody of the parents at the present time.

The court found neither parent visited A.H. as regularly and consistently as they could and should have. While the father was loving and affectionate to A.H. during the visits, he had missed a number of visits and had not made sufficient progress on the case permanency plan to warrant expansion of the visits. The mother paid significantly less attention to A.H. during the visits than to J.L., and her bond with A.H. was notably less affectionate. Neither parent had established a stable, mature lifestyle, or a home suitable for a young child, and had been unable to maintain employment. They both had significant, unmet mental health and/or emotional needs for which they are not receiving treatment. The court found an additional period of six months would not be enough time for either parent to resolve the many issues, and the delay was not in A.H.'s best

interests. A.H. was not placed in a pre-adoptive home so she would have to endure another change in placement before permanency could be achieved. The court also found no hindrance to termination applied.

II. SCOPE AND STANDARD OF REVIEW.

Our view of termination proceedings is de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). “We give weight to the juvenile court’s factual findings, especially when considering the credibility of witnesses, but we are not bound by them.” *Id.* We are primarily concerned with the best interests of the child even if the statutory grounds for termination are met. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

III. ANALYSIS.

A. Mother. The mother appeals claiming the State did not prove by clear and convincing evidence that A.H. could not be safely returned to her care. She points to the fact that she came to nearly every visit fully prepared and only testified she was not “bonded” with A.H. because the child had been removed from her care when she was two and a half months old and she was only able to see A.H. for a few hours a week. She also claims that due to her young age, A.H. did not require as much interaction during the visits as J.L. did.

However, at the time of the termination hearing, the mother did not have stable housing and her only employment was as an “on-call” food delivery driver. She had only performed five or six deliveries and earned at most \$27. The mother had not even begun attending regular therapy session as recommended by her psychological evaluation, and she was not consistent in attending her parenting group. There is also no indication that any of the problems identified

through these proceedings would be addressed if the mother was granted an additional six months to work toward reunification.

The mother claims on appeal that if she were provided more time “she would likely secure section 8 housing and would be able to provide a safe and secure home.” However, the mother has failed to follow through on identical promises throughout this case, and the child should not be forced to wait while the mother attempts once again to pull her life together. See *In re D.W.*, 791 N.W.2d 703, 707 (Iowa 2010) (“We do not gamble with the children’s future by asking them to continuously wait for a stable biological parent, particularly at such tender ages.” (internal quotations marks omitted)).

The mother also claims termination is not in A.H.’s best interests. The mother claims she is bonded with A.H. despite the earlier testimony and terminating her rights to A.H. will sever A.H.’s relationship with her half-sister, J.L. The mother also points out the fact that A.H. is not in a pre-adoptive home and will likely face another disruption in her life when she has a biological family that loves her and wants to care for her. The mother claims she has matured during the case, learned from her mistakes, and can keep A.H. safe.

The juvenile court disagreed with the mother’s assertions, and on our review of the record, so do we. The mother had made little progress on the case permanency plan through the pendency of the case and did not demonstrate an ability to care for A.H.’s basic day-to-day needs. Due to A.H.’s age, she needs permanency and security now, and a further delay is not in her best interests. The mother failed to raise the issue of A.H.’s relationship with her half-sister at the termination hearing, nor was it addressed in the order, and that issue is

therefore not preserved. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) (finding issues must be presented to and rule upon by the district court in order to preserve error for appeal). We agree with the juvenile court's conclusion that there was little evidence of a loving, secure attachment between A.H. and either parent. We find terminating the mother's rights was in the best interests of A.H.

F. Father. For his appeal, the father alleges he was not provided sufficient assistance and reasonable efforts to work toward the reunification goal because he was only given six months to complete evaluations and treatment that took up to a year and was not provided with financial assistance from DHS to complete the requirements.

Based on our de novo review, we agree with the juvenile court's assessment that any delay in the father obtaining the necessary evaluations and treatment is attributable to the father. He was told at the dispositional hearing in August that he needed to obtain a psychosexual evaluation. That evaluation was not completed until December. At the time of the final termination hearing in March, the father had not even begun to follow through on any of the treatment recommendations and stated he did not believe he needed sex offender treatment. In order to grant an additional six-month period under Iowa Code section 232.104(2)(b), the court must find that the need for the removal of the child from the home will no longer exist at the end of the six-month period. See *In re A.A.G.*, 708 N.W.2d 85, 92 (Iowa 2005). That finding could not be made in this case as the father as failed to even start, let alone be close to completing, the therapy and treatment necessary to place A.H. in his physical care. The father's resistance to treatment in the past, his on-going anger management

issues, and his lack of stability in employment or housing, leads us to agree with the juvenile court an additional six months will not eliminate the need for A.H.'s removal. A.H.'s future is not to be gambled with by asking her to wait for her father to become stable when she is at such a tender age and remains highly adoptable. See *D.W.*, 791 N.W.2d at 707.

Therefore, we affirm the juvenile court's ruling terminating the parental rights of both the mother and father in this case.

AFFIRMED.