

IN THE COURT OF APPEALS OF IOWA

No. 3-693 / 13-0743
Filed July 24, 2013

**IN THE INTEREST OF R.N.,
Minor Child,**

P.H., Mother,
Appellant,

W.N., Father,
Appellant.

Appeal from the Iowa District Court for Story County, Steven P. Van Marel, District Associate Judge.

A mother and father appeal from the order terminating their parental rights. **AFFIRMED ON BOTH APPEALS.**

Robyn Huss of Thornton, Coy & Huss, P.L.L.C., Ames, for appellant mother.

Duane Huffer of Huffer Law, P.L.C., Story City, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Stephen Holmes, County Attorney, and Tiffany Meredith, Assistant County Attorney, for appellee State.

Matthew Mauk, Ames, for minor child.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

EISENHAUER, C.J.

A mother and father appeal from the juvenile court order terminating their parental rights. The mother contends the court erred when it concluded the child could not be returned to her care and when it failed to find termination would be detrimental to the child because of the closeness of the parent-child bond. The father contends the court erred in its ruling on his motion concerning service of process and the State failed to make reasonable efforts to place the child with him. We affirm on both appeals.

After an incident of domestic violence in 2009, the father moved to Indiana and a no-contact order was entered preventing contact with the mother or child. The child, born in 2008, was adjudicated a child in need of assistance under Iowa Code section 232.2(6)(c)(2) (2011) in April 2011 following four founded child abuse investigations, including three where the child was present during domestic violence in the home and one where the mother was using marijuana. Following the mother's arrests for alcohol-related offenses and concerns about the mother's mental health, the child was removed from the mother's care in December 2011 and placed with the maternal grandparents.

In June 2012 the State petitioned to terminate parental rights, seeking termination of both parents' rights under section 232.116(1)(a), (b), and (h). Following a hearing in July, the court denied the petition, and the State appealed. This court upheld the juvenile court. See *In re R.N.*, No. 12-1476, 2012 WL 5356139, at *5 (Iowa Ct. App. Oct. 31, 2012).

The State continued to provide services to the mother and allowed both the father and mother to exercise supervised visitation. The mother cooperated

only with services she agreed with. The father's visit in November 2012 ended after fifteen minutes because the child was crying uncontrollably and clinging to the worker supervising the visit.

A review hearing was held in January 2013. The court ordered the mother to continue participating in family-centered services, to submit random drug screens, to participate in mental health counseling and follow all recommendations, to participate in family counseling, and to complete an attachment assessment and follow all recommendations. The court provided the father could continue visits with the child at the discretion of the department of human services. Because the maternal grandparents indicated they were not a long-term or adoptive placement option for the child, the department sought and the court ordered the child placed in foster care.

In late January the State petitioned to terminate both parents' parental rights under section 232.116(1)(a), (b), and (f) (2013). The petition came on for hearing in April. The court noted the mother had missed at least twenty drug screens, had not completed the attachment assessment, was not participating fully in mental health and substance abuse counseling, was not participating in family counseling, had used illegal drugs since the January review hearing, and admitted she might not pass a drug screen at the time of the termination hearing. The court noted the State attempted at least bi-weekly to arrange visitation with the father, but he had had only three visits totaling two and one-half hours since August 2012.

Concerning the child's best interests, the court found neither parent could provide a safe and stable environment for the child and neither parent had

demonstrated they were suitable custodians or were willing to make themselves suitable custodians. The court also found the long-term nurturing and growth of the child was best served by the child's placement with the pre-adoptive foster family, where the child "will be provided with emotional nurturing and guidance, and [the child's] physical, educational, and cultural necessities will be advanced." The court terminated the parental rights of both parents under section 232.116(1)(f). Both parents appeal.

We review terminations de novo. *In re H.S.*, 805 N.W.2d 737, 745 (Iowa 2011). We examine both the facts and law and adjudicate anew those issues properly preserved and presented. *In re L.G.*, 532 N.W.2d 478, 480-81 (Iowa Ct. App. 1995). We accord considerable weight to the findings of the juvenile court, especially concerning the credibility of witnesses, but are not bound by them. *Id.* at 481. Our main concern lies with the child's welfare and best interests. *Id.*

Mother. The mother contends termination of her parental rights was not in the child's best interests because termination would be detrimental to the child due to the closeness of the parent-child bond. This claim implicates a discretionary exception to termination set forth in section 232.116(3)(c). The termination order does not address the parent-child bond or any of the statutory exceptions to termination in section 232.116(3). This issue is not preserved for our review. See *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) ("Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.").

The mother also contends the court erred when it concluded the child could not be returned to her care at the time of the termination. See Iowa Code

§ 232.116(1)(f)(4). This element is proved when the evidence shows the child cannot be returned to the parent without remaining a child in need of assistance. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). A child cannot be returned to a parent under section 232.102 if by doing so the child would be exposed to any harm sufficient for a new child in need of assistance adjudication. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). “The threat of probable harm will justify termination.” *Id.* The mother has not addressed her substance abuse issues. In February 2013 she was found unconscious on a bridge. She tested positive for marijuana. At the termination hearing she admitted she might not pass a drug screen at that time. *See In re R.J.*, 436 N.W.2d 630, 637 (Iowa 1989) (noting a parent’s inability to control an addiction poses a long-term threat to a child’s safety). She also has a history of alcohol abuse and arrests for alcohol-related offenses. The mother sees no need to participate in court-ordered services. She also refuses to tell service workers the names of people she associates with and who are around her child, even though she has a history of involvement with abusive men. We agree with the juvenile court’s finding the child could not be returned to the mother’s care and affirm the statutory ground for termination. We affirm the termination of the mother’s parental rights.

Father. The father contends the court erred “in the way it ruled on [his] motion about service of process.” At the start of the termination hearing, the court addressed the father’s contention he was not properly served with notice of the proceedings.

THE COURT: Let me interrupt you, Mr. Huffer. Do you want the case continued again so we can serve your client?

MR. HUFFER: I want this to be considered with the court's ruling because service was not proper under the rules.

THE COURT: I guess my question is, does your client want to waive service; or does he want to get personally served today and we'll set this hearing out another month?

MR. HUFFER: He's willing to proceed with the trial today, Your Honor.

THE COURT: So he's waiving any defects in service?

MR. HUFFER: We will still assert them if there is an appeal, Your Honor.

THE COURT: Well, then he's not waiving defects in service, so then you want me to decide the issue whether or not he needs to be served today and we continue the hearing, or for me to decide that service was proper in the first place?

MR. HUFFER: [recitation of history of the proceedings].

THE COURT: Okay. I guess my question is about today's hearing on the State's petition to terminate parental rights. You filed a motion to either continue or dismiss because service was by publication. So I guess my question is, did you want to make that argument? Then if I find there was not appropriate service your client could be served personally today and we would have to continue the hearing; or I guess I could dismiss it and the State could re-file the petition and everybody would come back, say, in a month or six weeks from now to do this same hearing, so I guess that's my question. What did you want to do about the notice for today's hearing—service for today's hearing?

MR. HUFFER: My client wishes to proceed and try to resolve this today, Your Honor.

THE COURT: Okay. So he's waiving any defects in the service of the petition to terminate parental rights?

MR. HUFFER: I believe so, yes.

We conclude the father waived any defect in service and agreed to proceed with the termination hearing. The father's passing mention of "duress" in his brief is not sufficient for us to consider on appeal. *See Midwest Auto. III, L.L.C. v. Iowa Dep't of Transp.*, 646 N.W.2d 417, 431 n.2 (Iowa 2002) (holding random mention of an issue without elaboration or supporting authority fails to preserve the claim for appellate review); *see also State v. Mann*, 602 N.W.2d 785, 788 n.1 (Iowa 1999) (noting random mention of an issue, without analysis,

argument, or supporting authority, is insufficient to prompt appellate consideration).

The father also contends the court erred in finding the State made reasonable efforts to place the child with him. The department must make reasonable efforts to return a child to the child's parent. See Iowa Code § 232.102(7). The reasonable efforts requirement, however, is not a strict substantive requirement for termination. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). The requirement affects the State's burden of proving the child cannot be safely returned to the care of a parent. *Id.* The department is only required to supply those services that are reasonable under the circumstances. *In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000). The father lives in Indiana. Until the no-contact order was dropped in August 2012, he was not allowed contact with the mother or the child. A service worker called the father at least every other week to try to arrange for visitation. Because the father lives in Indiana and has a job, he only participated in three visits between August 2012 and the termination hearing in April 2013. When the father asked about placing the child with his mother or father (who are divorced), the State began the process of seeking home studies through interstate compact procedures. The child's paternal grandmother and grandfather both testified at the termination hearing. The grandfather now lives in Chicago, but had not provided his address to the department so a home study could be done. The grandmother lives in Indiana, but testified she was moving to another apartment, so no home study had yet been done. The father lives with his grandmother, but did not seek to have a home study conducted of her home so the child could be placed with him. The

father has not requested any other or different services. Although the department is obliged to provide reasonable reunification services, the father bears an equal obligation to demand other, different, or additional services before the termination hearing. See *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). We conclude the State's reunification efforts were reasonable under the circumstances. We affirm the termination of the father's parental rights.

AFFIRMED ON BOTH APPEALS.