IN THE COURT OF APPEALS OF IOWA

No. 7-220 / 07-0337
Filed April 25, 2007

IN THE INTEREST OF C.T.M.-F.,
Minor Child,

C.F., Father,
Appellant**,**

T.J.M., Mother,
Appellant**.**

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

A father and mother each appeal from the termination of their parental rights to their son. **AFFIRMED ON BOTH APPEALS.**

Randy Hisey, South Sioux City, for appellant father.

Lori Ubbinga, Sioux City, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and Marleen Loftus, Assistant County Attorney, for the appellee state.

Joseph Kertels, Juvenile Law Center, Sioux City, for the minor child.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

BAKER, J.

A mother and father each appeal from the termination of their parental rights to their son. They contend only that the State did not make reasonable efforts to reunify them with their son. We affirm on both appeals.

I. Background and Facts

T.J.M. is the mother and C.F. is the father[1] of C.T.M.-F., born in November 2004. T.J.M. and C.F. have never been married. They resided with each other for three to four months shortly after C.T.M.-F.'s birth.

C.T.M.-F. first came to the attention of the Iowa Department of Human Services (DHS) in June 2005 following reports that T.J.M., who had been diagnosed with bipolar disorder, had not been taking her medications. It was also reported that T.J.M. was using marijuana and crack cocaine in C.T.M.-F.'s presence. Both C.T.M.-F. and T.J.M. underwent hair stat drug tests. C.T.M.-F., who was age eight months at the time, tested positive for benzoylecgonine and cocaine. Because T.J.M. and C.T.M.-F. had been making frequent moves between Sioux City, Iowa, and Sioux Falls, South Dakota, DHS could not immediately locate them. In September 2005, DHS was notified that T.J.M. and C.T.M.-F. were back in Sioux City, living in a crack house.[2] C.T.M.-F. was removed from T.J.M.'s care and placed in foster care.[3] C.T.M.-F. tested positive

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[1] Paternity was established by administrative order in February 2005.

[2] DHS was also notified that T.J.M. had been named responsible for the abuse of an unrelated child in March 2005. After babysitting a five-year-old, T.J.M. had dropped the child off alone and unattended without making sure the child's parent was home.

[3] At the time of C.T.M.-F.'s removal from T.J.M.'s care, the court did not place him with C.F., who had a lengthy criminal history, including arrests for possession of marijuana and drug paraphernalia, failure to obey a police officer, public intoxication, harassment, restraining order violation, domestic assault, and various vehicle violations.

for cocaine. T.J.M. tested positive for benzoylecgonine and cocaine and acknowledged she had been using marijuana.

C.T.M.-F. was adjudicated to be a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b), (c)(2), (n), and (o) (2005) on October 21, 2005. The reasons included C.T.M.-F.'s exposure to illegal drugs, T.J.M.'s drug usage and nomadic/unstable lifestyle, and the ongoing domestic violence and criminal activities of both parents.

On October 26, 2005, C.T.M.-F. was placed with T.J.M. in a women's substance abuse treatment program. On November 5, 2005, T.J.M. was discharged from the program against medical advice when she had an argument with another resident. C.T.M.-F. was again removed from her care and placed back in foster care, where he currently resides. [4]

For the most part, the parents were not compliant with court-ordered services. Until shortly before the termination hearing, C.F. refused to allow service providers entry into his home, and both failed to cooperate with drug testing. Visitations with C.F. were suspended in March 2006 due to his failure to participate in reunification services and his arrest for possession of drug paraphernalia. Except for a supervised visitation at a funeral wake[5] for his mother in June, C.F. had no visitations from March until November 2006.

Visitations with T.J.M. were suspended in July 2006. On July 25, T.J.M. was incarcerated due to a probation violation. She began another substance

[4] After C.T.M.-F. was taken, T.J.M. was arrested after she kicked out windows from the front entrance to the program.

[5] This visitation was disrupted due to an argument between C.F. and T.J.M. and extended family members.

abuse treatment program, the Phoenix program, while incarcerated. The record indicates T.J.M. has met greater success with this program.

On November 15, 2006, a petition for termination of parental rights was filed. On November 21, T.J.M. and C.F. filed a joint application to increase the current schedule of weekly two-hour visits and make the visits unsupervised. On December 12, the juvenile court denied the request.

Following a January 30 and 31, 2007 hearing, the juvenile court issued an order terminating the parental rights of T.J.M. pursuant to Iowa Code section 232.116(1)(d), (e), (h), (i), and (n) (2005) and of C.F. pursuant to Iowa Code sections 232.116(1)(d), (e), (h), and (i). The parents appeal.

II. Merits

We review termination orders de novo. Iowa R. App. P. 6.4; *In re R.F.*, 471 N.W.2d 821, 824 (Iowa 1991). Although we give weight to the juvenile court's factual findings, especially when considering the credibility of the witnesses, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001); *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). If the court terminates parental rights on more than one ground, "[w]e only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm its ruling." *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2002).

T.J.M. and C.F. only assert the State did not make reasonable efforts to reunify C.T.M.-F. with them. The State contends this issue was not preserved but concedes that T.J.M. preserved error on her request for additional visitation.

The State has the burden to show reasonable efforts at family reunification were made as part of its ultimate proof that a child cannot be safely returned to

parental custody. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). A parent is required to object to the services provided or request additional services as early as possible so timely and appropriate changes can be made to accomplish reunification prior to commencement of termination proceedings. *Id.* at 493-94 (citing *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997)). Failure to do so may result in waiver of appellate review on this issue. *In re S.R.,* 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). Our review of the record fails to disclose either parent's objection to the adequacy of services provided or request for additional services other than their requested additional visitation prior to the termination hearing. Accordingly, neither has preserved this issue for our consideration.

On this appeal, although both parties allege that reasonable efforts were not made to reunify the parent with the child, neither has specified that such efforts were requested, what those services might have been, or that the result would have been different. Without such evidence or even allegations, this court has no basis upon which to overturn the decision of the juvenile court.

Assuming C.F. and T.J.M.'s claim had been preserved, we find the State made reasonable efforts toward reunification. A significant number of services were offered to C.F. and T.J.M., including substance abuse evaluations and treatment, drug testing, psychosocial evaluations, visitation supervision, and parent skill development. Until shortly before the termination hearing, they were not compliant with court-ordered services. C.F. would not allow service providers to assess his home, and they both failed to cooperate with drug testing. The major obstacle to reunification was not the State's failure to make reasonable efforts toward reunification. The major obstacle was the parent's failure to avail

themselves of services in a timely manner. *See In re C.B.*, 611 N.W.2d at 495 ("A parent cannot wait until the eve of termination . . . to begin to express an interest in parenting."). Any failure to accomplish family reunification is clearly attributable to the parents' negative response to the services provided rather than the reasonableness or sufficiency of those services. From our de novo review of the record, we find the State made reasonable efforts to reunite C.T.M.-F. with his parents.

AFFIRMED ON BOTH APPEALS.