

IN THE COURT OF APPEALS OF IOWA

No. 9-1028 / 09-1487
Filed December 30, 2009

**IN THE INTEREST OF V.A. and J.A.,
Minor Children,**

C.A., Father,
Appellant,

C.A., Mother,
Appellant.

Appeal from the Iowa District Court for Appanoose County, William S. Owens, Associate Juvenile Judge.

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

Debra A. George, Centerville, for appellant father.

Kevin S. Maughan of Maughan Law Office, Albia, for appellant mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Robert Bozwell, County Attorney, and Richard Scott, Assistant County Attorney, for appellee State.

Vicki Ryan, Centerville, for intervenors.

Jonathan Willier, Centerville, for minor children.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

A mother and father appeal separately from the order terminating their parental rights. Upon our de novo review, we affirm.

I. Background Facts and Proceedings.

C.A. is the mother and C.A. is the father of V.A., born January 2007, and J.A., born April 2008. At the time V.A. was born, the mother was sixteen years old and the father was twenty years old. Despite the father's young age, he has a criminal history including convictions for theft, possession of drug paraphernalia, consumption of alcohol in a public place, and disorderly conduct. Both parents have been diagnosed with mental health issues.

V.A. came to the attention of the Iowa Department of Human Services (Department) in October 2007, after it was reported that the parents were unable provide V.A. with housing and safe care.¹ There were concerns that the parents did not have stable housing, employment, or transportation; were unable to distinguish safe caregivers; were abusing illegal substances; were not addressing their mental health needs; and had domestic and anger-management issues. The floor of the home in which the parents were living with V.A. was observed to be covered with food, cigarette butts, garbage, and animal feces. A safety plan was put in place, and the parents agreed they would stay at the mother's father and stepmother's home (hereinafter the maternal grandparents) and supervise V.A. At the end of October, a service provider reported that the parents violated the safety plan and did not want to take the necessary steps to

¹ J.A. was not yet born.

correct conditions that placed V.A. at risk. The State subsequently filed a petition alleging V.A. to be a child in need of assistance (CINA).

The father moved out of the maternal grandparents' home in November and was not able to provide the Department with an address to contact him. The mother moved out in December, and the parents began residing together with an aunt whose home had previously been determined to be unsuitable for the aunt's children. The mother agreed to another safety plan in which she would leave V.A. in the physical care of the maternal grandparents, among other things. Both parents later attempted to take V.A. from the maternal grandparents, violating the safety plan. The Department then sought to remove V.A. from the parents' care because the child's removal was necessary to avoid imminent danger to the child, as the parents could not show that they were able to provide V.A. with safe and suitable housing. The juvenile court agreed, and V.A. was removed from the parents' care and placed with the maternal grandparents. V.A. has not been returned to the parents' care since the removal.

Following an uncontested proceeding, the juvenile court on February 1, 2008, adjudicated V.A. to be a CINA. The court adopted the Department's recommendations, including that the parents participate in family, safety, risk, and permanency services; participate in family team meetings and follow the plan developed there; and have visitation at the discretion of the Department. Although the father denied that he abused alcohol or substances, the court also adopted the Department's recommendation that both parents submit to random drug testing as required by the Department.

The parents were inconsistent in their participation in services and visitations, and the parents made little progress. Throughout the case, the father denied that he had an alcohol or substance abuse problem. The father never requested that the Department provide him with any additional services, including substance abuse treatment or random drug testing, and the Department did not require that he submit to random drug testing.

In April 2008, J.A. was born. Thereafter, a safety plan was put in place to allow J.A. to remain with the mother. The plan, to which the mother agreed, provided that the mother would not allow the father to have contact with J.A. without approval from the Department.

The parents continued to be inconsistent with services. The mother dropped out of school, and the parents had sporadic employment. In August 2008, it was reported that the mother was using drugs and having contact with the father, and that there had been a domestic abuse incident between the parents during which J.A. was present.² J.A. was then removed from the parents' care and placed in foster care. The State subsequently filed a petition alleging J.A. to be a CINA. J.A. was later placed with the maternal grandparents.

A permanency hearing concerning V.A. was held on August 21, 2008. Although the Department found that the parents had not complied with or followed the family case plan developed at the family team meetings and no progress had been obtained or maintained that would allow V.A. to be returned to the parents' care at that time, the Department recommended that the young

² The mother admitted that a baby was present during the incident but denied the child was in fact J.A.

parents be given another six months to improve their level of parental skills. The juvenile court thereafter entered its order extending permanency for six months. The court found that services had been offered to the parents and that the court had made an inquiry of the parties as to the sufficiency of the services being provided and whether additional services were needed to facilitate the safe return of V.A. to the parents' care. The court advised the parties that a failure to identify a deficiency in services or to request additional services might preclude them from challenging the sufficiency of the services in a termination of parental rights proceeding.

On October 9, 2008, J.A. was adjudicated a CINA, and the child's placement was continued. The court again adopted the Department's recommendations and ordered that services continue to be provided. Later that month, the father was arrested for third-degree burglary. He was placed in jail and subsequently pled guilty to the charge. The father was offered the option of being placed in a halfway house, where he could participate in services and have visitation with the children, with five years' probation. The father instead chose to be imprisoned, where he was not able to participate in any Department services. The father was not released until June 2009.

On February 12, 2009, the State filed its petition for termination of the parents' parental rights to both children. A contested termination hearing was held on April 23, May 21, June 18, and July 2, 2009. Following the father's release from prison, the parents reconciled and were living with the mother's mother. The parents testified they had begun to comply with services. However, the mother acknowledged that she had not, during the pendency of the case,

complied with the case plan and services. The parents requested additional time to be reunited with the children. The parents also requested that the children remain with the maternal grandparents and that a guardianship be established to allow them additional time to be reunited with the children.

The Department's caseworker testified that the children were in need of permanency and a guardianship would not fulfill that need. Additionally, the paternal grandfather testified that the children were in need of permanency and that he believed the children should not have to wait any longer for the parents to get themselves together. He testified he believed the parents' rights should be terminated and that termination was in the best interests of the children. He testified that he and his wife were willing to adopt the children, and he would allow the parents and the children's other grandparents to have a relationship with the children, provided it was appropriate for and in the best interests of the children.

On September 17, 2009, the juvenile court entered an order terminating the parents' parental rights to the children pursuant to Iowa Code section 232.116(1)(h) (2009) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home). The parents now appeal separately.

II. Scope and Standards of Review.

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). The grounds for termination must be supported by clear and convincing

evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Evidence is clear and convincing when it leaves “no serious or substantial doubt about the correctness of the conclusion drawn from it.” *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). Our primary concern in termination cases is the best interests of the children. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

III. Discussion.

On appeal, the father contends the State failed to provide him with reasonable services intended to facilitate reunification with the children. Additionally, the mother argues the State failed to establish by clear and convincing evidence grounds for termination. Both parents contend the court erred in determining termination was in the children’s best interests, as the children were placed with relatives and a guardianship could have been established. We address each argument in turn.

A. Reasonable Efforts.

The father argues the State failed to provide him with reasonable services intended to facilitate reunification with the child. Specifically, he contends he should have been given drug testing as was originally recommended by the Department. “While the State has the obligation to provide reasonable reunification services, the [parent] ha[s] 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) (emphasis added). 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. *Id.*; *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994).

Here, the father was given numerous opportunities during the pendency of the case to demand drug testing. However, the father failed to request the services. We therefore conclude the issue was not preserved for our review.

B. Grounds for Termination.

The mother argues the State failed to establish by clear and convincing evidence grounds for termination. The district court terminated the parents' parental rights under Iowa Code section 232.116(1)(h). Section 232.116(1)(h) permits termination of parental rights if all of the following have occurred:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's 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.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

The mother does not dispute the first three elements of section 232.116(1)(h) were established. Rather, she argues that the State failed to prove by clear and convincing evidence that the children could not be returned to her custody.

The legislature incorporated a six-month limitation for children in need of assistance aged three and below. Iowa Code § 232.116(1)(h)(3). Our supreme court has stated that "the legislature, in cases meeting the conditions of [the Iowa Code], 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 Iowa Code § 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. The children first came to the attention of the Department in October 2007. V.A. was removed from the parents' care in December 2007, and J.A. was removed from the mother's care in August 2008. V.A. was adjudicated CINA in February 2008, and J.A. was adjudicated CINA in October 2008. By the time of the termination hearing, V.A. had been out of the parents' custody for over a year. The statutory six-month period expired concerning each child with little evidence that the parents could provide the necessary stability to safely parent their children in an unstructured, unsupervised setting. The court granted the parents an additional six months to establish they could safely parent the children, yet the parents did very little to regain custody. The parents' lack of progress raises serious concerns about their ability to meet the needs of their children in the future. A parent's past performance may be predictive of the quality of the future care that parent is capable of providing. *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). Unfortunately, the record reflects that the children cannot be safely returned to the parents at this time.

"A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting." *Id.* "When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). "At some point, the rights and needs of the child rise above the rights and needs of

the parents.” *Id.* For the above reasons, we agree with the juvenile court’s decision to terminate the mother’s parental rights to the children.

C. Best Interests.

Both parents contend termination was not the children’s best interests, as the children were placed with a relative and the establishment of a guardianship was possible. We disagree.

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must be in the children’s best interests. *A.S.*, 743 N.W.2d at 867; *see also In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). “A child’s safety and the need for a permanent home are now the primary concerns when determining a child’s best interests.” *In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially). Those best interests are to be determined by looking at the children’s long-range as well as immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We are to consider what the future likely holds for the children if the children are returned to their parents. *In re J.K.*, 495 N.W.2d 108, 110 (Iowa 1993). Insight for that determination is to be gained from evidence of the parents’ past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

Additionally, termination may be avoided if “[a] relative has legal custody of the child.” Iowa Code § 232.116(3)(a). The factors in section 232.116(3) are permissive, not mandatory, and it is in the court’s discretion, based on the unique

circumstances of the case and the best interests of the child, whether to apply such factors. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa Ct. App. 1996).

On our de novo review of the record, we find termination of the parents' parental rights is in the children's best interests, and we find no abuse of discretion in the circumstances before us. There was no evidence in this record to establish that additional time would yield any different result. The children should not be forced to wait for permanency. See *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987) ("[P]atience with parents can soon translate into intolerable hardship for their children."). The children should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa Ct. App. 1993). We agree with the juvenile court's conclusions:

[T]he parents have been offered numerous opportunities to participate in services and visits with the children. The evidence, however, is quite clear they have squandered those opportunities at nearly every turn. To claim they are now willing to participate in services and visits is simply too little, too late. In point of fact, the parents were granted additional time to have [V.A.] returned to their care. Following an initial permanency hearing . . . , the parents were provided up to six additional months to work toward reunification. . . . Unfortunately, [the parents] did virtually nothing with that time until a petition was filed to terminate their parental rights.

....

Clearly, the best interests of the children would not be served by the issuance of a permanency order for guardianship. Such an order would not provide the children with the type of permanency they deserve. These are very young children, and they deserve a permanent home rather than one that might be subject to on-going judicial review. Termination and adoption provides the children with their best chance of achieving the safety, permanency, and well-being they deserve, and that the law clearly demands.

We therefore conclude termination is in the children's best interests.

IV. Conclusion.

Upon our de novo review, we find the father failed to preserve his reasonable efforts issue for our review, clear and convincing evidence supports termination of the mother's parental rights under Iowa Code section 232.116(1)(h), and termination is in the children's best interests. We therefore conclude the district court did not err in terminating the parents' parental rights.

AFFIRMED ON BOTH APPEALS.