IN THE COURT OF APPEALS OF IOWA

No. 3-491 / 93-785

FILED
OCT 5 1993
CLERK SUPREME COURT

IN THE INTEREST OF J.D.L., S.J.L., and S.L.L., Minor Children,

L.L., Father,

Appellant.

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

Father appeals an order terminating his parental rights pursuant to Iowa Code sections 232.116(1)(d), (e), (h), and (i) (1991), contending there is not evidence beyond a reasonable doubt to support the termination and that his due process rights were violated when his motion to dismiss the petition was overruled. **AFFIRMED.**

Jeffrey A. Neary of O'Brien, Galvin, Moeller & Neary, Sioux City, for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Special Assistant Attorney General; Judy Sheirbon, Assistant Attorney General; and Marleen J. Loftus, Assistant County Attorney, for appellee.

Michael J. O'Brien of the Juvenile Law Center, Sioux City, guardian ad litem/attorney for minor children.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

OXBERGER, C.J. 000268

In March 1990, J.L., born September 30, 1984, and his twin sisters, S.L. and S.L., born September 19, 1985, were found in a vehicle driven by an intoxicated minor. J.L.'s father and mother were also in the vehicle and were arrested on several charges, including child abuse. The children were placed in the care of their maternal aunt.

In April 1990, the children were adjudicated children in need of assistance. L.L. was named as the putative father of J.L. R.V. was named as the putative father of the twins. A dispositional hearing was held. The mother retained custody of the children subject to protective supervision by the department of human services (DHS).

An arrest warrant was issued for L.L. based on allegations he kidnapped and sexually abused the children's fourteen-year-old aunt. He fled with the children. The children and mother were located; L.L. remained a fugitive.

An emergency removal was granted in July 1990. In October 1990, after completing chemical dependency treatment, the mother regained physical custody of the children. However, in January 1991, the mother placed the children in foster care.

In September 1991, a review hearing was held. The court ordered continued placement of the children in foster care. The court noted L.L. had recently been arrested in South Dakota and was fighting extradition to Iowa. The

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court prohibited visitation between L.L. and J.L. and ordered commencement of termination proceedings.

In March 1992, L.L. acknowledged paternity of all three children. The court did not find L.L. to be the father of the children. L.L. requested visitation with the children pending his transfer to prison following convictions of sexual abuse, kidnapping, and theft. The court denied visitation but authorized monitored correspondence. The court ordered the initiation of termination proceedings.

In October 1992 the juvenile court found the Indian Child Welfare Act (ICWA) applied to proceedings concerning the children and granted the Winnebago Tribe of Nebraska's request to intervene. In November 1992, the State filed a petition for the termination of parental rights.

In January 1993, a termination hearing was held. The mother did not appear personally. The State called a number of witnesses, two of whom were qualified expert witnesses under the ICWA, to support the petition for termination. L.L. testified: he was the father of all three children; he had not affirmed he was the father in order to avoid child support obligations; he created R.V., a fictitious person, to aid in avoiding child support; he was currently serving consecutive fifteen- and ten-year sentences and a concurrent five-year sentence at the penitentiary; while there, he completed an alcohol abuse program, was attending AA meetings, was involved with the Native American sweat lodge, and was waiting to attend a

sex offender treatment program and a parenting program; and that he hoped to be released in August 1994. He also testified he had written the children three or four letters between March 1992 and January 1993.

On January 22, 1993, L.L. filed a motion to dismiss the termination petition, contending his due process rights had been violated when the court denied him visitation and simultaneously ordered termination proceedings.

On April 7, 1993, the court reopened the record to allow mother to appear personally and offer evidence. Mother did not resist termination of her parental rights.

The court concluded all three children were likely to suffer serious physical or emotional damage if returned to either parent. The court ordered the termination of the parental rights of mother, L.L., R.V., and any anonymous fathers as to these three children.

L.L. appeals.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

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I. Sufficiency of Evidence

L.L. contends there is not clear and convincing evidence to support termination of his parental rights. Specifically, he argues the record does not show that: (1) he has not maintained significant meaningful contact with the children during the previous six months; (2) the children could not be returned to him at the present time; (3) he has received services; or (4) he is unlikely to be released from prison for a period of five or more years.

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

> We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing Dameron, 306 N.W.2d at 745).

These children should not be forced to endlessly await the maturity of their father. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Termination must occur if twelve to eighteen months have elapsed since the child was removed from the home and the parent still cannot take care of the child. Id. Evidence of the parent's past performance may be indicative of the quality of future care he or she is

capable of providing. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

We find ample evidence to support the termination of L.L.'s termination rights. L.L. was limited to written correspondence with the children out of extreme concern for their safety because L.L. has been convicted of the kidnapping and sexual abuse of the children's fourteen-year-old aunt. In addition, although L.L. was authorized to continue written correspondence with the children, he wrote them only three or four times in nearly a year. We find this to be sufficient evidence of L.L.'s failure to maintain significant contact with the children in the six months prior to termination.

Although L.L. claims the State failed to provide evidence that the children would be unable to be returned to him, we cannot support his claim. First, L.L. is serving a twenty-five-year prison sentence. His scheduled discharge date is 2004. While we agree that L.L. may be released prior to that date, we will not require the children to wait in the limbo of foster care on the mere possibility that L.L. will be receive an early release. In addition, L.L. has not yet begun the required sexual abuse offender treatment, which will impact his discharge date. Finally, L.L. has not been active in the parenting of these children for a number of years. Initially, he denied paternity and refused services offered to him. We find

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evidence beyond a reasonable doubt that the children may not safely be returned to him.

L.L. also claims he has not received services as required by statute. Initially, L.L. refused services offered to him. L.L. then became a fugitive and was not available to receive services. L.L. was convicted of conduct which caused the court great concern for the children's safety. L.L. also testified he would have refused any services offered to him. Implied in the requirement that a parent receive services is the availability of the parent to receive those services. L.L. refused services and placed himself in positions where he was unable to receive services.

II. Denial of Motion to Dismiss

L.L. argues the denial of his motion to dismiss is a denial of his due process rights, although he does not state any particular violation. We have reviewed the record and find no due process violation. We affirm the decision of the juvenile court.

AFFIRMED.