IN THE COURT OF APPEALS OF IOWA

No. 7-500 / 97-691

000103

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF P.M.C.,
Minor Child,

C.C., Father,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott, Associate Juvenile Judge.

Father appeals the juvenile court's order terminating his parental rights over his minor child. **AFFIRMED.**

Harold K. Widdison of Richard Rhinehart & Associates, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Diane M. Stahle, Special Assistant Attorney General, and Rhoda Tenuta, Assistant County Attorney, for appellee-State.

Susan E. Boden of Vriezelaar, Tigges, Edgington, Rossi, Bottaro & Boden, Sioux City, guardian ad litem for minor child.

Considered by Cady, C.J., and Huitink, and Vogel, JJ.

CADY, C.J.

A father appeals the decision of the juvenile court terminating his parental rights to his minor son. We affirm on appeal.

Charles and Sherry are the parents of Phillip, who was born on September 13, 1995. The Department of Human Services (DHS) was aware of the family before Phillip was born because Charles and Sherry had voluntarily terminated their parental rights to an older child. When Phillip was born the couple did not have a permanent residence, but were living in their car. They agreed to place Phillip in foster care.

Phillip was adjudicated a child in need of assistance. The parents were directed to have a psycho-social evaluation. They were permitted supervised visitation with Phillip. The court agreed Phillip should remain in foster care.

The psycho-social evaluation was completed in January 1996. Testing showed Charles to be mildly mentally retarded. Dr. Ronald Bendorf, a psychiatric consultant, reported Charles had a rather significant personality disorder with passive aggression, anti-social borderline, and narcissistic qualities. Charles's conversations were not based on reality, and he had aggressive ideation.

Charles attended only fifteen of the forty-four scheduled appointments for visitation with Phillip. Shelly Kratz, a social worker, reported that when Charles did attend visitation, he usually played with the toys, and did not interact with Phillip. Kratz also noted Charles had a tendency to tell tall-tales during visitation. Charles's

last contact with Phillip was in October 1996. Charles and Shelly were divorced in January 1997.

On January 24, 1997, the State filed a petition to terminate Charles's parental rights under Iowa Code sections 232.116(1)(a), (b), (c), (d), (f), and (g). Sherry consented to the termination of her parental rights.

On February 11, 1997, Charles filed an application for appointment of counsel for his guardian. Charles claimed he was a handicapped person under the Americans with Disabilities Act (ADA), 42 U.S.C. §§12101-12213 (1993), and needed a guardian due to his low-functioning cognitive ability.

The application was heard on February 19, 1997, the same day as the termination hearing. Charles's mother testified she thought she was Charles's guardian, but later found out she was only the designated payee for purposes of receiving his social security benefits. Charles then asked for a guardian to be appointed for him. The juvenile court found Charles was not incompetent, and was not entitled to the appointment of a guardian under the ADA or Iowa Rule of Civil Procedure 17.

At the termination hearing, Charles stated he wanted to care for Phillip. He testified he did not have transportation, and this prevented him from regularly attending visitation. He also testified, however, he could obtain a bus pass to visit

Phillip in the future. The juvenile court terminated Charles's parental rights under sections 232.2(6)(c), (d), (f), and (g) [sic]. Charles has appealed.

I. The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re R.K.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Charles contends the juvenile court improperly terminated his parental rights under sections 232.2(6)(c), (d), (f), and (g). He points out section 232.2 deals with children in need of assistance and does not provide the means to terminate parental rights.

We believe the juvenile court meant to terminate Charles's parental rights under section 232.116(1)(c), (d), (f), and (g). The petition for termination of parental rights was based on sections 232.116(1)(a), (b), (c), (d), (f), and (g). The juvenile court's mention of section 232.2 was a typographical error. We conclude this small error does not provide sufficient reason to overturn the juvenile court decision.

III. Charles also contends there was insufficient evidence to terminate his parental rights under sections 232.116(1)(c), (d), (f), or (g). We turn first to subsection (d), which requires the State to show: (1) the child has been adjudicated a child in need of assistance; (2) the child has been removed from the home for at

least six consecutive months; and (3) the parent has not maintained significant and meaningful contact with the child during the previous six consecutive months and has made no reasonable efforts to resume care of the child despite being given the opportunity to do so. Iowa Code §232.116(1)(d).

Charles attended only four visitations with Phillip in the six consecutive months before the termination hearing. During the entire time Phillip was in foster care, Charles attended fifteen out of forty-four scheduled visitations. Charles has had no contact with Phillip since October 1996. Although Charles claimed he had problems with transportation, he admitted he could get a bus pass. We find there is clear and convincing evidence to show Charles has not maintained significant and meaningful contact with his child.

When the juvenile court terminates parental rights under more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996). We have already concluded Charles's parental rights were properly terminated under section 232.116(1)(d). Therefore, we need not address his claims based on sections 232.116(1)(c), (f), and (g).

IV. Charles claims the State should have been required to comply with the ADA before it could terminate his parental rights. The ADA requires a public entity to make "reasonable accommodation" to allow a disabled person to receive services

or to participate in the public entity's programs. *In re C.M.*, 526 N.W.2d 562, 566 (Iowa App. 1994); C.F.R. §35.130(b)(7) (1994). Charles believes "reasonable accommodation" would require the State to appoint a guardian for him.

We do not believe Charles preserved error on this issue. Parents should demand additional or other services prior to the termination hearing. *In re B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993); *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). Challenges to services should be made when the case plan is entered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994).

Here, Charles asked for an attorney for his guardian about eight days before the termination hearing. He did not ask for the appointment of a guardian until the day of the termination hearing. We determine Charles's requests were made too late. A request for services should be made when it can do some good.

Even if we were to address this issue on the merits, we would find the State reasonably accommodated Charles's mental disability. Social workers testified they were aware of Charles's problems, and tried to explain things on his level of understanding. We do not find Charles has shown "reasonable accommodation" would require the appointment of a guardian under the facts of this case. Under Iowa Rule of Civil Procedure 17, a guardian ad litem should be appointed only after there has been an adjudication of incompetence. *Putensen v. Hawkeye Bank*, 564 N.W.2d 404, 407-408 (Iowa 1997). Charles had not been adjudicated incompetent. We agree

with the juvenile court decision Charles was not entitled to the appointment of a guardian under the ADA or rule 17.

We affirm the decision of the juvenile court.

AFFIRMED.