IN THE COURT OF APPEALS OF IOWA

No. 1-407 / 01-255
Filed July 18, 2001

FILED
JUL 18 2001
CLERK SUPREME COURT

IN THE INTEREST OF M.J.,
Minor Child,

A.C., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

Father appeals the juvenile court's termination of his parental rights. **AFFIRMED.**

Jeffrey T. Mains of Benzoni & Mains, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, John Sarcone, County Attorney, and Cory McClure, Assistant County Attorney, for appellee-State.

Michelle Miller of the Juvenile Law Center, Des Moines, for minor child.

Ryan Genest, Altoona, for mother.

Considered by Vogel, P.J., and Zimmer, and Hecht, JJ.

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ZIMMER, J.

A father appeals the decision of the juvenile court which terminated his parental rights to his minor child. He claims the court abused its discretion by denying his motion to continue the termination hearing. We affirm.

Anthony and Erin are the parents of Madisyn, born in August 1996. Anthony's involvement with Madisyn was limited because he was incarcerated for a period of time. When he was not in jail, he spent time with Madisyn on weekends.

Madisyn was removed from her mother's care in May 1999. Anthony stated he did not want to care for the child. Erin has a history of substance abuse and was involved in an abusive relationship. Madisyn was placed with the maternal grandparents. In August 1999, she was adjudicated to be a child in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(c)(2) and (n).

Anthony was not interested in having visitation with Madisyn. He did not participate in services. He moved out of the state in April 2000 and did not have any contact with the Department of Human Services (DHS). In August 2000, his attorney filed a motion to withdraw because he did not maintain contact with her. The juvenile court granted this motion.

In January 2001, the State filed a petition to terminate the parents' rights. Erin consented to termination of her parental rights. An attorney was again appointed for Anthony. He contacted his attorney before the termination hearing, and stated he would not be present for the hearing, but asked to have the case continued. The juvenile court denied the motion to continue, pointing out that

Anthony had received legal notice and been given an opportunity to be heard. The court noted Anthony had not participated throughout the proceedings.

The juvenile court terminated Anthony's parental rights under sections 232.116(1)(b) and (d). The court found Anthony had no contact with Madisyn since April 2000. After that time, he also had no contact with DHS and did not participate in services. Anthony appeals.

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the child. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

Anthony contends the juvenile court should have granted his motion for a continuance. He asserts due process required a continuance in this case. He claims the risk of an erroneous determination was significant because he was not present at the hearing to explain his noncompliance with services.

We review a motion for continuance under an abuse of discretion standard and will reverse only if injustice will result to the party desiring the continuance. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). Denial of a motion to continue must be unreasonable under the circumstances before we will reverse. *Id.* We may look at a parent's past performance in determining whether a continuance of a termination proceeding should be granted. *In re K.A.*, 516 N.W.2d 35, 37 (Iowa Ct. App. 1994). The juvenile court is not obligated to grant a motion for continuance because "children simply cannot wait for responsible parenting." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990).

We find the juvenile court did not abuse its discretion by denying Anthony's motion to continue the termination hearing. Anthony was aware of the termination hearing, but chose not to attend. Anthony has had no contact with Madisyn since April 2000. He never participated in any services, and throughout most of the CINA proceedings DHS was unaware of his whereabouts. Looking at Anthony's past performance, a continuance of the termination proceedings was not warranted.

We affirm the decision of the juvenile court.

AFFIRMED.