

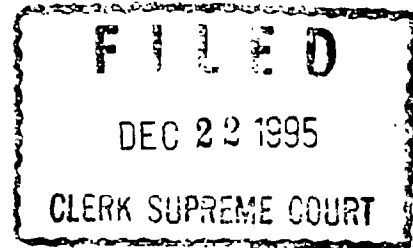
IN THE COURT OF APPEALS OF IOWA

No. 5-643 95-902

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

R.E.M.,

Father-Appellant.



Appeal from the Iowa District Court for Polk County, Constance Welu, Judge.

R.E.M., the father, appeals from the termination of his rights to A.M.M.

AFFIRMED.

Catherine K. Levine, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Michelle Chenoweth, Assistant County Attorney, for appellee.

Michael Bandstra, Des Moines, guardian ad litem for minor child.

Considered by Hayden, P.J., and Sackett and Huitink, JJ.

SACKETT, J.

Rick, the father of Angela, born July 28, 1993, appeals from a juvenile court order terminating his parental rights. He contends there was not clear and convincing evidence supporting the termination. Rick was incarcerated until twenty-nine days prior to the hearing terminating his parental rights. Rick contends he was not afforded reasonable efforts to reunite him with his daughter because there was not sufficient time for him to meet the goals in the case plan. We affirm.

In April 1994, Rick and the child's mother had an altercation. The mother and Angela were injured. The mother had black eyes and needed stitches to close a cut on her forehead. Rick ultimately pled guilty to assault with intent to inflict serious injury and interference with official acts as a result of the problems.

On June 19, 1994, while Rick was incarcerated, Angela's mother took Angela to Mercy Medical Center. Angela was dehydrated. Angela's mother left for eighteen hours, returned, and then left again. On June 24, 1994, Angela was put in a foster care home and a petition to have her found a child in need of assistance was filed.

On August 9, 1994, a hearing was held on the petition. The mother appeared with an attorney and Rick participated by telephone, he being incarcerated at the time.

The case history showed Rick had previously been incarcerated at Anamosa, Iowa; Oakdale, Iowa; and the Fort Des Moines, Iowa Correctional Facility. Neither the mother nor Rick appeared at the dispositional hearing.

On March 15, 1995, Rick was released from prison. On March 20, 1995, the State filed the petition to terminate his parental rights. A hearing on the petition was held on April 12, 1995. On April 25, 1995, an order terminating Rick's parental rights under Iowa Code section 232.116(1)(g)(4) (1993) was filed. That section provides the court may order termination of parental rights where:

g. The court finds that 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.

Iowa Code § 232.116(1)(g)(1-4) (1993).

Rick has appealed from that order. Rick does not contend he has the ability to care for Angela at this time. He believes Angela is well taken care of in her current surroundings. Now he only asks for visitation, but he contends with time and assistance he can function as Angela's father.

Rick is living at the Door of Faith Mission. His sentencing requirement was released on March 15, 1995. Rick was evaluated while in the Iowa prison system and it was recommended he attend a "batterer's program". The State advances he did not attend a "batterer's program". The record gives no indication of the required course

of study or curriculum in what is titled a "batterer's program". Rick did not attend a program titled "batterer's program". He did attend individual therapy. Rick received training in vocational and social skills. He attended a class on anger management and classes on being a parent, relapse prevention, and goal setting. We consider this effort on Rick's part as substantial.

Rick admittedly was using drugs when he had the altercation with Angela's mother. Rick contends he is no longer using drugs and current tests for drug use have been negative. He contends he has never failed to cooperate with services. Rick contends one person from the Department of Human Services who testified has never seen him interact with Angela and he was kept from Angela because he was incarcerated.

The State points out Rick's prior incarcerations and prior drug use. Rick was asked to submit urine samples on two occasions and did not do so.

The right to raise one's children is an essential, basic civil right, a right "far more precious than property rights." *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 1212, 31 L. Ed. 2d 551, 558 (1972).

The State bears the burden of proving the allegations of its petition by clear and convincing evidence. See *In re Chad*, 318 N.W.2d 213, 219 (Iowa 1982); *In re T.B.B.*, 460 N.W.2d 881, 882 (Iowa App. 1990). This is the minimal burden of proof now required in this type of case by the Due Process Clause of the United States

Constitution, Amendment XIV. *Santosky v. Kramer*, 455 U.S. 745, ___, 102 S. Ct. 1388, ___, 71 L. Ed. 2d 599, 603 (1982).

There is a requirement reasonable services be offered to preserve the family unit. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994); *In re A.L.*, 492 N.W.2d 198, 201 (Iowa App. 1992); *In re B.L.*, 491 N.W.2d 789, 791-93 (Iowa App. 1992) (Donielson, J., dissenting); *In re M.D.S.*, 488 N.W.2d 715, 717-20 (Iowa App. 1992) (Habhab, J., dissenting); *In re A.W.*, 464 N.W.2d 475, 478 (Iowa App. 1990) (Schlegel, P.J., concurring in part and dissenting in part (on another issue)).

The focal question is whether the State, in its failure to give the father adequate time to correct his problems after he was released from prison, did not meet its burden of offering reasonable services to reunite the family.

The State points particularly to Rick's past. Rick claims to have reformed. The record is not sufficient to determine whether this is true. Rick has cooperated at least in part with requests. We find programs Rick attended were directed at least in part to the problems that resulted in his incarcerations and abuse of Angela's mother. The fact they were not designated "batterer's programs" was not dispositive. Rick kept in touch with Angela's social worker during his incarcerations. He could do little more than he did while incarcerated. Clearly, there was not sufficient time for help between his release and the filing of the petition.

Angela has been in one foster home during this entire proceeding and her foster parents want to adopt her. The adoption has been recommended and appears

to offer a much better life to Angela than she would have if she were to retain her ties to her father.

Once the State has proved grounds for termination by clear and convincing evidence, then what is in the best interest of Angela is controlling.

We affirm.

AFFIRMED.