IN THE COURT OF APPEALS OF IOWA

No. 1-151 / 00-0884
May 23, 2001

FILED
MAY 23 2001
CLERK SUPREME COURT

IN THE INTEREST OF,
S.R. and C.R.,
Minor Children,

E.R., Father,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge.

The father appeals the juvenile court's order dismissing his petitions to terminate the mother's parental rights for lack of standing. **REVERSED AND REMANDED.**

Murray W. Bell of Murray W. Bell, P.C., Davenport, for appellant.

Marsha J. Arnold, Davenport, for appellee-mother.

Norma Nunez, Rock Island, for minor children.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

000270

HECHT, J.

Ernesto, the father of Camilo and Sonia, appeals the juvenile court order dismissing his petitions to terminate the mother's parental rights. He claims the juvenile court erred in its interpretation of Iowa Code sections 232.111(1) and 232.111(3)(1999), concluding Ernesto did not have standing to file the petition, and that the court erred when it dismissed his petitions. We reverse the juvenile court and remand for further proceedings.

Background facts and proceedings. Ernesto and Xochitl are the parents of Camilo, born in June 1992, and Sonia, born in July 1993. Xochitl has three other children by other fathers. All five children were adjudicated in need of assistance on March 5, 1998, based on allegations of physical and emotional abuse by their grandparents, with whom they lived. DHS investigators described their home as "filthy, cluttered with clothes, garbage, and roach infested." The grandparents had been raising the children since infancy. Their mother lived in Chicago. The children were placed in foster care on May 27, 1998. At a permanency hearing in September of 1999, Xochitl consented to placing Camilo and Sonia in their father's custody in Illinois if the court would not terminate her parental rights. The service providers, attorneys, and the court agreed that would be an appropriate resolution. Delays occurred, and the children were not moved to Illinois. On April 25, 2000, Ernesto obtained an order granting him leave to file a petition to terminate Xochitl's parental rights without payment of costs. He filed a petition that same day. Xochitl filed motions to dismiss, to enforce the permanency order, and to dismiss for lack of standing. On May 5,

2000, the court dismissed the termination petitions concluding a parent is a not a party authorized to petition for termination of parental rights under Iowa Code sections 232.111(1) and (3) (1999). Ernesto appeals.

Appellate claims. Ernesto contends he is a "competent person having knowledge of the circumstances" under section 232.111(3) and thus has standing to file a termination petition. He also argues the legislature created two classes of possible petitioners. The first class of petitioners identified in section 232.111(1) includes those who have an unfettered, absolute right to file the petition. The second class of possible petitioners includes "any competent person having knowledge of the circumstances" who may file a petition only after convincing an agent of the State or a judicial officer that the petitioner has an arguably meritorious case for termination.

Discussion. Section 232.111(1) lists "guardian, guardian ad litem, custodian, the department of human services, a juvenile court officer, or the county attorney" as persons permitted to file a "petition for termination of the parent-child relationship." *Id.* Section 232.111(3) gives DHS, juvenile court officers, county attorneys, and judges the authority to "authorize any competent person having knowledge of the circumstances to file a termination petition . . . without the payment of a filing fee." *Id.* Iowa Code section 232.2 defines custodian, guardian, and guardian ad litem for the entire chapter. Iowa Code §§ 232.2(11), (21), and (22). The explicit language in the definitions in section 232.2 makes it clear parental rights are broader than the rights of those who act *in loco parentis*. *See e.g.,* Iowa Code § 232.2(11) ("All rights and duties

of a custodian shall be subject to any residual rights and duties remaining in a parent or guardian.").

Section 232.2(11) describes the broad range of persons who fit the definition of "custodian:"

> [A] stepparent or relative within the fourth degree of consanguinity to a child who has assumed responsibility for that child, a person who has accepted a release of custody pursuant to division IV, or a person appointed by a court or juvenile court having jurisdiction over a child.

Id. Under the facts before us, we believe Ernesto fits within the statutory definition of a custodian of Camilo and Sonia. As their biological father, he is a relative within the fourth degree of consanguinity. Xochitl consented to the children being placed in Ernesto's custody. The juvenile court ordered,

> that custody of Sonia . . . and Camilo . . . is placed with their father, Ernesto, . . . to be implemented upon the initiation of services and supervision through the Illinois Department of Children and Family Services by way of interstate compact.

Although circumstances delayed the children's move from Iowa to Illinois, it is clear the court and the parties contemplated an assumption of responsibility and custody by Ernesto. We hold, therefore, that Ernesto has standing under Iowa Code section 232.111(1) to petition to terminate Xochitl's parental rights. The juvenile court erred in dismissing his petition for lack of standing.

Xochitl cites *In re H.J.E.* to support her claim a parent does not have standing to file a petition to terminate parental rights under section 232.111. *In re H.J.E.*, 359 N.W.2d 471, 473-74 (Iowa 1984). In *H.J.E.*, a CINA case already was in progress when the father filed his petition to terminate his own parental rights under chapter 600A. *Id.* The court held chapter 232 was the exclusive

means of termination once a CINA case is in progress. *Id.* at 474. Therefore the district court was without authority to hear the father's petition under chapter 600A. *Id.* In dicta, the court quoted language from Iowa Code section 232.111(1) to support its assertion "a parent cannot initiate termination proceedings under chapter 232." *Id.*

The circumstances of the case before us are not similar to those in *In re H.J.E.* The petition to terminate Xochitl's parental rights is not a voluntary petition filed by her. Ernesto is not seeking, as was the father in *H.J.E.*, to be relieved of responsibility for his children. Rather, he is seeking to have full responsibility for them. In *H.J.E.* the father did not have, and did not want custody. Ernesto wants and was ordered by the court to have custody of his children. We conclude *In re H.J.E.* does not control our resolution of the case before us.

Finally, we conclude our resolution of this case meets the express intent of the legislature in Iowa Code chapter 232:

> This chapter shall be liberally construed to the end that each child under the jurisdiction of the court shall receive, preferably in the child's own home, the care, guidance and control that will best serve the child's welfare and the best interest of the state.

Iowa Code § 232.1.

We reverse the juvenile court's dismissal of Ernesto's petition to terminate Xochitl's parental rights and remand this case for further proceedings. We express no opinion on the merits of the petition.

REVERSED AND REMANDED.