IN THE COURT OF APPEALS OF IOWA

No. 1999-232 (9-456) / 99-420
Filed September 29, 1999

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

R.B., Father,
Appellant,

B.M., Mother,
Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, Jane Spande, Juvenile Judge.

Father and mother appeal the termination of their parental rights to their son.

AFFIRMED.

David G. Thinnes, Cedar Rapids, for appellant-father.

Barbara A. Connolly, Howes Law Firm, P.C., Cedar Rapids, for appellant-mother.

Thomas J. Miller, Attorney General, and Charles K. Phillips, Assistant Attorney General, for appellee-State.

Judith Amsler, Cedar Rapids, Guardian ad litem for minor child.

Considered by Vogel, P.J., Zimmer, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

HAYDEN, S.J.

Richard and Brenda are the parents of Andrew, born in December 1996. They appeal the decision of the juvenile court which terminated their parental rights. The parents claim the State did not present sufficient evidence to support termination of their parental rights. Also, they allege the State failed to make reasonable efforts to reunite them with their child, and termination is not in the child's best interests We affirm on appeal.

Andrew was born prematurely and had serious medical problems. He had three surgeries for a bowel obstruction. His food intake needs to be carefully monitored due to his bowel problems. Andrew also has respiratory and vision problems. He is more susceptible than other children to infections. Due to his special needs he requires a high level of care, otherwise he would be at risk for serious health problems.

While Andrew was in the hospital, concerns arose about the parents' ability to care for him. Brenda has borderline intellectual functioning and hearing loss. Richard was working about twelve hours a day and was generally unavailable to care for the child. In addition, the parents were living with several relatives and pets, and did not have an adequate home for the child. When Richard was informed Andrew was to be placed in foster care he became verbally abusive to social workers from the Department of Human Services (DHS) and threatened them. Andrew was released from the hospital in April 1997 and was immediately placed in foster care. He was

adjudicated to be a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and (c)(2).

Richard and Brenda moved to their own apartment. They continued to own pets, even though Andrew's physician warned them Andrew needed to be protected from the germs the pets might carry. The parents continued to struggle with hygiene issues, such as washing their hands. Even though Andrew is susceptible to respiratory distress due to exposure to smoke and dust, Richard continued to smoke cigarettes and marijuana. Richard threatened social workers on two occasions when they told him the home was not clean enough to have visitation there.

The parents received parenting skill development sessions from April 1997 until January 1998. They also participated in supervised visitation. During visitation they received instruction on parenting, home management, and child development. Parenting skills were demonstrated for them. The parents needed continual prompting in order to appropriately care for Andrew. Richard would sometimes argue with social workers over how to care for the child. Brenda struggled to learn parenting skills, and had difficulty even learning how to make a bottle of formula. At times when she was frustrated, Brenda would start to cry. Both parents have fallen asleep during visits.

In August 1998, Brenda separated from Richard. She claimed Richard had been physically abusive to her. The parties then had separate visitation. In December 1998, Brenda reunited with Richard. There are concerns about the stability of the

parental relationship because Richard is actually married to someone else, but has not lived with his wife for some time.

Andrew has done well in foster care. He has mild developmental delays. He continues to need close monitoring of his food intake because he is at risk for life-threatening intestinal complications. He was hospitalized in July 1997 and April 1998 for intestinal problems. Andrew sometimes needs nebulizer treatments for respiratory problems. He is considered adoptable.

In July 1998, the State filed a petition to terminate the parental rights of Richard and Brenda. The court found the parents had been provided necessary services for reunification, but they remained unable to provide for Andrew's physical and emotional needs. The court terminated their parental rights under section 232.116(1)(g). Each parent 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 E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Richard contends the State did not present clear and convincing evidence to show Andrew cannot be placed in his care, which is an element of section 232.116(1)(g). He points out he previously worked as a certified nursing assistant. Richard believes he can adequately care for Andrew.

There is clear and convincing evidence Andrew could not be placed in Richard's care at the present time. Richard has made some recent progress. Some progress, however, by a parent is not sufficient. *In re D.A.*, 506 N.W.2d 478, 479 (Iowa App. 1993). A parent must show an adequate overall ability to care in all custodial areas. *Id.* There remain concerns is this case about domestic abuse and Richard's problems with anger management. Also, even though the visits were only one hour in length, Richard sometimes fell asleep. A question is therefore raised concerning whether Richard could adequately supervise Andrew over a longer period of time. Richard's parental rights were properly terminated under section 232.116(1)(g).

III. Brenda asserts there is insufficient evidence in the record to show Andrew could not be placed in her care. She claims her parenting skills continue to improve. She also points out Andrew's medical condition has improved, so he no longer needs as high a level of care as he did previously.

There is clear and convincing evidence Andrew could not be placed in Brenda's care at the present time. Brenda has also made some recent progress, but remains unable to meet Andrew's needs. Due to her cognitive deficiencies, Brenda had problems learning even basic parenting skills, such as making a bottle. Social workers still need to remind her at every visit to check Andrew's diaper. When Brenda becomes frustrated by events she would cry and would not interact with Andrew. Brenda's parental rights were properly terminated under section 232.116(1)(g).

IV. The parents contend the State did not engage in reasonable efforts to reunite them with Andrew. Reasonable services must be provided to attempt to reunite a family before the State can terminate parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). While the State has an obligation to make reasonable efforts, it is a parents responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa App. 1997).

Here, the parents asked a service provider about parenting classes. The service provider told them where they could take a parenting class. The parents also asked two of the service providers about getting additional information on Andrew's health conditions. The parents were told they could directly contact the doctor. Also, a DHS social worker provided Richard with some information on Andrew's medical condition. Brenda asked about getting a doll to practice parenting skills. The DHS worker was unable to obtain the doll. Moreover, a doctor reported the doll would not be very useful to Brenda because it did not squirm and cry like a real baby.

During the termination hearing, the parents raised the question of whether the social workers took their cognitive abilities into consideration while teaching parenting skills. There is no evidence the parents raised this issue previously. Even if this issue was properly preserved, the social workers testified they taught by demonstration. The parents received reasonable services under the facts of this case.

V. The parents requested additional visitation with Andrew. Generally, the State must make reasonable efforts to provide services to eliminate the need for

removal. *In re T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994). The reasonable efforts concept would broadly include a visitation arrangement designed to facilitate reunification while protecting the children from the harm responsible for the removal. *In re M.B.*, 553 N.W.2d 343, 345 (Iowa App. 1996). The nature and extent of visitation is controlled by the best interests of the child. *Id.*

The juvenile court found while visitation could have been expanded in this case, reasonable efforts were made overall. The court determined the parents had been provided all services necessary and reasonable to effect reunification. In our de novo review, we hold the amount of visitation was reasonable in view of the parents' slow progress in learning how to meet Andrew's many needs.

VI. The parents claim the DHS did not appropriately accommodate them under the Americans with Disabilities Act (ADA). Under the ADA, a public entity is prohibited from discriminating against a disabled person by excluding him or her from participation in public services, programs, or activities. 42 U.S.C. § 12132 (1993). The ADA requires the public entity to make "reasonable accommodation" to allow the disabled person to receive services or participate in programs. *In re C.M.*, 526 N.W.2d 562, 566 (Iowa App. 1994) (citing 28 C.F.R. § 35.130(b)(7) (1994)).

There is no mention of the ADA in the juvenile court record. This issue was raised for the first time in the appellate briefs. As noted above, parents have the responsibility to demand services if they are not offered prior to the termination hearing. *H.L.B.R.*, 567 N.W.2d at 679. Furthermore, an issue not presented in the

juvenile court may not be raised for the first time on appeal. *In re R.J.*, 495 N.W.2d 114, 117 (Iowa App. 1992). This issue has not been properly preserved for our review.

VII. The parents claims termination of their parental rights is not in Andrew's best interests. They state they have a bond with Andrew and he enjoys visits. They point out Andrew's medical problems have vastly improved. They ask for a longer period of time to demonstrate their parenting abilities.

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the best interests of children, a court looks to the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The court must consider the physical, mental, and emotional condition and needs of the child in deciding whether to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (owa App. 1996).

We hold termination of the parental rights of Richard and Brenda is in Andrew's best interests. Andrew has been out of the home for his entire life. The parents have been given adequate time to improve their parenting skills to meet Andrew's special medical needs. At some point, the rights and needs of the child rise above the rights and needs of the parents. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). Andrew needs the stability of a permanent home.

We affirm the decision of the juvenile court terminating the parental rights of Richard and Brenda to Andrew.

AFFIRMED.