IN THE COURT OF APPEALS OF IOWA

No. 1999-224 (9-448) / 98-1868
Filed August 27, 1999

IN THE INTEREST OF D.S., A.S., and A.S., Jr., Minor Children,

A.S., Sr., Father,
Appellant.

FILED
AUG 27 1999
CLERK SUPREME COURT

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

Father appeals the termination of his parental rights to his three children. **AFFIRMED.**

Patrick J. Kelly, Bettendorf, for appellant.

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

Robert J. Phelps, Davenport, for mother.

Lawrence Lammers, Davenport, attorney and guardian ad litem for minor children.

Considered by Sackett, C.J., Streit, J., and Hayden, S.J.* Vogel, J., takes no part.

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

HAYDEN, S.J.

Allen and Santasha are the parents of three children, Allen Jr., born in April 1993; Duquan, born in March 1994; and Alexander, born in December 1996. Allen appeals the decision of the juvenile court terminating his parental rights. We affirm on appeal.

The parents have a history of substance abuse. They were arrested in 1995 for delivery of a controlled substance. Allen was placed on supervised probation for four years. He completed a substance abuse treatment program in March 1996.

The family became involved with the Department of Human Services (DHS) when Alexander tested positive for cocaine at the time of his birth. He weighed only four pounds, fifteen ounces at birth and had pneumonia. Upon being released from the hospital he was placed in foster care. He was adjudicated to be a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2), (n), and (o).

Allen's visitation with Alexander was sporadic. He did not participate in other services. Allen violated his probation by using controlled substances and was placed in the violator's program in March 1997. He had substance abuse and family strengthening classes while in this program. His discharge summary noted Allen continued to display characteristics indicative of a return to criminal behavior and substance abuse.

An investigation in May 1997 showed Santasha's utilities had been turned off and there was insufficient food in the home. Allen Jr. and Duquan were removed

from the home and placed in foster care. They were adjudicated to be children in need of assistance pursuant to sections 232.2(6)(c)(2) and (n).

Allen returned home from the violator's program after the children were removed. He attended one parenting class. In November 1997, Allen was arrested for driving while under suspension. He was over the legal limit for alcohol at the time. Later the same month, Allen was arrested for simple domestic assault. He tested positive for cocaine after two visits with the children. The juvenile court terminated his visitation until he was able to demonstrate an ability to maintain sobriety. Allen had no contact with his children after November 21, 1997.

In January 1998, Allen was arrested for probation violations. He was sentenced to a term of imprisonment not to exceed ten years. Allen had no contact with DHS from November 1997 until July 1998, when he sent a letter expressing his interest in reuniting with the children.

The children have done w ll in foster care. Allen Jr. is developmentally delayed. He can be very aggressive and tends to challenge parental authority. He receives speech and play therapy. Allen Jr. is in a foster home with a half-brother. A family has expressed interest in adopting them.

Duquan is considered to be quite bright, but he has some social problems. He has asthma and requires frequent breathing treatments. Alexander does not appear to have any problems. Duquan and Alexander are in the same foster home. This family has expressed an interest in adopting them.

In June 1998, the State filed a petition to terminate the parental rights of Allen and Santasha. At the termination hearing Allen testified he planned to take substance abuse and parenting classes while in prison, but had not yet done so. The juvenile court found the parents did not demonstrate an ability to recognize or understand the needs of the children. The court terminated Allen's parental rights pursuant to sections 232.116(1)(b), (d), and (e). Santasha's parental rights were also terminated. Allen appealed.

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, 839 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

Allen contends there is insufficient evidence in the record to support termination of his parental rights. He claims the State did not present clear and convincing evidence the children could not be returned to his care. He believes he should be able to parent the children once he is released from prison.

There is not sufficient evidence to show the children could be returned to Allen's care. Allen has not yet addressed his substance abuse problems. In addition, Allen has shown a pattern of continuing criminal behavior. At the termination hearing, Allen was unaware of the children's problems. Allen has not demonstrated he could meet the children's needs. The children could not be safely returned to Allen's care.

000211

Allen also contends termination of his parental rights is not in the children's best interests. He states he loves his children and wants to care for them.

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 children. *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 children in deciding whether to terminate parental rights. *In re C.W*, 554 N.W.2d 279, 282 (Iowa App. 1996).

We conclude termination of Allen's parental rights is in the best interests of the children. It was within Allen's ability to turn his life around, but he has not done so. He has refused to take responsibility for his actions. His use of illegal substances and his criminal activity have kept him from parenting his children. Allen has not had any contact with his children since November 1997. The children need stability and should not have to wait any longer for Allen to address his own problems.

We affirm the decision of the juvenile court terminating Allen's parental rights to Allen Jr., Duquan, and Alexander. Costs of this appeal are assessed to appellant.

AFFIRMED.