IN THE COURT OF APPEALS OF IOWA

No. 1-324 / 00-1921
Filed June 29, 2001

FILED
JUN 29 2001
CLERK SUPREME COURT

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

B.R.N., Father,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Mark J. Eveloff, District Associate Judge.

A father appeals the juvenile court's order terminating his parental rights to his daughter. **AFFIRMED.**

Drew H. Kouris, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, M. Elise Pippin, Assistant Attorney General, and Martha Heinicke, Assistant County Attorney, for appellee-State.

Roberta Megal, Public Defenders' Office, Council Bluffs, for minor child.

Considered by Sackett, C.J., and Huitink and Streit, JJ.

HUITINK, J.

Billy, the father of Amber, appeals the termination of his parental rights. He claims he did not abandon Amber. He also claims Amber should be placed with his sister or his ex-wife instead of terminating his parental rights. We affirm.

Background

Amber, born on April 25, 1994, is the daughter of Nakia and Billy. Amber is the youngest of Nakia's six children and the only one fathered by Billy. Throughout the pendency of this CINA case, Billy was incarcerated in Indiana, serving fifty-five years for confinement and deviant sexual conduct. He will be eligible for parole in 2013. DHS became involved in November 1997 during a founded denial-of-critical-care lack-of-adequate-housing investigation. Nakia and the children moved to a homeless shelter. In December 1997, she requested the children be placed in foster care.

Nakia suffers from schizophrenia, paranoid type, and antisocial personality disorder. In January 1998, Nakia filed an affidavit requesting all six of her children be adjudicated in need of assistance. In February 1998, Nakia was hospitalized involuntarily because of her mental condition. In March, the court adjudicated the children to be in need of assistance. At this time, the court did not know Billy was Amber's father.

Amber was placed in a foster home with two of her siblings. Review hearings in 1998 and 1999 continued Amber's foster placement. Nakia signed a consent to termination of her parental rights to Amber and three of her siblings in June 1999. She signed a consent to termination of her parental rights to the

other two children in August 1999. At a review hearing in August 1999, Nakia testified Billy was Amber's father and he was incarcerated in Indiana.

In November 1999, the State petitioned to terminate the parental rights of Nakia and all known and unknown fathers of the six children. The State alleged grounds for termination under Iowa Code sections 232.116(1)(a), (b), and (e). Service of notice on Billy was delayed because he was in a different institution than was first thought; therefore the court continued the termination hearing until May 2000. Billy filed a motion for transport to attend the hearing. The court denied his motion, but continued the hearing until August 2000, and provided for the attorneys to depose Billy in prison. He stated he last saw Amber in 1995. He said all his attempts to correspond with Amber were returned. He said he wanted to reestablish contact with Amber while he is in prison. He also stated he had made attempts to provide financial support.

After a hearing, the court found Billy was physically and emotionally abusive to Nakia and her children. He left the home when Amber was about two months old. He was not a caretaker for her. Billy never has supported Amber. Rather, he sold her bed and swings to get money for drugs. The court explicitly found Nakia to be a credible witness. The court found the State established the allegations of the petition by clear and convincing evidence and terminated Nakia's and Billy's parental rights to Amber.

Appellate claims

Billy claims the court erred in terminating his parental rights. He argues he did not abandon her, but was deliberately shut out of the CINA proceedings.

He asserts he attempted to contact Amber. He also argues he did not receive any services and no efforts were made to reunite parent and child. He asserts Nakia is not a credible witness. He asks the court not terminate his parental rights, but rather Amber be placed with his sister or with his former wife, whom he divorced in 1986.

Discussion

We review termination cases de novo. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App.1998). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa Ct. App.1997). Our primary concern is the best interests of the child; we look to both the child's long-range and immediate interests. *M.N.W.*, 577 N.W.2d at 875.

The petition to terminate Amber's parents' rights does not separate the allegations concerning the various statutory grounds for termination either by code section or by parent. The termination order simply finds "the State has established the allegations of the Petition by clear and convincing evidence" and terminates Nakia's and Billy's parental rights to Amber without reference to any code provisions. From our review of the termination order, it appears Billy's parental rights were terminated under Iowa Code sections 232.116(1)(b) and (e).

A. Abandonment. Billy argues he had no intent to abandon Amber and did not relinquish or surrender his parental rights and duties. *See In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996). Where Nakia's testimony differed from Billy's deposition testimony, the court appears to have taken Nakia's version. It did expressly find her to be credible. We give that finding weight. Iowa

R. App. P. 14(f)(7); *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998). Billy claims he sent letters and money, but all his mailings were returned. Nakia claims he knew where they were living, yet never sent birthday or Christmas cards or provided any financial support. Even before Amber was adjudicated a child in need of assistance, Billy had no part in her life and his own choices resulted in his imprisonment. Given Amber's age, letters would not be effective to establish or maintain a relationship with her. We find clear and convincing evidence Billy abandoned Amber.

Billy also asserts reasonable efforts were not made to eliminate the need for Amber's removal and he received no services while in prison. "The services required to be supplied an incarcerated parent, as with any other parent, are only those that are reasonable under the circumstances." *In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000). Billy has no relationship with Amber. He is not eligible for release until after Amber is an adult. We find no services reasonable under the circumstances of this case.

B. Safe return. Billy cannot claim Amber could be returned to his custody before he is released from prison. Rather, he argues the State did not prove Amber cannot be protected from some harm which would justify her adjudication as a child in need of assistance "that in any way can be attributed to [Billy]." This argument is based on the reference to section 232.102 which appears in section 232.116(1)(e)(4). Under section 232.102(5)(b), Billy argues an adequate placement is available either with his sister, who never has had any contact with Amber, or with his ex-wife, who never has had any contact with Amber. He

offers no evidence either person is able or willing to take Amber. No home studies have been done. We find no merit in this claim. We find clear and convincing evidence supports termination on this statutory ground.

AFFIRMED.