IN THE COURT OF APPEALS OF IOWA

FILED
JUN 2 8 2000
CLERK SUPREME COURT

No. 0-365 / 99-1467
Filed June 28, 2000

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

E.T., Father,
Appellant.

Appeal from the Iowa District Court for Linn County, Michael J. Newmeister, District Associate Judge.

On appeal from an order terminating his parental rights to his son, father contends the court erred in concluding he failed to comply with his case permanency plan such that termination was warranted. **AFFIRMED.**

David Mullin and Anne M. Laverty of Mullin & Laverty, P.L.C., Cedar Rapids, for appellant.

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

Mark Brown, Cedar Rapids, guardian ad litem for minor child.

Heard by Streit, P.J., and Zimmer and Hecht, JJ.

STREIT, P.J.

Everett appeals the termination of his parental rights, claiming the State failed to prove the statutory elements for termination were met by clear and convincing evidence. We affirm, finding no merit to his claims.

I. Background Facts & Proceedings.

Marquis, born September 6, 1996, is the son of Everett. Marquis was the product of a brief affair between Everett and the child's mother. From the time of his birth until his removal, Marquis resided with his mother. The Iowa Department of Human Services became involved with Marquis when it learned his mother had a serious alcohol abuse problem and was often intoxicated while caring for Marquis. In August of 1997 both parents consented to the adjudication of Marquis as a child in need of assistance. Custody was continued with his mother, and unsupervised visitation with Everett was denied because he refused to complete a social history for DHS and was found to have sexually abused one of his daughters.

In December of 1997 Marquis was removed due to the mother's inability to refrain from drinking and was placed in foster care. Over the next twenty months, Everett appeared for his weekly visitation a total of twenty-four times. Fourteen of his twenty-four visits occurred during the first six months of removal. Since May of 1998 he has only seen his son ten times. He also failed to address his sexual abuse issues and refused to give DHS his address.

Based on his inconsistency in visiting Marquis, his refusal to seek sex offender treatment, his failure to provide DHS with his address, and his inability

to provide stable parenting, the court terminated his parental rights pursuant to Iowa Code sections 232.116(1)(c) and .116(1)(g).

Everett appeals, claiming clear and convincing evidence did not support termination.

II. Standard of Review.

Appellate review of proceedings to terminate a parent-child relationship is de novo; thus, "it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us." *In re O'Neal*, 303 N.W.2d 414, 422 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom the court heard and observed firsthand, but we are not bound by those findings. *Long v. Long*, 255 N.W.2d 140, 143 (Iowa 1977).

III. Clear and Convincing Evidence Supports Termination.

Everett claims the State failed to show the statutory elements for termination were met by clear and convincing evidence. Although he professes error as to each statutory ground found by the trial court, "we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm." *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999) (citation omitted). We will therefore limit our analysis to Iowa Code section 232.116(1)(g).

Iowa Code section 232.116(1)(g) (1999) permits the juvenile court to terminate the parent-child relationship if the court finds 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.

Everett does not dispute the first three elements are supported by clear and convincing evidence. Rather, he focuses his attention on whether Marquis can be safely returned to his care under subsection four.

The court has long recognized there exists a parental interest in the integrity of the family unit, but such interest is not absolute and may be forfeited by certain conduct. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State has the duty to see that every child within its borders receives proper care and treatment and must intercede when parents abdicate that responsibility. *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988). The State must act to prevent probable harm to a child and need not delay until actual physical harm has occurred. *Id.* The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supports the child's initial removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). Our primary concern in a termination proceeding is the best interests of the child. Iowa R. App. P. 14(f)(15); *In re Dameron*, 306 N.W.2d at 745.

Placing Marquis with his father for the very first time in his life would expose him to a threat of identifiable harm. We can gain insight into a child's

prospects for remaining safe and healthy by reviewing evidence of the parent's past performances, for it may be indicative of the parent's future capabilities. *See In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1980).

Everett does not possess the ability, dedication, sense of responsibility, or willingness to raise Marquis to healthy maturity. Everett has failed to comply with nearly every directive in the case plan. The first directive required Everett to use appropriate parenting skills. Inherent in such a directive is the assumption that the father will actually appear so as to appropriately parent. The greatest defect in Everett's parenting skills is his sporadic contact with Marquis. Everett offered a number of health-related excuses why his visitation lacked consistency, but we find these explanations to be somewhat contrived and lacking in detail. While there were no major problems in parenting when Everett actually appeared for visitation, all the parenting skills in the world are meaningless if the parent does not have the dedication or sense of responsibility to be available for the child. Everett does not possess that dedication as evidenced by his sporadic visitation and his lack of knowledge regarding the well being of his other children. Also, as a result of Everett's failed visits, he has no strong bond with the child. Without more of a relationship exhibited here, Marquis cannot be returned to his father.

The second directive of the case plan required Everett to complete sex offender treatment. Everett refused to comply with this directive, adamantly denying any such abuse occurred. Nonetheless, a founded sexual abuse report was entered against him for fondling his daughter. Placing Marquis in Everett's

care without some treatment or at least evaluation of Everett's abusive tendencies would undeniably expose Marquis to a serious threat of harm.

The third directive required Everett to cooperate with DHS. Everett, however, refused to fill out the social history needed to evaluate him as a possible custodian or inform DHS of his present residence. His flat refusal to work with DHS is not indicative of a father attempting to preserve a relationship with his child.

The only directive Everett complied with was protecting Marquis from witnessing domestic violence. This compliance is not particularly notable, however, because his visitation was supervised.

Although each problematic area outlined above may not be worthy of termination in isolation, in the aggregate the problems endangered Marquis's future health and safety. The juvenile court, based on clear and convincing evidence, properly terminated Everett's parental rights under Iowa Code section 232.11(1)(g). The juvenile court is affirmed.

AFFIRMED.