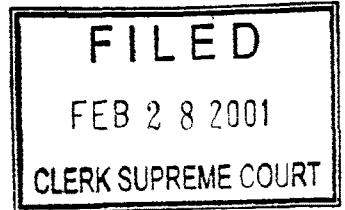


IN THE COURT OF APPEALS OF IOWA

No. 0-830 / 00-0732
Filed February 28, 2001



IN THE INTEREST OF
K.E.D., Minor Child,

K.A.D., Father,
Appellant.

Appeal from the Iowa District Court for Linn County, Robert Sosalla,
District Associate Judge.

Imprisoned individual who was married to the mother when the child in
question was born, appeals from an order of the juvenile court denying his
request for visitation with the child. **AFFIRMED.**

Ronald L. Ricklefs, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney
General, and Rebecca A. Belcher, Assistant County Attorney, for appellee-State.

Lucy Harrington, Cedar Rapids, guardian ad litem for minor child.

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

HECHT, J.

Kyle D. appeals from the juvenile court order denying him visitation with his wife's child. He requests this court enter an order modifying the ruling of the district court and allow him reasonable visitation with the child. We affirm.

I. Factual Background and Proceedings. Vanessa D. gave birth to Kylisha D. on March 21, 1999. At the time of the birth, Vanessa was married to Kyle, who was incarcerated on federal drug charges. Vanessa and Kyle agreed to treat Kylisha as Kyle's child, even though he is not her biological father. For the first three months of Kylisha's life, Vanessa brought the child to visit Kyle in jail on a regular basis. Since that time, Kyle has not had any contact with the child. Kylisha's biological father is Carl M. He has expressed an interest in obtaining physical care of Kylisha and currently has supervised visitation with her.

Vanessa voluntarily placed Kylisha in foster care with the Department of Human Services ("DHS") on September 1, 1999, because she had been indicted on federal drug charges and was incarcerated pending trial. On December 22, 1999, DHS filed a case permanency plan with the juvenile court recommending visitation with Vanessa and Carl but not making a recommendation for visitation with Kyle. Kyle filed an objection to the case permanency plan expressing his desire to exercise visitation with Kylisha as her legal father. The juvenile court denied his request for visitation. Kyle appeals.

II. Standard of Review. We review child in need of assistance cases de novo. *In re E.H.*, 578 N.W.2d 243, 248 (Iowa 1998). We review "both the

facts and the law, and we adjudicate rights anew.” *In re A.M.H.*, 516 N.W.2d 867, 870 (Iowa 1994). Our focus is upon protecting the best interests of the child. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999).

III. Visitation. Kyle argues the juvenile court erred by denying visitation with Kylisha based on his status as her legal or established father. Clearly, Kyle is Kylisha’s established father by virtue of his marriage to Vanessa at the time of Kylisha’s birth. See *Callender v. Skiles*, 591 N.W.2d 182, 185 (Iowa 1999) (citing Iowa Code §§ 144.13; 252A.3(4) (1999)). The record before us on appeal does not indicate Carl has filed an action to overcome paternity pursuant to Iowa Code section 600B.41A(3).¹ Therefore, Kyle still has the legal standing to request visitation with Kylisha. However, as this case comes to us in the context of a CINA proceeding, we must consider whether visitation with Kyle is in Kylisha’s best interests.

The ultimate goal of CINA proceedings is for the children to receive “the care, guidance, and control that will best serve the child’s welfare.” *In re K.R.*, 537 N.W.2d 774, 777 (Iowa 1995) (quoting Iowa Code § 232.1). Visitation between a parent and child is an important aspect of the goal of reunification. See *In re S.W.*, 469 N.W.2d 278, 280-81 (Iowa Ct. App. 1991). However, the

¹ Section 600B.41A(3) gives the mother, the established father, the child, and the child’s legal representative the ability to file a petition to overcome paternity. Iowa Code § 600B.41A(3)(a)(1). We note the language of section 600B.41A(3)(a)(1) does not give a putative father the right to file an action to overcome paternity. However, in the recent case of *Callender v. Skiles*, our supreme court held that portion of the statute to be unconstitutional to the extent it denies a putative father standing to file such an action. *Callender v. Skiles*, 591 N.W.2d at 191-92. Therefore, we assume without deciding Carl, as Kylisha’s putative father, would have standing to file an action to overcome Kyle’s status as Kylisha’s established father.

best interests of the child always control the nature and extent of visitation. *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). This standard may warrant limited parental visitation. See *In re C.G.*, 444 N.W.2d 518, 520 (Iowa Ct. App. 1989). The State is required by statute to provide reasonable reunification services to parents under the circumstances of their case. *In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000). In determining which services are reasonable under the circumstances, we consider the following factors:

the age of the children, the bonding the children have or do not have with their parent, including any existing clinical or other recommendations concerning visitation, the nature of parenting deficiencies, the physical location of the children and the parent, the limitations of the place of confinement, the services available in the prison setting, the nature of the offense, and the length of the parent's sentence.

Id. While the record does not contain sufficient information for this court to make findings on all of the above factors, it does contain enough information for us to make a determination regarding Kyle's request for visitation with Kylisha.

Kylisha is not quite two years old. She has not seen or interacted with Kyle for more than eighteen months and has no bond with him. While we note Kyle's professed intentions to make Kylisha an important part of his life and his family, his statements are contradicted by his behavior with regard to his three older children. During the social history interview completed by DHS, Kyle admitted he had no idea where his oldest two children are and has no contact with the other child. He also admitted he did not spend much time with them when they were young because he was in prison. We look to current evidence and past performance in assessing the evidence when determining whether

visitation is in the child's best interests. *See In re J.C.*, 560 N.W.2d 33, 35 (Iowa Ct. App. 1996). Kyle has an extensive criminal record, starting in 1978, and has been convicted of serious crimes on fifteen separate occasions. Currently, he is serving a sentence in federal prison for drug charges. Even with a downward adjustment for pleading guilty, his sentence is expected to be 188 to 235 months (fifteen years to almost twenty years). He has no reasonable expectation of assuming a meaningful parenting role for Kylisha during the period of her minority.

In addition, Vanessa has expressed her intention to divorce Kyle after her release from prison and no longer wants Kyle to take part in Kylisha's life. Kylisha's biological father, the only parent in her life who is not currently incarcerated, has stepped forward and taken an active role in her life. We also determine the child's best interests by looking at the child's long-range as well as immediate interests. *In re C.D.*, 509 N.W.2d 509, 511-12 (Iowa App. 1993). We conclude it is not in Kylisha's long-term or immediate best interests to have visitation with Kyle. Therefore, we affirm the order of the juvenile court denying visitation.

AFFIRMED.