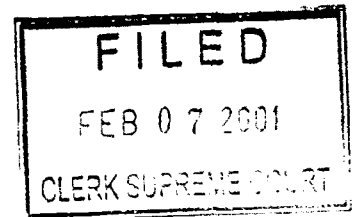


IN THE COURT OF APPEALS OF IOWA

No. 0-757 / 00-0727
Filed February 7, 2001

IN THE INTEREST OF
N.S. AND C.S.
Minor Children,

R.S., Father,
Appellant.



Appeal from the Iowa District Court for Washington County, Lucy J. Gamon, District Associate Judge.

A father appeals the decision of the juvenile court after a review hearing in a child in need of assistance proceeding. **AFFIRMED.**

Anders L. Johnson, Marengo, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Barbara Edmondson, Assistant County Attorney, for appellee-State.

Janice A. Becker of McMurray & Becker Law Offices, Coralville, for minor children.

Leslie Lamping of Day, Meeker, Lamping & Schlegel, Washington, for mother.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

MILLER, J.

A father appeals the decision of the juvenile court after a review hearing in a child in need of assistance (CINA) proceeding. He claims the court should not have waived services to him. He also claims the court should not have granted concurrent jurisdiction to the district court.

Roger and Sandra are the parents of Nathan, born in August 1986, and Chantelle, born in August 1991. The family first came to the attention of the Department of Human Services (DHS) in 1997, when Sandra reported Roger had previously beaten Nathan with a belt, giving him bruises. She also reported Roger had been physically abusive to her in the past. Roger was in prison on drug-related charges at the time of these reports. The parents were pursuing a dissolution of marriage.

In June 1998, Sandra received a threatening letter which contained words which had been cut out and pasted onto paper. The letter stated, "we know were [sic] your family is and everything you do" and "the nightmare is going to happen." Shortly thereafter, Roger had his mother invite Sandra and the children to her house. Roger arrived unexpectedly. Sandra attempted to get away, and a high-speed chase ensued. Nathan reported he was afraid of his father.

In November 1998, the juvenile court adjudicated Nathan and Chantelle to be CINA with respect to their father, pursuant to Iowa Code section 232.2(6)(b) (1997). The court found Roger had sent the threatening letter to Sandra. The court ordered Roger should have no visitation with the children. He was allowed

weekly telephone and letter contact. The parents' divorce was finalized in December 1998.¹

In February 1999, allegations arose that in 1994 or 1995, Roger took nude photographs of Nathan, Chantelle, and two of their cousins. The children remembered the photographs. They stated Roger had asked them to take their clothes off, and he then took their pictures. About forty-five photographs were recovered by police officers. DHS determined the photographs had been taken for lascivious purposes. A founded report of sexual abuse was issued against Roger.

Roger had very limited participation in services. He had four hours of skill development services. Then, sometime after April 1999, Roger moved to the State of Washington. He did not inform DHS of the move. He was arrested in Washington for domestic assault in July 1999. By October 1999, Roger had returned to Iowa and was living with his mother. He did not reinitiate participation in services.

Roger has a history of substance abuse. He also has a history of emotional problems, and has been diagnosed with an antisocial personality disorder. A prison psychologist found Roger "had a serious case of self-pity," and blamed others for all of his problems. Although the juvenile court ordered Roger to have new psychological and substance abuse evaluations, he never complied.

¹ No copy of the dissolution decree was found in the juvenile court file. Thus, the terms of the dissolution, as they affect the children, are unknown to this court.

A dispositional review hearing was held in March 2000. The juvenile court determined concurrent jurisdiction should be granted to the district court to allow Sandra to modify visitation with respect to Roger. The court concluded there was no benefit to further services being ordered for Roger because Roger had made no progress with the services which had been offered. The court allowed Roger to continue to write letters to the children on a weekly basis. Roger appeals.

I. Scope of Review

Our review of an action arising from CINA proceedings is de novo. *In re B.B.*, 598 N.W.2d 312, 315 (Iowa App. 1999). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by these findings. *In re D.S.*, 563 N.W.2d 12, 14 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. Waiver of Services

Roger contends the juvenile court should have continued services in order to allow him to complete the requirements previously ordered by the court. Roger admits he did not comply with previous juvenile court orders requiring him to obtain new substance abuse and psychological evaluations.

The federal Adoption Assistance and Child Welfare Act of 1980 established the concept of family preservation, with the goal of reuniting children with their families after reasonable efforts by social services. See *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). In Iowa, section 232.102(7) (1999) requires DHS to "make every reasonable effort to return the child to the child's home as quickly

as possible consistent with the best interest of the child."² In termination proceedings, the State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent. *Id.*

Recently, the Adoption and Safe Families Act of 1997 eliminated the reasonable effort requirement if the parents engaged in certain types of behavior. See 42 U.S.C. § 675(5)(C). The previously-adopted family preservation concept was found to be detrimental to children in some cases. *C.B.*, 611 N.W.2d at 493 (citing *In re Lilly*, 719 A.2d 327, 332 (Pa. Super. Ct. 1998)). In 1998, the Iowa legislature enacted section 232.102(12), which permits waiver of reasonable efforts when aggravating circumstances exist. *Id.*

Section 232.102(12) (1999) provides, "If the court determines aggravated circumstances exist, with written findings of fact based upon evidence in the record, the court may waive the requirement for making reasonable efforts." The legislature lists what it considers "aggravated circumstances." Iowa Code § 232.102(12)(a)-(g).

In our de novo review, we may apply the facts of the case to section 232.102(12), and determine whether there are any grounds for waiving further services to Roger.³ A ground that applies to our case is section 232.102(12)(b), which provides, "The court finds the circumstances described in section 232.116,

² "Reasonable efforts" means the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child, or to make it possible for the child to safely return to the family's home. Iowa Code § 232.102(10)(a).

³ The juvenile court did not state which subsection of section 232.102(12) it relied upon to end services to Roger. For purposes of appellate review, a reference to the relevant code provision is preferable.

subsection 1, paragraph "h", are applicable to the child." Section 232.116(1)(h) provides:

The court finds that all of the following have occurred:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts of omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

In regard to the first element, the children were adjudicated to be children in need of assistance pursuant to section 232.2(6)(b). The juvenile court found Roger had physically abused Nathan in the past. We find the first element has been met.

The second element requires a finding the parent's actions posed a significant risk to the life of the child or constituted imminent danger to the child.

In the adjudicatory order, the juvenile court found:

Further evidence of imminent abuse is provided by the high-speed car chase Roger engaged in on July 3, 1998. At that time, Roger was on furlough from a halfway house. Roger's willingness to follow his wife and two children at a high speed indicates his disregard for their personal safety and his willingness to risk inflicting serious injury on them.

In addition to the high-speed chase, which threatened the lives of the children, Roger sent a threatening letter to Sandra and the children. Furthermore, Roger took nude photographs of the children, which would constitute a danger to them. For all of these reasons, we determine clear and convincing evidence shows Roger's actions posed a risk of imminent danger to the children.

Finally, we find there is clear and convincing evidence the offer or receipt of services would not correct the conditions which led to the abuse within a reasonable period of time. Roger was offered services, but he made the decision not to comply. We conclude there is sufficient evidence to meet all three elements of section 232.116(1)(h), and therefore, further services to Roger were properly waived under section 232.102(12)(b).

III. Concurrent Jurisdiction

Roger claims the juvenile court should not have granted concurrent jurisdiction to the district court. The court ordered, "Concurrent jurisdiction should be granted to the district court at this time to afford Sandra the ability to modify visitation and service terms with respect to Roger."

The juvenile court has exclusive jurisdiction over the custody and placement of a child who is subject to CINA proceedings. Iowa Code § 232.3. The juvenile court may authorize or request a party to litigate the issues of custody, guardianship, or placement concurrently in another court. *Id.*; *In re K.R.*, 537 N.W.2d 774, 777 (Iowa 1995). Custody or visitation orders entered by a court granted "concurrent jurisdiction" may not conflict with or frustrate the placement of a child established through CINA proceedings. *A.B. v. M.B.*, 569 N.W.2d 103, 104-05 (Iowa 1997).

The grant of concurrent jurisdiction was proper in this case. The juvenile court order gave Sandra the ability to petition the district court to modify the terms of the parties' dissolution decree in regard to visitation and service terms. In his appellate brief, Roger does not state *why* concurrent jurisdiction would be inappropriate.

We affirm the decision of the juvenile court.

AFFIRMED.