IN THE COURT OF APPEALS OF IOWA

No. 8-600 / 98-0635
Filed November 30, 1998

IN THE INTEREST OF D.A.E., JR., Minor Child,

D.E., SR., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, District Associate Judge.

Father appeals from juvenile court order terminating his parental rights. **AFFIRMED.**

Marcia L. Schober, Altoona, for appellant.

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

Thomas J. McCann, Des Moines, guardian ad litem for minor child.

Considered by Sackett, P.J., and Huitink, Streit, Vogel, and Mahan, JJ.

STREIT, J.

A father appeals the order terminating his parental rights. He alleges the court erred in finding clear and convincing evidence his minor child could not be returned to his custody pursuant to Iowa Code section 232.116(1)(e) (1997).

David, Jr. ("D.J.") was born in July 1993, to Cindy and David, Sr. In April 1995, D.J. was adjudicated a child in need of assistance under Iowa Code sections 232.2(6)(c)(2),[1] 232.2(6)(g),[2] and 232.2(6)(n)[3] because of David's illegal drug use and Cindy's inability to care for D.J. David also has a history of problems managing his anger, including two convictions for assault. David is a paranoid schizophrenic and has daily medication to take for this condition. Cindy has cerebral palsy and uses a wheelchair.

In June 1995, the Department of Human Services placed D.J. in the physical custody of his aunt. David was ordered to undergo random drug testing. David failed

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[1] This section provides:

c. Who has suffered or is imminently likely to suffer harmful effects as a result of . . .

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

[2] This section provides:

g. Whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter and refuses other means made available to provide such essentials.

[3] This section provides:

n. Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.

to comply with the court-ordered drug tests and failed to finish a psychological examination. Although Cindy regained custody of D.J. from January to May 1997, David was ordered to have no contact with D.J. because of his continuing substance abuse.

On September 28, 1997, the State filed a petition to terminate Cindy's and David's parental rights. D.J. had been out of his parents' custody, except the short time he was with Cindy in 1997, for more than two and one-half years. Cindy consented to the termination of her parental rights. The court concluded David not only failed to comply with the permanency plan, but he has significant unresolved emotional, financial, and anger management problems. The court found D.J. had "flourished" with his aunt and uncle. The juvenile court terminated David's parental rights under Iowa Code section 232.116(1)(e).[4]

We review proceedings to terminate parental rights de novo—we review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306

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[4] The State initially pled Iowa Code section 232.116(1)(g) (child under four years old), but amended the petition to section 232.116(1)(e) because D.J. was four years old. This section provides:

e. The court finds that all of the following have occurred:

(1) The child is four years of age or older.

(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 twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

N.W.2d 743, 745 (Iowa 1981). Our primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). Those best interests are determined by looking at the child's long-range as well as immediate interests. We recognize the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," however, Iowa has built this patience into the statutory scheme of chapter 232. *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987); *In re D.A.*, 506 N.W.2d 478, 479 (Iowa App. 1993). The Iowa Supreme Court has been emphatic that, after the statutory twelve-month period has passed, we view the case with a sense of urgency. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990); *In re A.C.*, 415 N.W.2d at 614.

The State has an obligation to make reasonable efforts to reunite a parent and child, but it is the parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa App. 1997); *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). A parent should demand services before the termination hearing. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). Challenges to the case plan should be made when the plan is entered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994).

David claims he took advantage of the services provided to him. He asserts the state failed to prove D.J. could not be returned to him because there was no legitimate effort through the permanency plan to reunite D.J. with him. David contends the plan focused primarily on Cindy, and the case worker was biased and

never seriously considered returning custody to him. He asserts he has made the necessary improvements to his parenting skills on his own because the department did not make reasonable efforts to provide him with appropriate services.

The State asserts David waived his objections to the unfairness of the permanency plan because he failed to raise them at the time the plan was adopted by the court. The State also argues D.J. could not be returned to David's custody if the court decides to address the merits.

We conclude David waived any objections to the case permanency plan and services offered. The State has an obligation to make reasonable efforts, but it is the parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa App. 1997); *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App.1993). Challenges to services should be made when the case plan is entered. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997); *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App.1994).

Even if he had not waived his objections to the case permanency plan, we would affirm. David has not complied with court-ordered UA's. Clean UA's were a prerequisite to visitation. David has unresolved issues with his mental health, explosive temper, and violence toward others. D.J. is a very active child, who currently requires the efforts of *both* foster parents to care for him. He would be at imminent risk of harm or neglect if placed in David's custody. If a definitional

ground from 232.2(6) exists at the time of the termination hearing, the requirements of 232.116(1)(e)(4) are met.

AFFIRMED.