IN THE COURT OF APPEALS OF IOWA

No. 0-446 / 99-1923
Filed October 25, 2000

FILED
OCT 2 5 2000
CLERK SUPREME COURT

IN THE INTEREST OF R.H., III and C.H.,
Minor Children,

R.E.H., II, Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile Judge.

Father appeals from the juvenile court order terminating his parental rights to his minor child. **AFFIRMED.**

Bryan J. Tingle, Des Moines, for appellant.

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

Christine Bisignano, West Des Moines, guardian ad litem for minor children.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

A father appeals the decision of the juvenile court terminating his parental rights. He claims the juvenile court abused its discretion in denying his motion to continue the termination hearing, and the State did not present sufficient evidence to warrant termination of his parental rights. We affirm.

Robert and Archaletta are the parents of Robert III, who was born in January 1997. At the time Robert III was born, Archaletta was residing at the House of Mercy. Robert was offered supervised visitation if he provided clean drug tests. He did not provide consistent drug tests until June 1997. While Archaletta was at the House of Mercy, Robert was offered visitation on seven dates. He only attended two visits. During this time, Robert was expected to participate in domestic abuse intervention services, but he did not attend.

Archaletta was discharged from the House of Mercy for rule violations in July 1997. She and Robert III then lived at various shelters, or with friends or relatives. Robert's housing was also unstable. Robert had a substance abuse evaluation in September 1997. No treatment was recommended at that time.

In February 1998, Archaletta voluntarily agreed to place Robert III in foster care. She was homeless and had tested positive for illegal drugs. Robert III was adjudicated to be a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2) and (g) (1997). At that time Robert stated he would like to have his parental rights terminated.

Robert met with DHS workers in May 1998 and expressed an interest in caring for his child. By August 1998, he had secured suitable housing and was

maintaining employment. He had recently married and had a young child with his new wife. He participated in a parenting class, but did not complete it. Robert had supervised visits with Robert III, and eventually had unsupervised visits.

In December 1998, DHS workers were making plans to reunite Robert with Robert III, when they discovered Archaletta had moved into Robert's home and his relationship with his wife was unstable. Robert's participation in services and visits then ceased. A criminal check revealed Robert had outstanding warrants against him for domestic abuse, theft, and failure to appear.

In April 1999, the State filed a petition to terminate the parental rights of Archaletta and Robert. Robert received notice the termination hearing was set for May 1999, but Robert did not appear. The matter was continued until July 1999. The record shows Robert and his attorney received notice of the new hearing date. Although Robert did not appear at the termination hearing, his attorney was present. Robert's attorney sought a continuance, which the juvenile court denied. The attorney stated he believed Robert did not appear at the termination hearing due to the outstanding arrest warrants against him.

The juvenile court terminated the parental rights of Robert and Archaletta to Robert III under sections 232.116(1)(c), (d), and (g). The court found Robert had no meaningful contact with the child for at least seven months, and had a history of domestic abuse, substance abuse, and criminal conduct. Robert appealed.

I. Scope of Review.

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (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. Continuance.

Robert contends the juvenile court should have granted his motion for a continuance. An appellate court reviews a motion for continuance under an abuse of discretion standard. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa App. 1996). The court will reverse only if injustice will result to the party desiring the continuance. *Id.* In order to show an abuse of discretion, the party must show the juvenile court's action was unreasonable under the attendant circumstances. *In re J.L.L.*, 414 N.W.2d 133, 135 (Iowa 1987).

In his brief, Robert states, "There is no indication in the record that R.H. was served proper notice of the continuation date." However, he does not affirmatively allege he received no notice of the July 1999 hearing date. The continuance order shows a copy was mailed to Robert and his attorney. Robert's attorney did not raise the issue of lack of notice at the termination hearing. In fact, the juvenile court asked Robert's counsel if Robert had any legal excuse for not attending the hearing, to which counsel replied, "No, Your Honor."

In an offer of proof, Robert's attorney stated Robert had agreed to consent to termination of his rights, but had not been in to sign the form. The attorney also stated:

> I believe part of his reluctance to show up at my office or to do anything is for fear of being arrested. I know that for sure that's why he won't come to court, and I believe the record in this case will reflect he has not been to court on this matter, at least for the past -- it seems like four or five hearings that we've had on this case.

The court left the record open for one week following the termination hearing to allow Robert's counsel to present any additional evidence. Robert did not take advantage of this opportunity to present evidence.

The evidence shows Robert failed to attend the termination hearing due to the outstanding arrest warrants against him, and not because of lack of notice of the hearing. Based on the circumstances of the case, the juvenile court did not abuse its discretion in denying the motion to continue.

III. Sufficiency of the Evidence.

Robert claims there is insufficient evidence in the record to support termination of his parental rights under sections 232.116(1)(a), (b), (c), (d), (e), (g), and (k). As the State points out, Robert's parental rights were terminated only under sections 232.116(1)(c), (d), and (g). We do not consider Robert's arguments concerning sections 232.116(1)(a), (b), (e), or (k).

There is clear and convincing evidence in the record to show Robert III could not be safely returned to Robert's care at the present time, which is an element of section 232.116(1)(g). The evidence shows there were several outstanding arrest warrants against Robert at the time of the termination hearing.

Robert could not safely care for his child if he was unable to even appear in court on his child's behalf due to his fear of arrest. Furthermore, the evidence shows Robert was not cooperative with services. He has had no contact with his child since December 1998. Based on all of these factors, we determine there is sufficient evidence to terminate Robert's parental rights under section 232.116(1)(g).

IV. Other Code Sections.

When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996). Because we determine Robert's parental rights were properly terminated under section 232.116(1)(g), we need not address his claims regarding sections 232.116(1)(c) and (d).

We affirm the decision of the juvenile court terminating Robert's parental rights to Robert III.

AFFIRMED.