IN THE COURT OF APPEALS OF IOWA

No. 6-361 / 96-202

FILED
JUN 27 1996
CLERK SUPREME COURT

IN THE INTEREST OF L.F., Jr., A Minor Child,

L.F., Sr., Father,
Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Gerald W. Magee, Judge.

L.F., the father, appeals from a termination of his parental rights to L.F., Jr.

AFFIRMED.

Phillip J. Stone of Stillman, Goranson, Stone & Lovell, Clear Lake, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Maureen McGuire, Assistant Attorney General, and Steve Tynan, Assistant County Attorney, for appellee.

Katherine S. Evans, Mason City, guardian ad litem for minor child.

Considered by Cady, P.J., and Huitink and Vogel, JJ.

VOGEL, J.

Lane is the father of L.F. born on October 26, 1993. L.F. was removed from the family home after police officers were called to the home by the mother who stated Lane had threatened to kill the child. Both parents were intoxicated. The police had been called to the house on numerous occasions to deal with domestic abuse and violence, with alcohol always playing a role.

L.F. was adjudicated CINA on June 1, 1994, following admissions by the parents to the allegations in the petition. He continued in foster care while the parents were ordered to participate in appropriate services, family assessment, and substance abuse evaluation. L.F. has remained in foster care since that time. The parents visited L.F. sporadically. Lane last visited L.F. on March 21, 1995. On May 5, 1995, Lane began serving a two-year sentence for domestic abuse and assault.

On September 13, 1995, the State filed a petition for termination of the parents' rights, alleging they lacked the ability or willingness to respond to services and an additional period of rehabilitation would not correct the situation.

At trial, the State presented evidence that the mother's parental rights to three other children had been terminated. The State also showed she had a long history of substance abuse with several unsuccessful treatments and she was both a victim and a perpetrator of domestic abuse. There was evidence L.F. and other children born to the mother had been diagnosed with fetal alcohol syndrome. The evidence revealed Lane had a lengthy criminal and psychiatric history resulting in many incarcerations

and hospitalizations. Lane was shown to be of low intelligence and had antisocial personality disorder. Lane also had a severe alcohol abuse problem.

The district court concluded the parents had both received extensive services before and after L.F. was born without any improvements, particularly in the establishment of parental skills. The court stated L.F. was a special needs child who required much structure and attention due to symptoms of fetal alcohol syndrome. The court noted Lane was unable to even care for himself and L.F. would be at "imminent risk" if returned to him.

On December 29, 1995, the parents' rights to L.F. were terminated pursuant to Iowa Code sections 232.116(1)(f), (g) (1995). Only section 232.116(1)(g) pertained to Lane. The mother is not appealing the termination of her parental rights.

Lane appeals.

I. ***Scope of Review.*** Appellate review of termination proceedings is de novo. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1984) *cert. denied sub nom. J.G. v. Tauke*, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* at 491-92. The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

II. ***Statutory Criteria.*** Lane contends the district court erred in terminating his parental rights pursuant to Iowa Code section 232.116(1)(g) (1995). Section

232.116(1)(g) permits the district 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.

The only element of section 232.116(1)(g) which Lane disputes is the final element regarding clear and convincing evidence the child cannot be returned to the parents.

When a parent lacks the capacity and ability to meet the needs of a special needs child, then this factor may support a termination of parental rights. *In re E.B.L.*, 501 N.W.2d 547, 551 (Iowa 1993). L.F. is a special needs child who has been diagnosed as having fetal alcohol syndrome. L.F.'s condition has led to developmental delays in physical skills and in speech and language skills. Lane also has problems of his own. He has a long history of mental health problems for which he has failed to obtain consistent treatment. Lane denies having mental health problems and has failed to consistently take his prescribed medication. Many of Lane's difficulties stem from low intellectual functioning, poor impulse control, poor judgment, and chemical abuse. Lane is also an alcoholic who has failed to acknowledge his problem and comply with treatment recommendations. We conclude

Lane cannot adequately meet the needs of a special needs child when he cannot acknowledge his own problems and take care of himself.

Lane also has an extensive and significant criminal history. In the case permanency plan dated May 28, 1994, it was reported Lane had been charged, since 1990, with public intoxication five times, serious assault four times, criminal trespassing six times, fifth degree theft two times, disorderly conduct three times, criminal michief three times, and violation of a no contact order once. The report also stated he had been incarcerated on five separate occasions. The case permanency plan dated November 23, 1994, updated Lane's criminal history since the previous plan. Lane had been arrested on ten separate occasions for aggravated domestic assault, criminal mischief, theft, public intoxication, disorderly conduct, and criminal trespassing. Lane had also been incarcerated three times during this period. The June 2, 1995 case permanency plan reported Lane had been arrested three more times and spent time in jail three more times.

In addition to being evidence of instability, Lane's extensive criminal record has been an obstacle in receiving services. Lane missed a significant number of appointments with social services due to incarceration. In a quarterly report issued by Lutheran Social Service of Iowa on November 22, 1994, it was reported Lane missed five appointments, four of these due to incarceration. The March 1995 report noted Lane missed nine out of fourteen appointments, many due to incarceration. The May 1995 report stated Lane missed six out of nine appointments, most due to

incarceration. Even when Lane was not incarcerated, he failed to follow through with recommended services.

Lane argues he should be given additional time to demonstrate he can be a good parent. The legislature has statutorily determined the interval for which patience with parents may last. Iowa Code § 232.116(1)(g)(3) (1995). "This period must be reasonably limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children." *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). A child should not be forced to endlessly suffer the parentless limbo of foster care. *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990). He or she need not endlessly await the maturity of his or her natural parent. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489,495 (Iowa 1990). L.F. was taken out of the home in May 1994 when he was about seven months old. The hearing on the petition for the termination of parental rights was held eighteen months later in November 1995. L.F. has done well in foster care and the foster parents have indicated an interest in adopting L.F. We find Lane has been given ample opportunity to prove himself and has failed.

We conclude the district court did not err in terminating Lane's parental rights pursuant to section 232.116(1)(g).

AFFIRMED.