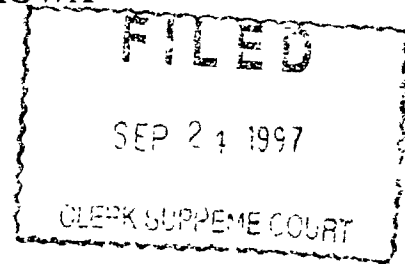


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IN THE COURT OF APPEALS OF IOWA

No. 7-438 / 96-2201
Filed September 24, 1997



IN THE INTEREST OF B.B., Minor Child,

R.B., Father,
Appellant.

Appeal from the Iowa District Court for Wapello County, Gene W. Glenn,
Associate Juvenile Judge.

Father appeals from juvenile court order prohibiting him from visiting or
having contact with his minor son, and subsequent court order terminating his
parental rights. **AFFIRMED.**

R. T. Starken of Alexander & Starken, Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General,
and Kenneth Duker, Assistant County Attorney, for appellee-State.

Sam K. Erhardt, guardian ad litem for minor child.

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

STREIT, J.

Robert and Mae Lynn are the parents of Benjamin, born May 12, 1991. Robert appeals the decision of the district court terminating his parental rights to Benjamin. We affirm.

The Department of Human Services (DHS) became involved with the family in 1993 due to reports of hazardous and unsanitary conditions in the home. There were dog feces on the floor, and dangerous items such as saws, nails, and bleach in areas accessible to Benjamin. There were also concerns about domestic violence. In December 1993, DHS issued a founded report against the parents for denial of critical care of Benjamin due to the unsafe conditions in the home.

In July 1994, DHS investigated reports of unsafe and unsanitary conditions in the home, and issued another founded report against the parents for denial of critical care. The parents voluntarily agreed to place Benjamin in foster care.

On August 15, 1994, the juvenile court adjudicated Benjamin a child in need of assistance. The court determined Benjamin should remain in foster care because of the risks to his health in the home. The parents were ordered to undergo psychological evaluations. Robert was ordered to have a substance abuse evaluation, and treatment, if needed. The parents were also to participate in parent skill development services and homemaker services. The parents were to have supervised visitation.

Robert has a problem with alcoholism. He was arrested twice in 1994 for public intoxication. He had a substance abuse evaluation in September 1994, which recommended outpatient treatment. Robert began treatment, but was terminated from the program for noncompliance with attendance policies. Robert did not participate in services.

Robert was arrested for domestic abuse in February 1995, after he threatened Mae Lynn with a knife. The parties divorced. Robert was in prison from June 1995 to August 1995 on his conviction for domestic abuse. When Robert was released from prison in August 1995, he asked to have visitation with Benjamin. DHS set up a time for visitation, but Robert never appeared. He did not set up another time for visitation. Robert's last visit with Benjamin was in May 1995.

Robert was sent back to prison from December 1995 for parole violations which stemmed in part from his marriage to a convicted felon. Robert completed a drug and alcohol program while in prison, and became a minister.

On July 11, 1996, the State filed a petition for the termination of the parental rights of Robert and Mae Lynn. Robert was released from prison in October 1996 and he sought visitation with Benjamin. DHS was reluctant to permit the visitation because Benjamin had become very upset at just the mention of his father's name and said he did not want to see his father again. Benjamin told his foster parents about several incidents in which Robert became violent in the home.

In November 1996, the State filed a motion seeking to prohibit Robert from having contact with Benjamin. On December 6, 1996, the juvenile court found it was in Benjamin's best interests to prohibit contact and visitation with Robert. Robert appealed this order. He also filed a motion to stay the termination proceedings while his appeal was pending. This motion was denied by the juvenile court.

Mae Lynn did not appear at the termination hearing and does not appeal the termination of her parental rights. Robert testified he would like to assume custody of Benjamin. He admitted he had recently used alcohol. There was evidence the foster family was interested in adopting Benjamin. The juvenile court terminated Robert's parental rights under Iowa Code section 232.116(1)(e). Robert appealed. The supreme court ordered the consolidation of Robert's two appeals.

The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re R.K.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

Robert contends the prohibition of contact and visitation with Benjamin prior to the termination of his parental rights was a violation of the reasonable efforts requirement and precluded the termination of his parental rights. He believes providing visitation is part of the reasonable efforts requirement. Robert asserts DHS

should be required to engage in reasonable efforts until the juvenile court has ordered termination of a parent's rights.

Reasonable efforts must be provided to attempt to reunite a family before the State can terminate parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). Generally, DHS must make reasonable efforts to provide services to eliminate the need for removal. *In re T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994). The reasonable efforts concept would broadly include a visitation arrangement designed to facilitate reunification while protecting the child from the harm responsible for the removal. *In re M.B.*, 553 N.W.2d 343, 345 (Iowa App. 1996).

We find DHS did make reasonable efforts to reunite Robert and Benjamin. Services were offered to Robert, but he chose not to participate. Due to Robert's own actions he had no visitation with Benjamin from May 1995 until October 1996, either because he did not appear for visitation or because he was in prison. Robert did not attempt to telephone Benjamin or write letters during this period of time. Robert voluntarily gave up contact with his son.

The nature and extent of visitation is controlled by the best interests of the child. *Id.* We determine visitation with Robert would not be in Benjamin's best interests. Benjamin continues to have bad memories of the violence perpetrated by Robert in the home.

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We affirm the decision of the juvenile court determining Robert should not have contact or visitation with Benjamin. We also affirm the termination of Robert's parental rights to Benjamin.

AFFIRMED.

Vogel, J., concurs; Sackett, P.J., specially concurs without opinion.