IN THE COURT OF APPEALS OF IOWA

No. 1999-521 (9-778) / 99-0524
Filed February 23, 2000

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF

M.B. and M.B.,
Minor Children,

M.C., Father,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

Father appeals the juvenile court's termination of his parental rights. **AFFIRMED.**

Robert Tiefenthaler, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Chris Odell and Janet Hoffman, Assistant Attorneys General, Rhoda Tenuta, Assistant County Attorney, and Nikki Aden, legal intern, for appellee-State.

Marchelle Denker, Juvenile Law Center, Sioux City, for children.

Considered by Vogel, P.J., and Vaitheswaran, J., and Peterson, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (1999).

PETERSON, S.J.

Melton and Brenda are the parents of Melton, Jr., born in December 1985, and Matthew, born in February 1988. Melton appeals the decision of the juvenile court which terminated his parental rights. He claims the State did not present sufficient evidence to support the termination and termination is not in the children's best interests. We affirm on appeal.

The parents separated in 1991, and thereafter, the father did not have much contact with the children. The children were removed from the mother's care in June 1996 because the children had been physically abused by her live-in boyfriend, and she did not intervene. The children were placed with a family friend. They were adjudicated to be children in need of assistant (CINA) pursuant to Iowa Code sections 232.2(6)(b) (1995) (parent or other member of the household has physically abused child) and (c)(2) (child is likely to suffer harm due to parent's failure to exercise care in supervising child).

In September or October 1996, the father contacted the Department of Human Services (DHS) and inquired about the children. On the application of the guardian ad litem, in October 1996, the juvenile court entered an ex parte order prohibiting the parents from having contact with the children. This was modified in December 1996, and the father began supervised visitation with the children.

The juvenile court ordered the father to have a psycho-social evaluation and comply with its recommendations. The evaluation determined Melton had an antisocial personality disorder. There were also concerns about whether he

might have an alcohol or drug problem because he was very vague on his answers to questions in these areas. The evaluation recommended the father participate in individual and/or group therapy. He did not follow through with this recommendation.

In February 1997, the children were placed in foster care due to Melton Jr.'s behavioral problems. In March 1997, Melton Jr. was placed in a hospital due to his assaultive behaviors. He reported auditory hallucinations. He has been diagnosed with oppositional defiant disorder, attention deficit hyperactivity disorder, and post-traumatic stress disorder. In June 1997, Melton Jr. was placed in a residential treatment facility.

Although he was not legally divorced from Brenda, in early 1998, Melton married Terri. Terri was also involved with DHS and her six children had been removed from her care. Terri received extensive in-home services, and because Melton was living in the home, he received these services as well. Eventually Terri's parental rights were terminated.

Melton was consistent in attending visitation for a period of time, and in October 1997, he began having unsupervised visitation with Matthew. However, in July 1998, he was evicted from his home and he had only two visits with Matthew since that time. He had no visits with Melton Jr. during the same time period. The father was unable to display consistent housing or employment.

In December 1998, Melton was arrested for possession of a controlled substance-marijuana. While he was being taken to the police station, he vomited several pieces of a substance which was field tested to be methamphetamine.

Matthew has done very well in foster care. The foster parents have expressed an interest in adopting him. As for Melton Jr., it is unknown how long he will need to remain at the residential treatment center.

In November 1998, the State filed a petition to terminate the parental rights of Melton and Brenda. The juvenile court terminated Melton's parental rights pursuant to sections 232.116(1)(c) (circumstances which led to CINA adjudication continue despite the receipt of services), (d) (parent has not maintained significant and meaningful contact with the child), and (e) (child cannot be returned home). The court found the children would be subjected to harm if returned to their father's care due to his continued illegal drug use, and unstable employment and housing. The court determined the father had avoided genuine participation in services. Brenda's parental rights were also terminated. The father appealed.

I. 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 child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Melton contends the State did not present sufficient evidence to support termination of his parental rights. He claims the State failed to show the children could not be returned safely to his care, which is an element of section 232.116(1)(e). He asserts he is presently capable of meeting the children's needs. The father claims the juvenile court was prejudiced against him because

of his association with Terri, who had her parental rights terminated to her own children.

A good prediction of the future conduct of a parent is to look at the past conduct. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa App. 1998). The parent's past performance may indicate the quality of care the parent is capable of providing in the future. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

The record shows the father was making progress for a period of time, but in July 1998, his progress took a sharp downward trend. He was evicted from his home. He became unemployed. The father only had two visits with Matthew since July 1998 and no visits with Melton Jr. Furthermore, he was arrested for possession of a controlled substance. There is clear and convincing evidence the children could not be returned to the father's care at the present time. We determine the father's parental rights were properly terminated under section 232.116(1)(e).

III. 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 have determined Melton's parental rights were properly terminated under section 232.116(1)(e), we need not address his claims regarding section 232.116(1)(c) and (d).

IV. Melton asserts it was not in the children's best interests to terminate his parental rights. He points out he was having unsupervised visits

with Matthew for a period of time. He also points out DHS did not recommend termination of his parental rights to Melton Jr.

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must still be in the best interests of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the best interests of a child, a court looks to the child's long-range and immediate interests. *C.K.*, 558 N.W.2d at 172. The court must consider the physical, mental, and emotional condition and needs of the child in deciding whether to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996).

We find termination of Melton's parental rights is in Matthew's best interests. Although he participated in unsupervised visits with Matthew, after July 1998, he had minimal visits with his son. The father made no further progress in placing himself in a position to be able to assume his parenting responsibilities. His lack of contact with Matthew raises questions concerning his commitment to his child.

Concerning Melton Jr., we conclude termination of the father's parental rights is also in this child's best interests. The juvenile court carefully considered Melton Jr.'s best interests. The court stated:

> The best ways for the court to help Melton Jr. is by giving him a full range of options and that comes through termination of parental rights. That full range of options for Melton Jr. includes continued residential care as long as it is needed, specialized foster care placement, a search for an appropriate adoptive home and placement when appropriate, and/or placement with Melton Sr. or another family member if determined to be appropriate by Melton Jr.'s placement team.

The juvenile court did not foreclose Melton Jr.'s reunification with his father at some point in the future, but gave him more placement options.

We affirm the decision of the juvenile court which terminated Melton's parental rights to his two children.

AFFIRMED.