IN THE COURT OF APPEALS OF IOWA

No. 5-195 / 94-1773

FILED
JUN 27 1995
CLERK SUPREME COURT

IN THE INTEREST OF P.C., JR., AND J.C., Minor Children,

P.C., Sr., Father,
Appellant.

Appeal from the Iowa District Court for Clinton County, Arlen J. Van Zee, District Associate Judge.

Father appeals the district court's order terminating his parental rights over his two minor children. **AFFIRMED.**

Paul E. Pfeffer of Pfeffer Law Office, P.C., Clinton, for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Ross Barlowe, Assistant County Attorney, for appellee-State.

J. David Zimmerman of Pillers, Pillers & Zimmerman, P.C., Clinton, guardian ad litem for minor children.

Heard by Donielson, C.J., Huitink, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving by order of the Iowa Supreme Court.

PER CURIAM

Peter and Dorene are the parents of P.C., born June 10, 1985, and J.C., born July 7, 1986.

In 1985 a report of child abuse against P.C. by Peter was deemed founded. Peter had picked his then infant son up by the neck and banged his head against the crib. A child in need of assistance (CINA) petition was filed; however, the parents agreed to accept family services and the petition was eventually dismissed.

In May 1991 Dorene placed P.C. and J.C. in voluntary family foster care. Dorene and Peter were in the process of getting a divorce at this time. In addition, Dorene was having mental health problems. Dorene was diagnosed as major depressive and hospitalized several times in 1991 for depression and self-mutilating behavior.

In December 1991 a CINA petition was filed alleging the children were in need of assistance pursuant to Iowa Code sections 232.2(6)(k) and 232.2(6)(n) (1991). The children were adjudicated CINA in January 1992. Peter did not resist the adjudication. The district court ordered foster care to continue.

After the February 1992 dispositional hearing, the court adopted the case permanency plan prepared by DHS, ordered the children to remain in family foster care, and ordered visitation be monitored by DHS.

After an August 1992 review hearing, the court returned P.C. and J.C. to Dorene's custody subject to supervision by DHS. In October 1992 the court entered an order suspending Peter's visitation with the children based on inadequate supervision of visits and an additional incident of abuse.

After a January 1993 review hearing, Peter was allowed visits with the children at Dorene's home supervised by DHS. In February 1993 the children were again

placed in foster care due to Dorene's mental health problems. In May 1993 the case permanency plan began to focus on reuniting the children with Peter. The plan recommended that, within the next six months, Peter complete a psychological evaluation, attend a men's group for sexual perpetrators, make his home clean and safe for children, and improve his personal hygiene.

In September 1993 a child abuse report was deemed founded against Dorene and Peter. Dorene reported she and Peter had both sexually abused P.C. from the time he was six months old until he was three years old.

On July 7, 1994 a petition to terminate Dorene's and Peter's parental rights was filed. Dorene consented to termination of her parental rights.

After a hearing, the court concluded Peter's rights should be terminated pursuant to Iowa Code section 232.116(1)(e). It found the children could not be returned to his custody. Peter appeals.

The guardian ad litem has joined the State's brief in support of termination.

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.

Peter's rights were terminated pursuant to Iowa Code section 232.116(1)(e) (1993). Section 232.116(1)(e) permits the juvenile court to terminate the parent-child relationship if the court finds 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.

Peter argues the fourth requirement, regarding clear and convincing evidence the children cannot be returned to his custody, was not met. Specifically, Peter contends reasonable efforts were not made to reunite his children with him.

In order to gain custody, Peter was ordered by the district court to comply with the case plan submitted by DHS on May 17, 1993. The case plan required Peter to: (1) complete a psychological evaluation; (2) attend a men's group therapy for sexual perpetrators; (3) provide a safe and clean home for the children; and (4) improve his personal hygiene. In the year following this order, Peter completed two psychological evaluations, attended some counseling, and participated in supervised visitations.

David McEchron, a psychologist, evaluated Peter psychologically and provided counseling in a sexual abuse treatment program. McEchron found Peter to be very paranoid, to have problems controlling his anger, and to have a strong tendency to blame others for his thoughts and actions. McEchron also found Peter to display a very impulsive pattern of life and a tendency to become controlling and demanding. McEchron felt Peter should not be given sole custody of the children.

McEchron reported Peter had attended only eight of eleven counseling sessions. When Peter did attend, he was late. Peter's participation was marginal and he showed little willingness to improve. Peter's comments during the sessions were usually derisive regarding DHS and the system in general. He also expressed dissatisfaction with everyone from social services to his neighbors. McEchron found Peter's progress to be insignificant.

Rich Russman, who supervised Peter's visitation, described Peter's current living conditions deteriorated, cluttered, very disheveled, and dirty. Russman stated

Peter was very easily angered. Maxine Dixon, a DHS worker, testified Peter continued to have a house which was unsafe for children. Dixon did not believe Peter had made any significant progress in the development or the improvement of his parenting skills. Georgann Wyatt, the Court Appointed Special Advocate, recommended a termination of the parental rights.

We believe the district court's assessment of the case is an accurate summary of the record. The court stated:

> The children cannot be returned to the custody of their father as provided in Section 232.102 because of his persistent unwillingness to provide a proper home environment, inability to appropriately parent the children, his impulsive and immature behavior, and his lack of anger management and conflict resolution skills. . . . Peter has been uncooperative with these services and has not sufficiently benefitted from the services to allow the children to safely return to his custody.

We also find Peter has made no progress in rectifying the problems raised in the case plan submitted by DHS on May 17, 1993.

We find reasonable efforts have been made to reunite the children with their father. Peter has failed to cooperate, and it is his failure to cooperate which has led to this termination. We find there is clear and convincing evidence the children cannot be returned to Peter's custody. The district court's termination of Peter's parental rights pursuant to Iowa Code section 232.116(1)(e) is affirmed.

AFFIRMED.