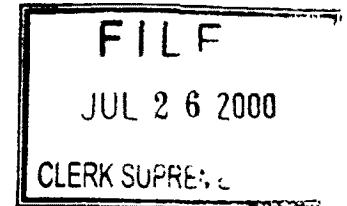


IN THE COURT OF APPEALS OF IOWA

No. 0-366 / 99-1488
Filed July 26, 2000



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

W.P., FATHER,
Appellant.

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

Father appeals from the court's order terminating his parental rights to his child. **AFFIRMED.**

Todd Babich of Babich, Cashatt & Renzo, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, and Martha Johnson, Assistant County Attorney, for appellee-State.

Nancy Pietz of Cook & Brown, P.L.C., Clive, guardian ad litem, for minor child.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

HECHT, J.

William ("Willie") P. appeals from an order terminating his parental rights to Nataleigh N. He challenges the jurisdiction of the Iowa court under the Uniform Custody Jurisdiction Act and disputes the sufficiency of the evidence supporting the termination. We affirm.

I. Factual Background and Proceedings. On November 25, 1992, the Iowa district court for Polk County terminated Tammy N.'s parental rights to six children. Willie was the father of two of those children. Tammy and Willie were never married. On August 31, 1993, the Iowa court terminated Tammy's rights to a seventh child whom Willie also fathered. Tammy and Willie then moved to Minnesota. On February 23, 1996, a court in Minnesota terminated the rights of Tammy and Willie to yet another child.

Tammy's ninth child, also fathered by Willie, was born on August 17, 1997. The district court terminated the parents' rights to this child on July 7, 1998. At that time, Tammy was pregnant with Willie's child, her tenth child. The State informed her it intended to remove the expected baby from her care upon its birth. Tammy traveled by bus to Alabama on or about July 31, 1998, and entered a drug treatment center. She gave birth to Nataleigh on August 15, 1999, in Coffee County, Alabama, while Willie was incarcerated in an Iowa correctional facility.

A representative of the Iowa Department of Human Services notified Alabama authorities who promptly instituted removal proceedings. On August 27, 1998, the Alabama court found Iowa "retains full jurisdiction in this matter;"

and Tammy "left the State of Iowa without permission." The Alabama court found "exigent emergency circumstances" and removed the baby from Tammy's care.

On September 3, 1998, the Polk County juvenile court entered an order assuming jurisdiction and authorizing the Iowa Department of Human Services to travel to Alabama to retrieve the child. The Alabama court entered an order the next day transferring custody of Nataleigh to the Iowa DHS. The child was returned to Iowa on September 5, 1998, and placed in foster care.

On September 14, 1998, the State filed a motion seeking a waiver of reasonable efforts to reunify the family. This was followed by a petition to terminate parental rights filed on September 29, 1998. Tammy's counsel filed a motion to dismiss the Iowa proceeding, contending the State had made false allegations about Nataleigh's domicile in the CINA petition, and asserting the Iowa district court had no subject matter jurisdiction under Iowa Code section 598A.3(1)(a)-(d). Tammy and Willie also filed a motion to set aside the Iowa court's order assuming jurisdiction. On October 27, 1998, the Iowa district court overruled the motions and held: (1) the Alabama court had declined jurisdiction; (2) Iowa is the home state of the child; and (3) Tammy had left the State of Iowa to avoid removal of the child at birth. Tammy sought leave to pursue an interlocutory appeal, but our supreme court denied the request.

On September 2, 1999, the district court found "aggravated circumstances" establishing "the offer or receipt of services would not likely, within a reasonable time . . . correct the conditions which led to the child's

removal.* The court terminated the parental rights of Tammy and Willie pursuant to Iowa Code sections 232.116(1)(c) and (h) (1999). Willie appeals.

II. Jurisdiction Issue.

A. *Standard of Review.* Questions of jurisdiction, authority, and venue of the district court are legal issues to be reviewed for correction of errors at law. *State v. Clark*, 608 N.W.2d 5, 7 (Iowa 2000); *Holding v. Franklin County Zoning Bd.*, 565 N.W.2d 318, 320 (Iowa 1997).

B. *The Merits.* Iowa Code section 598A.3 provides, in part, as follows:

1. A court of this state which is competent to decide child custody matters has jurisdiction to make a custody determination by initial or modification decree if:

b. It is in the best interest of the child that a court of this state assume jurisdiction because the child and the child's parents, or the child and at least one contestant, have a significant connection with this state, and there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

d. It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph "a", "b", or "c", or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and it is in the best interest of the child that this court assume jurisdiction.

3. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine custody.

Iowa Code § 598A.3(1)(b), (1)(d), & (3) (emphasis supplied). Willie claims the Iowa district court had no jurisdiction over this case under Iowa Code section 598A.3.

Willie also claims Alabama is Nataleigh's home state for jurisdictional purposes. Iowa Code section 598A.2(5) defines "home state" as:

[T]he state in which the child, immediately preceding the time involved, lived with the child's parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the state in which the child lived from birth with any of the persons mentioned.

(Emphasis supplied). Willie contends Nataleigh never lived in Iowa until she was improperly removed from the State of Alabama and placed in foster care in this State within the first month of her life. The State contends jurisdiction of the Iowa courts is not dependent upon a determination that Iowa is the child's home state. Iowa Code section 598A.3(1) permits the courts of this state to assume jurisdiction whether or not Iowa is the child's home state if another state has declined to exercise jurisdiction on the ground that Iowa is the more appropriate forum. The State asserts the Alabama court's order of August 27, 1998, constitutes such a declination. Willie challenges the legal effect of that order, however, contending the Alabama court was misled to believe the courts of this state "retain[ed] full jurisdiction in this matter and that [Tammy] . . . left the State of Iowa without the permission of the Polk County, Iowa, Department of Human Services or the Polk County, Iowa, juvenile court."

Willie correctly notes Tammy was not subject to the jurisdiction of the Iowa juvenile court in any pending proceeding when she moved to Alabama before Nataleigh's birth. Accordingly, the Alabama court's statement "the State of Iowa retains full jurisdiction in this matter" is somewhat confusing. However, we determine the court's language was merely an expression of an understanding that the State of Iowa was prepared to provide the forum for litigation concerning Nataleigh's welfare in a location "where significant evidence concerning [her]

care, protection, training, and personal relationships [was] most readily available." See Iowa Code section 598A.1(3) & .3(1)(b).

Willie correctly notes Tammy was under no legal obligation to remain in Iowa, and her departure from this state "without permission" was not sufficient to divest the Alabama court of jurisdiction or, standing alone, support jurisdiction in the Iowa court. Even if the Alabama court misapprehended the legality of Tammy's departure from Iowa, however, we conclude its declination of jurisdiction is not invalidated. Implicit in the August 27, 1998, order is the Alabama court's determination Iowa is the more appropriate forum in this case. Willie's ongoing residence in Iowa, together with the extensive historical information available here pertaining to the suitability of Tammy and Willie as parents, clearly makes Iowa the most appropriate forum to adjudicate the merits of the dispute in this case. There is no evidence in the record suggesting Willie has ever been in Alabama. Tammy and Nataleigh had been there for less than a month prior to the child's removal to Iowa. Thus, Alabama authorities had little information upon which to assess the best interests of the infant. In sharp contrast, however, given the extensive historical information and numerous witnesses available in Iowa documenting the parenting history of Tammy and Willie, it is clearly in Nataleigh's best interest to have the matter adjudicated here. Although it is not a model of clarity, we conclude the Alabama court's order of August 27, 1998, constitutes a declination to exercise jurisdiction. Accordingly, the Iowa district court properly exercised jurisdiction pursuant to Iowa Code section 598A.3(d).

III. Termination of Parental Rights.

A. Standard of Review. Our review of termination cases is de novo. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996). We review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995).

B. The Merits. The district court found clear and convincing evidence supporting termination of Willie's parental rights under Iowa Code sections 232.116(1)(c) and 232.116(1)(h). The grounds alleged for the termination of parental rights must be proven by clear and convincing evidence. Iowa Code § 232.114(5)(c). We need only find grounds to terminate under one of the sections cited by the juvenile court to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999). Our primary concern in a termination proceeding is the best interests of the child. *Dameron*, 306 N.W.2d at 745.

We gain insight into a child's prospects for remaining safe and healthy by reviewing evidence of the parent's past performance, for it may be indicative of the parent's future capabilities. See *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1980). We also look to the parent's prior acts in determining whether a substance abuse problem presents a danger to himself or others. See *A.J.*, 553 N.W.2d at 914. Willie's record as a parent is abysmal. He was the subject of multiple founded child abuse reports, some for physical abuse and one for sexual

abuse. As recently as March 18, 1999, he was arrested for physical abuse when he struck Tammy in the head while intoxicated. He adamantly refused to take responsibility for his actions leading to the previous terminations of his parental rights with respect to other children. His record of attendance at supervised visitation was inconsistent. Willie suffers from a chronic substance abuse problem. His frequent use of crack cocaine and repeated alcohol abuse contributed to his pattern of physical and emotional abuse of Tammy. He had a urinalysis positive for ingestion of cocaine as recently as February of 1999. The record clearly indicates Willie has a substance abuse problem he has failed to address in treatment and which poses a significant potential for harm to himself and his child.

Willie challenges the State's proof on the ground it relates only to past conduct rather than current evidence tending to prove Nataleigh would be in danger if placed in his care. The State has a duty to act to prevent probable harm, and need not delay until actual physical harm has occurred to this child. See *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1998). The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supports the children's initial removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). Willie has a long history of parenting inadequacies resulting in the termination of his parental rights to the other offspring from his relationship with Tammy. The State acted to prevent probable harm to Nataleigh and did not need to delay until actual physical harm occurred to the child. The State proved the elements of Iowa Code section 232.116(1)(h)

by clear and convincing evidence without proof that Willie had abused or neglected this particular child.

Willie also asserts reasonable efforts to reunite him with Nataleigh were required, but not provided, prior to termination of his parental rights. While the State generally has an obligation to make reasonable efforts to reunify a family, services may be dispensed with under aggravated circumstances. See Iowa Code § 232.102(12)(b), (c). We adopt as our own the district court's finding the State proved aggravated circumstances eliminating the duty to provide services to Willie in this case. Willie has made no attempt to correct his negative behaviors with regard to his other children and it is highly unlikely he would benefit from the receipt of the same services he has been offered many times previously. Having determined grounds for termination of parental rights were proved pursuant to Iowa Code section 232.116(1)(h), we need not address the sufficiency of the evidence supporting termination under section 232.116(1)(c).

Willie next argues termination is not mandatory even upon proof of statutory grounds for termination. This contention incorporates the principle that 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 child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the best interests of a child, a court looks to her long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The court must consider the child's physical, mental, and emotional condition and needs in deciding whether to order termination. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996). There is overwhelming evidence

supporting the district court's finding termination is in Nataleigh's best interest.

Accordingly, we affirm.

AFFIRMED.