FILED
MAR 31 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF
JON CORY NORDYKE,

A Minor,

CHARLES U. GORDON,

Appellant.

Filed March 31, 1980

0-18
3-63696

Appeal from Hardin District Court - Newt Draheim, Judge.

Natural father appeals order of juvenile court terminating his parental rights alleging notice given did not comport with due process of law and the findings of the court were not supported by the evidence. - Reversed and remanded.

Clark E. McNeal, of Barker, McNeal & Wiese, Iowa Falls, for appellant.

Thomas J. Miller, Attorney General of Iowa, Candy Morgan & Francis C. Hoyt, Jr., Assistant Attorneys General, John G. Black, Special Assistant Attorney General and Jon Heitland, Hardin County Attorney, for appellee.

Philip S. Deats, of Whitesell Law Firm, Iowa Falls, for natural mother.

Robert H. Muhlenbruch, McGreevy Law Firm, Ackley, guardian ad litem.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Appellant, Charles U. Gordon, appeals order of juvenile court terminating his parental rights alleging notice given did not comport with due process of law and the findings of the court were not supported by the evidence. Reversed.

On January 6, 1978, the Hardin County Department of Social Services filed a petition to terminate the parent-child relationship of Gordon and his son, Jon Cory Nordyke, alleging as its sole ground for termination that Gordon "neglected to comply with the duties imposed upon him by the parent-child relationship." At its initial hearing, the trial court continued the termination proceeding and found Jon Cory was a child in need of assistance as contemplated in Chapter 232, The Code 1977. Apparently the trial court assumed that procedure was authorized by the then applicable provisions of section 600A.9(1)(a). The court placed Jon Cory in foster care and ordered Gordon perform certain functions. Neither the State nor Gordon appealed the procedure and order of the initial action. On January 12, 1979, the court took up the termination matter. Although the trial court did not find Gordon had failed to perform the functions it earlier had ordered, (and therefore could not rely on the termination ground of section 600A.8(6), The Code 1979), it ordered termination based on its findings (1) Gordon, prior to the original petition, neglected to pay for subsistence and care for Jon Cory while he was in the custody of others, and (2) Gordon, prior to the original petition, had abandoned the child.

Termination may be based on the various grounds of section 600A.8. However, it is a denial of due process to adjudicate a termination of parental rights on a ground of which the parent has not had proper notice. In Interest of Kelley, 262 N.W.2d 781, 784 (Iowa 1978). Here, Gordon was not notified termination would be sought on the abandonment ground. The petition failed to state that ground nor was it tried by consent. We find Gordon received inadequate notice on the abandonment ground and conclude the trial court erred by terminating his parental rights on that basis. See id. See also In Interest of Hewitt, 272 N.W.2d 852, 855-57 (Iowa 1978) (wherein the court discusses notice requirements in the context of child in need of assistance proceedings.)

The State contends the termination nevertheless should be affirmed since proper notice was given on the ground of neglect and the trial court based its decision on that

ground. While adequate notice was given on the ground of neglect, we find the evidence does not support termination on that ground.

Our review is de novo and we apply the clear and convincing standard of proof. Kelley, 262 N.W.2d at 784. A neglect finding must be predicated on a breach of some parental duty. The subsections of section 600A.8 concern parental duties. Subsection 4 refers to duties and neglect in general terms. Subsection 5 refers to patterns of specific conduct that make a person unfit to be a parent. Subsection 7 refers to noncompliance with a court order of financial support for the child. Gordon's conduct under review falls into three periods: during the pregnancy; after birth but prior to the filing of the termination petition; and after the filing of the petition.

The trial court neglect finding was limited to Gordon's conduct prior to the filing of the petition on January 6, 1978; that period covered only the prenatal time and the one week between Jon Cory's birth and the filing of the petition. While cases such as Planned Parenthood v. Danforth, 428 U.S. 52, 96 S. Ct. 2831, 49 L. Ed. 2d 788 (1976), cloud the extent of a putative father's rights and obligations, prior to the birth of his child, we believe financial support during pregnancy is a parental duty of the putative father. For example, section 675.1 holds a father liable for expenses of the mother during pregnancy and confinement. The evidence here supports the finding Gordon failed to provide such support during pregnancy. However, the termination decision cannot rest on that basis alone as conduct from all three segments of time, including that after filing of the petition, should be reviewed. See In re Marriage of Dawkins, 285 N.W.2d 8, 9 (Iowa 1979). Since the petition was filed, Gordon has paid child support to the foster parents even though he was not ordered to do so by the court. He has exercised all the visitation permitted by the court with Jon. He is employed now and he and his wife are desirous to provide necessary parental functions.

We do not find Gordon's failure of performance during the nine month period prior to the petition negates his performance since then. Neglect, as shown by any of the section 600A.8 factors, was not established by clear and convincing proof. Accordingly, we hold the trial court erred by terminating Gordon's parental rights on that ground and reverse its judgment.

The effect of our reversal is to vacate the termination order entered below.

Under the provisions of section 600A.9 as it applied in January 1979, the trial court was empowered to dismiss the termination petition but find the child in need of assistance. Our reversal of the termination cannot affect the conclusion Jon Cory was a child in need of assistance since neither party objected to that finding, which was incorporated in the trial court's final order. Accordingly, we reverse only the termination of Gordon's parental rights and remand for further action by the trial court on the adjudication of a child in need of assistance.

REVERSED AND REMANDED.