IN THE COURT OF APPEALS OF IOWA

No. 3-672 / 93-1356

FILED
MAR 24 1994
CLERK SUPREME COURT

IN THE INTEREST OF M.F. and C.B., Minor Children,

R.L.F., Father,

Appellant.

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Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Judge.

The father appeals the order of the juvenile court terminating his parental rights to M.F. and C.B. **AFFIRMED.**

Robert E. Tucker, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter and Charles K. Phillips, Assistant Attorneys General, and Michael Hunter, Assistant County Attorney, for appellee-State.

Cory McClure and Susan Conn of the Youth Law Center, Des Moines, for minor children.

Heard by Schlegel, P.J., Habhab, J., and McCartney, S.J.*, but decided by Donielson, C.J., and Hayden, Sackett, and Habhab, JJ. Cady and Huitink, JJ., take no part.

*Senior judge from the 2nd judicial district serving on this court by order of the Iowa Supreme Court.

PER CURIAM

Robert, the natural father, appeals the juvenile court's order terminating his parental rights to Michael and Chelsea. The court also terminated the parental rights of the natural mother, Tess. The mother, however, does not appeal.

Michael was born on February 3, 1990, and Chelsea was born on January 16, 1991. Robert and Tess were never married. The children lived with their mother. The Iowa Department of Human Services (DHS) placed the children in temporary foster care in April 1992 after the mother left the children with unwilling caretakers. One day after the children were placed in foster care, the mother returned. The DHS returned the children to the custody of their mother.

Approximately two months later, the DHS again placed the children in foster care after the mother left the children with their maternal grandmother. In July 1992 the juvenile court adjudicated the children in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2) (1991). Robert did not participate in the CINA proceeding. See In re M.L.M., 464 N.W.2d 688, 690 (Iowa App. 1990). The juvenile court ordered the children to remain in family foster care.

In April 1993 the State filed a petition for the termination of parental rights as to both parents. In August 1993 the juvenile court determined the State proved

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by clear and convincing evidence the father had abandoned his children pursuant to Iowa Code section 232.116(1)(b) (1993). The court found Robert "has not had any contact with the children since they were placed in foster care, nor has he expressed the desire to have contact with them." The juvenile court terminated the parental rights of Robert and Tess to Michael and Chelsea.

On appeal Robert claims the State failed to prove by clear and convincing evidence he abandoned his children as defined in section 232.116(1)(b). He contends the State failed to notify him of the CINA proceedings and failed to offer him services similar to those offered to the mother. He contends in the absence of appropriate services and guidance from DHS, the State cannot prove by clear and convincing evidence his parental rights should have been terminated.

Our review of this termination proceeding is de novo. Iowa R. App. P. 4. Although we are not bound by them, we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). Our primary consideration is the best interests of the children. In re D.J.R., 454 N.W.2d 838, 839 (Iowa 1990) (citation omitted).

Iowa Code section 232.116(1)(b) provides the court may order the termination of parental rights if it finds there is clear and convincing evidence the child has been abandoned or deserted. Iowa Code § 232.116(1)(b) (1993). As used in chapter 232, "abandonment of a child" means:

> [T]he permanent relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Iowa Code § 232.2(1), cited in In re D.J.R., 454 N.W.2d 838, 841-42 (Iowa 1990).

Robert admitted he has failed to maintain significant and meaningful contact with Michael and Chelsea.

> Q. . . . Do you feel that you have maintained contact with your child, significant and meaningful contact with your children? A. No.
> Q. No? A. No.

Robert's former juvenile court officer testified Robert had told the officer in August 1992 he had not seen Michael and Chelsea for awhile and had no plan at that point to become involved in their lives. Robert has visited the children only twice since the have been placed in foster care.

> Q. How many times since they have been in foster care? A. Twice.
> Q. Okay. And those were visits that were set up for Tess, right? A. Yes.
> Q. And you came along? A. Yes.
> Q. Okay. You didn't ask for any visits for yourself, is that correct? A. No.
> Q. It's not correct or you didn't ask? A. I didn't -- I didn't ask.

Robert stated he stayed only ten minutes during one of these visits because the children did not know who he was. He also testified at the termination hearing he believed the children would not recognize him. When questioned Robert did not know the children's birth dates.

Robert has made no attempt to inform DHS of his whereabouts during the proceedings involving his children. In June 1992 DHS attempted to contact Robert at the only address it had for him. DHS's letter, however, was returned on the basis Robert did not reside at the address. In October 1992 Robert made one unscheduled visit to the DHS office to see Mary Martinez, the foster care specialist. Upon finding out Martinez was unavailable, Robert left without leaving his address, phone number, the reason for his visit, or a request for visitation or services. Robert made no other effort to contact any personnel at the DHS to request visitation with his children. The two times he did visit his children were during visitations set up for Tess. In May 1993 DHS sent a letter to Robert's correct address. The letter stated if he had any questions to call the phone number provided. DHS received no response from Robert. The father's feeble contacts must be viewed in the light that total desertion is not required for a showing of abandonment. See In re M.M.S., 502 N.W.2d 4, 8 (Iowa 1993) (citing In re Goettsche, 311 N.W.2d 104, 105 (Iowa 1981)).

A review hearing was held in March 1993. The juvenile court's order states the parties present at the hearing, including the mother and father, agree it would be in the best interests of the children to continue in foster care. At the termination hearing Robert argued he never agreed to the arrangement.

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Robert has failed to provide any emotional assistance to his children. Evidence indicates Robert failed to contribute financially to the support of the children. At the time of the termination hearing Robert was eighteen years old and remained unemployed. He indicated his mother or girlfriend would care for the children if he was awarded custody.

> [P]arental responsibilities include more than subjectively maintaining an interest in a child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances. See In re J.L.Z., 492 Pa. 7, 421 A.2d 1064, 1064-65 (1980) ("This affirmative duty encompasses more than a financial obligation; it requires continuing interest in the child and a genuine effort to maintain communication and association with the child. . . . Because a child needs a benefactor, parental duty requires that a parent exert himself to take and maintain a place of importance in the child's life.")

In re Goettsche, 311 N.W.2d at 106 (citation omitted).

We determine the State has presented clear and convincing evidence to support termination of Robert's parental rights based on abandonment. The termination of parental rights for abandonment under section 232.116(1) does not require an offering of services to assist with parenting. In re M.L.M., 464 N.W.2d at 691. We affirm the termination of the parental rights of Robert.

AFFIRMED.