IN THE COURT OF APPEALS OF IOWA

No. 0-560 / 00-466
Filed October 25, 2000

IN THE INTEREST OF
K.L.K, Minor Child,

K.K., Father,
Appellant.

FILED
OCT 2 5 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Dickinson County, David C. Larson, Judge.

Father appeals the termination of his parental rights to his minor child. **AFFIRMED.**

Pamela Wingert, Spirit Lake, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Jack Bjornstad, Assistant County Attorney, for appellee-State.

Shannon Sandy of Sandy Law Firm, P.C., Spirit Lake, for minor child.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

SACKETT, C.J.

Appellant father, Korey, appeals the decision of the juvenile court which terminated his parental rights to his son Kolton, born in July of 1999. He claims the State did not present sufficient evidence to warrant termination of his parental rights, the State did not use reasonable efforts to reunite him with his child, and termination is not in the child's best interests. We affirm.

Prior to Kolton's birth, a sibling, Kyler received injuries consistent with shaken baby syndrome while in Korey's care. These injuries eventually led to Kyler's death. Korey was convicted of child endangerment causing serious injury. In May 1999 Korey was sentenced to prison for a term not to exceed ten years. Korey has been in prison during Kolton's entire life.

In a 1995 evaluation, Korey admitted slapping, choking, and pushing his then paramour. In March 1997, Korey pled guilty to a charge of domestic abuse assault. The complaint alleged Korey slapped his girlfriend in the head, pushed her head into a wall, and punched her in the stomach. He was ordered to attend a batterer's treatment program, but he did not complete the program. A no-contact order was issued, which Korey violated several times. In January 1999 Korey was convicted of domestic abuse assault causing bodily injury, second offense.

On September 3, 1999, the juvenile court found Kolton to be a child in need of assistance as defined by Iowa Code sections 232.2(6)(b), (c)(2), and (n). The court determined Kolton should be removed from his mother's care and placed in foster care. On the same date, the State filed a petition to terminate

Korey's parental rights to Kolton. The petition did not seek the termination of Kolton's mother's parental rights.

A termination hearing was held in February 2000 and the juvenile court terminated Korey's parental rights to Kolton under section 232.116(1)(m). The court found that due to the nature of the injuries leading to Kyler's death, Kolton would be in imminent danger if left in Korey's unsupervised care. The court determined it was in Kolton's best interests to terminate Korey's parental rights. Korey appealed.

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).

Korey's parental rights were terminated under section 232.116(1)(m), which provides for termination if the juvenile court finds all of the following have occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (2) The parent has been convicted of child endangerment resulting in the death of the child's sibling, has been convicted of three or more acts of child endangerment involving the child, the child's sibling, or another child in the household, or has been convicted of child endangerment resulting in a serious injury to the child, the child's sibling, or another child in the household.
>
> (3) There is clear and convincing evidence that the circumstances surrounding the parent's conviction for child endangerment would result in a finding of imminent danger to the child.

Korey concedes the State presented sufficient evidence of elements one and two, but claims the State did not make the requisite showing for the third

element. Korey asserts the State did not indicate the harm that could befall Kolton if he were placed in Korey's care. Korey argues he was a good parent except for the isolated incident which led to Kyler's death.

The State presented clear and convincing evidence the circumstances surrounding Korey's conviction for child endangerment support a finding that Korey would present an imminent danger to Kolton. Kyler had symptoms of shaken baby syndrome. His brain ceased functioning and he was in a coma for several months before he died. Kyler was in Korey's care at the time he received his injuries.

The incident leading to Kyler's injuries was not an isolated incident. Korey has a history of abusing several women. Korey's parental rights were properly terminated under section 232.116(1)(m).

Korey claims the State did not engage in reasonable efforts to reunite him with Kolton. Korey states that even though he is in prison, he should have been offered services such as collect calls, transportation, and visitation.

Reasonable services must be provided to attempt to reunite a family before the State can terminate parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1997). While the State has an obligation to make reasonable efforts, it is a parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa App. 1997). There was no evidence Korey requested services prior to the termination hearing. This issue has not been preserved for our review.

Korey contends termination of his parental rights is not in Kolton's best interests. Korey believes his parental rights were terminated only because he was incarcerated.

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, the court looks to the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The court must consider the physical, mental, and emotional condition and needs of the child in deciding to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996).

Korey has been in prison during Kolton's entire life and has had no contact with the child. Kolton would be at risk if placed in Korey's care. Korey has failed to show termination of his parental rights is not in Kolton's best interest.

We affirm the decision of the juvenile court which terminated Korey's parental rights to Kolton.

AFFIRMED.