IN THE COURT OF APPEALS OF IOWA

No. 0-687 / 00-0485
Filed January 24, 2001

FILED
JAN 24 2001
CLERK SUPREME COURT

IN THE INTEREST OF A.M.L., Minor Child,

M.R.L., FATHER,
Appellant.

Appeal from the Iowa District Court for Lee (South) County, Gary R. Noneman, District Associate Judge.

Michael, the father of Autumn born in November of 1996, appeals following the termination of his parental rights. **AFFIRMED.**

Clinton R. Boddicker of Dickey, Smith, Kultala & Boddicker, L.L.P., Keokuk, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, Michael P. Short, County Attorney, and David A. Andrusyk, Assistant County Attorney, for appellee-State.

Heard by Sackett, C.J., and Mahan, J. and Habhab, S.J.**

**Senior judge assigned by order pursuant to Iowa Code § 602.9206 (2001).

SACKETT, C.J.

Michael, the father of Autumn born in November of 1996, appeals following the termination of his parental rights. He contends that (1) no review hearing was held within six months of Autumn being found a child in need of assistance; (2) the State failed to prove by clear and convincing evidence that Autumn could not be returned to his care; (3) he was not offered reasonable services; and (4) termination of his parental rights was not in Autumn's long term best interest. We affirm.

We review termination proceeding de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). 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). We may review the facts as well as the law and adjudicate a parent's right anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Our primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275.

In June of 1998 Autumn was placed in foster care at the request of her mother. The State petitioned to have Autumn found to be a child in need of assistance. At the time this petition was filed Michael was incarcerated in the Clarinda Correctional Facility in Clarinda, Iowa. An attorney was appointed to represent his interests in these proceedings. The attorney attended the hearing where it was stipulated Autumn was a child in need of assistance under Iowa Code Sections 232.2(6)(b) and 232.2(6)(k).

On July 30, 1998 Autumn's custody was placed with the Iowa Department of Human Services and she remained in foster care. The juvenile court further

ordered the child's mother be provided with services for reunification and she be allowed to visit Autumn. The court also provided for the case to be reviewed in six months or upon the application of an interested party. No services were provided for Michael at that time and there is no record that he requested them. No review hearing was held within the six-month period. It was not until March 22, 1999, that Michael requested a review hearing. At that time he was incarcerated in the Anamosa Men's Reformatory in Anamosa, Iowa.

On April 22, 1999, the State filed a petition to terminate Autumn's parental rights under Iowa Code Section 232.116(1)(g). Michael filed on June 2, 1999, an application to modify the dispositional order contending he would be released from prison on June 12, 1999, and he wished to visit Autumn. He further filed a motion to dismiss the petition for termination of parental rights contending he was not offered services and neither a permancy hearing or a dispositional hearing had been held. He contended such hearing was necessary so that he could request services.

On July 16, 1999, the juvenile court denied Michael's motion to dismiss but ordered the hearing on the State's petition for termination of parental rights to be continued until February 17, 2000. On July 19, 1999, the juvenile court held a review hearing and ordered Michael to comply with certain terms including (1) completing a psychological evaluation and follow up treatment; (2) completing a substance abuse evaluation and follow up treatment; (3) providing releases to his prison, medical and psychiatric records; (4) obtaining and maintaining a permanent home and gainful employment and (5) successfully completing a

batterer's education program. The court provided the matter should be reviewed on February 17, 2000.

The matter came before the court on the termination petition on February 17, 2000. Autumn's mother had voluntarily relinquished her parental rights. The court found that Michael had failed to fulfill the requirements of the July 19, 1999, order and was unable to care for Autumn. His parental rights were terminated under Iowa Code 232.116(1)(g) and (i).

We first address Michael's claims that the hearings required by statute were not held and that he did not receive reasonable services. The State argues that the main objective of the requirement for a review hearing is to assure the child is in a proper placement and not necessarily to provide a parent with the forum to request services. The State also argues that it is contrary to reason that the juvenile court be expected to order services based only on the anticipation of Michael's release. We agree with Michael that the required hearings should have been held. We also agree that the fact he was incarcerated does not dictate he is not entitled to services to reunify him with his child. We also find that until July 19, 1999, Michael was not afforded reasonable reunification services as statutorily mandated. *See* Iowa Code §§ 232.99(3), 232.102(9) (1997). Though imprisonment may create difficulties in providing reunification services, imprisonment does not necessarily absolve the Department of Human Services of its statutory mandate to provide reunification services under all circumstances. *See In re S.J.*, ___ N.W.2d ___, ___ (Iowa App. 2000). Rather the department must assess the nature of its reasonable efforts obligation based on the circumstances of each case. *Id.*; *In re C.B.*, 611 N.W.2d 489, 493 (Iowa

2000). The services required to be supplied an incarcerated parent are only those that are reasonable under the circumstances. *See S.J.*, ___ N.W.2d at

Yet while we agree with Michael that the issue of offering him services should have been addressed earlier this does not mandate reversal of the termination order. The juvenile court was correct in proceeding with a hearing on the termination of parental rights petition. Michael was represented by counsel at the hearing where Autumn was found to be a child in need of assistance and there is no record he requested services at that time. *See In re M.T.*, 613 N.W.2d 690, 692 (Iowa App. 2000). Additionally, when Michael did request services they were provided. These services were sufficient under the facts of this case to meet the statutory mandate. *See S.J.*, ___ N.W.2d at ___. (finding a statutory mandate for services was met although the department provided no reunification services until one month before the termination hearing, when it allowed the imprisoned father to have supervised visits with his son and made arrangements for him to attend child-development/parenting classes).

Michael also contends there is not clear and convincing evidence supporting the termination and the termination of his parental rights is not in Autumn's best interest. While conceding that the State proved the grounds necessary for termination under Iowa Code section 232.116(1)(i) he contends the State failed to meet its burden as to Iowa Code section 232.116(1)(g) by failing to show by clear and convincing evidence Autumn could not be returned to his care.

When the juvenile court terminates parental rights on more than one statutory ground we need only find grounds to terminate under one of the

sections cited by the juvenile court to affirm. *See In re A.C.*, 553 N.W. 2d 909, 911 (Iowa App. 1996). Furthermore there is clear and convincing evidence Autumn cannot be returned to Michael's care. Michael was released from prison by the time of the termination hearing but according to his attorney was then living in North Dakota and did not attend the termination hearing because he claimed his car broke down on the way to the hearing. He was allowed to testify by telephone. After release from prison he was living in Tennessee at addresses not certain. While in Tennessee he was charged with possession of drug paraphernalia. He next lived in North Dakota in a homeless shelter. Currently he lives in an apartment with a girlfriend. Michael has failed to follow though on the requirements for treatment. Michael is not in a position to assume Autumn's care. Furthermore there is no evidence that termination is not in Autumn's best interest. She is in a foster placement with a family who has adopted her older sister. The family testified it is their intention to also adopt Autumn. This is really the only family Autumn has never known.

Finally, we note Michael's positive steps toward rehabilitation did not totally eliminate his past. While a once unfit parent may not automatically be deemed forever unfit; a parent may not simply wipe the slate clean merely by professing a desire to do so. *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990). We have considered a parent's arrests and incarcerations in determining whether return of a child to a parent would result in harm. *See In re D.P.*, 465 N.W.2d 313, 315 (Iowa App. 1990). Michael has failed to show termination of his parental rights is not in Autumn's best interest.

We affirm the decision of the juvenile court terminating Michael's parental rights to Autumn.

AFFIRMED.