IN THE COURT OF APPEALS OF IOWA

No. 6-560 / 96-962

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

R.L.M., Father,
Appellant.

FILED
SEP 30 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Constance Cohen, Associate Juvenile Judge.

The father appeals from the juvenile court's order terminating his parental rights. **AFFIRMED.**

Catherine K. Levine, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Maureen McGuire, Assistant Attorney General, John Sarcone, County Attorney, Emily McConkey and Romonda Belcher, Assistant County Attorneys.

Traci J. Poe, Des Moines, for minor child.

Decided en banc.

PER CURIAM

This case involves an appeal by a father challenging the termination of his parental rights.

Roy and Amy are the parents of David, who was born on October 8, 1994. David was born prematurely at home into a toilet. He was taken to the hospital, where he was found to suffer from extreme prematurity, respiratory insufficiency, patent ductus arteriosus which required heart surgery, anemia, feeding problems, infection, bilateral inguinal hernias which required surgery, and exposure to methamphetamine. The Department of Human Services was notified because of David's exposure to illegal drugs.

Roy and Amy admitted using methamphetamine. Amy claimed she did not know she was pregnant and she used illegal substances during the pregnancy. DHS informed the parents they would be required to successfully complete substance abuse treatment before David was released from the hospital in order for then to assume his care. A substance abuse evaluation in November 1994 recommended Roy attend an intensive outpatient program.

Neither parent had completed substance abuse treatment when David was released from the hospital on December 20, 1994, and he was placed in foster care. Amy's stepfather, Daniel, who lived in California, asked to take custody of David. At that time both parents agreed David should be placed with Daniel. On February 8, 1995, the juvenile court determined David was a child in need of assistance. He

was placed in the temporary custody of Daniel, under the supervision of DHS. The court noted the Interstate Compact should be used to engage courtesy supervision in California.

Roy entered inpatient substance abuse treatment. However, before he completed treatment, he pled guilty to pending charges of possession of crack cocaine with intent to deliver. In April 1995 he was sentenced to a term of imprisonment not to exceed ten years. If he completes his sentence he would not be released before 2000. His first parole hearing is October 1996. Roy completed classes in parenting and marriage while in prison. He testified he has not yet been able to enter substance abuse treatment.

David continues to have some medical problems. He is placed on a nebulizer, or breathing machine, three or four times every day. His fluid intake must be monitored because his lungs fill with fluid easily. He has hip problems which require special exercises every day. He is also more susceptible than other children to infections and illnesses. Furthermore, the circumstances of his birth place him at risk for special educational needs and developmental problems. Daniel has expressed an interest in adopting David.

On September 28, 1995, the State filed a petition to terminate the parental rights of Roy and Amy under Iowa Code sections 232.116(1)(g), 232.116(1)(h), and 232.116(1)(k). The juvenile court determined it had jurisdiction to hear the case. The court terminated the parental rights of Roy and Amy to David, finding the termination

was in David's best interests. The court noted Roy had not yet completed substance abuse treatment and that it would be some time before he would be released from prison. The court also found Roy had no clear understanding of David's medical needs. Only Roy has appealed the juvenile court decision.

I. The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). Our primary concern is the best interests of the child. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1994). Those best interests include the child's long-range as well as immediate interests. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995).

II. Roy claims the juvenile court lacked subject matter jurisdiction to terminate his parental rights because under the Uniform Child Custody Jurisdiction Act, chapter 598A, David's home state would be California. He states that because David has lived in California for more than six months, Iowa courts no longer have jurisdiction. He points out that chapter 598A custody proceedings included actions regarding child neglect and dependency.

We note that in the original dispositional order, the juvenile court specifically stated the Interstate Compact, found in section 232.158, would apply. Article V(a) of section 232.158 provides:

> The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would

> have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. . . .

Under Article II(b) Iowa would be the sending agency, and under Article II(c), California would be the receiving state. We conclude that under section 232.158, Iowa retained jurisdiction over David and that the juvenile court had subject matter jurisdiction in this case.

III. Roy also claims DHS did not make reasonable efforts to reunite him with David. Reasonable services must be provided to attempt to reunite the family before the State can terminate parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994).

Roy has been in prison since April 1995, and therefore unavailable for services. His incarceration was due to his own actions and he cannot fault DHS for being unable to provide services while he is in prison. Prior to his incarceration, Roy failed to take advantage of available services. Roy failed to complete substance abuse treatment or to obtain a parenting/psychological evaluation.

We also find it is not in David's best interests to give Roy additional time to accept services once he is released from prison. We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the child. *A.Y.H.*, 508 N.W.2d at 96.

We affirm the decision of the juvenile court that Roy's parental rights to David should be terminated. We determine this termination is in David's best interests.

AFFIRMED.