IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME

No. 0-367 / 00-0136
Filed July 26, 2000

IN THE INTEREST OF J.S.E., a/k/a J.S.J., Minor Child,

S.J., Father,
Appellant.

Appeal from the Iowa District Court for Clinton County, Arlen J. Van Zee District Associate Judge.

The father of minor child J.E. appeals a district court order terminating his parental rights. **AFFIRMED.**

Jeffrey L. Farwell of Farwell & Bruhn, Clinton, for appellant father.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Ross Barlow, Assistant County Attorney, for appellee State.

Matthew J. Fullerton of Schoenauer, Smith & Fullerton, Clinton, guardian ad litem for minor child.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

VOGEL, P.J.

The appellant, natural father of a minor child, appeals a district court order terminating his parental rights, alleging the services provided to him by the Department of Human Services (DHS) did not reasonably accommodate him under the Americans with Disabilities Act (ADA)[1] and the grounds for termination were not proven by clear and convincing evidence. Because we find the appellant failed to preserve error as to the issue of provision of adequate services and the record contains clear and convincing evidence to terminate parental rights, we affirm.

Background facts. Steve is the natural father of Jennifer, who was removed from parental care on October 20, 1997, at the age of one month. Both Steve and Connie, Jennifer's mother, are mentally challenged individuals with IQ's of only 58 and 60 respectively. After the birth of Jennifer, they were afforded twenty-four hour in-home supervision and instruction with the child for the first month of her life. During this time, however, the parents were unable to make any progress in providing the necessary care for the child. Subsequent to the discovery of two deep scratches on the baby's head and the continued removal of heavy blankets placed over her head while in the crib, the child was removed and placed in a foster home. Additional efforts were then made to reunite the parents with their child. When the parents again failed to reach an acceptable level of improvement, the court terminated the parental rights of both Steve and Connie. Only Steve appeals this decision.

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[1] 42 U.S.C. § 12132 (1995).

Scope of review. We review terminations of parental rights de novo. Iowa R. App. P. 4; *In re J.D.B.*, 584 N.W.2d 577, 580 (Iowa App. 1998). We review the facts as well as the law and adjudicate a parent's rights anew. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999). Our primary concern is the child's best interests, both immediate and long-term. *In re J.W.*, 528 N.W.2d 657, 659 (Iowa App. 1995).

Adequacy of services. Steve alleges the services offered by DHS to reunite him with his child were inadequate under the ADA, given his mental disability. The State asserts because Steve raised these issues during the child in need of assistance (CINA) proceedings and failed to appeal the trial court's ruling, he has not adequately preserved error as to this issue.

The trial court entered an adjudicatory order on January 7, 1998, followed with a dispositional order on March 9, 1999. A dispositional order entered by the trial court is a final, appealable order within the meaning of the rules of appellate procedure. Iowa R. App. P. 1(a); *see In re Long,* 313 N.W.2d 473, 477 (Iowa 1981) (asserting a CINA case unaccompanied by a dispositional order is not a "final" order that is appealable); *see also In re A.W.*, 464 N.W.2d 475, 477 (Iowa App. 1990) (holding the trial court order became final when the dispositional order was entered). In order to preserve error on the issue of whether Steve had been offered services that appropriately accommodated his disability under the guidelines of the federal ADA statute, Steve should have appealed the dispositional order. Having failed to do so, he has not preserved the error, which

would allow this court to address the merits of his ADA claim. *J.D.B.*, 584 N.W.2d at 581.

Clear and convincing evidence. Steve further alleges grounds for the termination of his parental rights were not proven by clear and convincing evidence under Iowa Code section 232.116(1)(g)(4) (requiring clear and convincing evidence that the child cannot be returned to parental custody because of the risk of adjudicatory harm). He contends some of the initial problems of child care, such as diapering, feeding, and dressing his daughter, will diminish as she is able to communicate her needs more fully and provide some of these care functions for herself. Steve currently resides in an assisted living facility, performing such tasks as cooking, cleaning, and laundry for himself. He further claims he has established a parental bond with his daughter and, with the provision of in-home services, he could adequately provide care for his child.

The State contends Steve, despite extensive provision of services and assistance, has remained incapable of learning the skills necessary to provide adequate care for his child. The level of parenting skills exhibited by Steve during the supervised visitation sessions clearly illustrate Jennifer cannot be returned into his care. He needed detailed instruction to perform simple tasks, was unable to communicate with and relate to Jennifer, was often uninterested in interacting or playing with her, and was unable to remain focused on or identify Jennifer's needs during the session, often spending much of the time playing by himself. The social workers involved in this case reported Steve still required prompting and instruction to see to Jennifer's safety and general care. Although

Steve is able to provide some parental care functions for Jennifer, he is unable to recognize that same need and provide for it without prompting at a later time. Unfortunately, despite the love that Steve has for his child, he is unable to adequately keep her from harm and provide for her needs. After two years of consistent receipt of services, he has not been able to make any significant progress in improving his parenting skills. This court has previously stated:

> [A] parent's mental disability alone is not a sufficient reason for termination. *In re Wardle*, 207 N.W.2d 554, 563 (Iowa 1973). But we also said there that such a disability "is a proper factor to be considered in determining whether the child is neglected to the point" at which termination is necessary to serve the child's best interests. *Id.* This necessity arises when the disabled parent lacks the capacity to meet the child's present needs as well as the capacity to adapt to the child's future needs. *Id.*

In re A.M.S., 419 N.W.2d 723, 724 (Iowa 1988). We find this to be the case here.

Therefore, we find the record contains clear and convincing evidence Jennifer cannot be returned into the custody of Steve at the present time. Accordingly, we affirm the trial court's termination of Steve's parental rights.

AFFIRMED.