

IN THE SUPREME COURT OF IOWA

SUPREME COURT No. 18-0813

Floyd County No. JVJV002481

IN THE INTEREST OF B.H.A.
MINOR CHILD

J.R., Mother
Petitioner-Appellant

M.A., Father
Respondent-Appellee

APPEAL FROM THE IOWA DISTRICT COURT FOR FLOYD COUNTY
HONORABLE KAREN KAUFMAN SALIC, JUDGE

APPELEE-FATHER'S PROOF-BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. The Juvenile Court was correct in finding it was not in the B.H.A.’s best interest to terminate M.A. parental rights.**

In the Interest of Q.G. & W.G. 911 NW2d 761, (IA 2018)

ROUTING STATEMENT

The Appellee concurs with the Appellant's routing statement: this appeal involves questions of applying existing legal principles and the case should be transferred to the Court of Appeals per Iowa Rules of Appellate Procedure Rule 6.14 and 6.401.

STATEMENT OF THE CASE

The petition to file for M.A.'s termination of parental rights of B.H.A. on February 3, 2017. The same day M.A. was sentenced to a term of 121 months in federal prison for Conspiracy to Deliver Methamphetamine. (App. 59). The petition was served on M.A. on February 10, 2017, at the Fayette County Jail in West Union. (App. 38). M.A. filed an answer to the petition on March 8, 2017 resisting the termination.

As M.A. was incarcerated, attorney Mark Huegel was appointed to be his Guardian Ad Litem; he accepted service on February 9, 2017. (App. 37). Attorney Ann Troge was appointed as Guardian Ad Litem for B.H.A.; she accepted service on March 3, 2017. (App. 39).

The termination matter was heard over two days of testimony. The first day of testimony was held on November 7, 2017. The second day of testimony was held on March 26, 2018.

STATEMENT OF RELEVANT FACTS

J.R. and M.A. started dating in April of 2013. (T.Vol. I p.33, L 7-8). At this time J.R. was living with her parents in Charles City. (T.Vol. I p. 32, L. 11-25) M.A. was also living in Charles City with his parents. (T.Vol. I p. 33, L 14-20) J.R. was aware when they started dating M.A was using drugs. (T. Vol I p. 34, L 2-25; p. 35, L. 1-2) This concerned J.R. as she was a past drug user herself. (T.Vol I p. 35, L 4-6) She started using again after meeting M.A. (T. Vol I p. 35, L. 6-8)

During the relationship M.A. was convicted of delivery of a controlled substance and was sent to a residential facility in Mason City, Iowa from September 2013 to December 2013 (T.Vol I p. 35, L 14-25; p. 36, L 1-8) During this time J.R. became pregnant with B.H.A. (T.Vol I p. 36 L. 13-18)

Both J.R. and M.A. were excited about the pregnancy. (T. Vol. p. 38, L – 10-17; p. 146, L. 6-15) During the pendency of the pregnancy M.A. went to doctor appointments (T. Vol. p. 39, L 9-10). J.R. stated that she was clean during the pregnancy and stopped taking drugs before she became pregnant. (T. Vol I pg 36, L. 13-18, L. 21-23) B.H.A was born premature at 28 weeks and 5 days gestation at the Floyd County Medical Center in April of 2014 (T. Vol. I p.43, L. 3-17) Once M.A. found out the J.R. went into labor, he made it to the birth. (T. Vol. I p. 43, L. 3-17) B.H.A was transported to Mayo Clinic in Rochester, Minnesota and stayed for a nine-week period. (T. Vol. I p. 44, (L. 11-21) M.A. went up to Mayo with

J.R.'s parents for the weekend. (T. Vol I. p. 189, L. 17-20; p. 191 L. 9-13) During which time he asked the doctors and nursing questions regarding his son's care (T. Vol I pg. 190, L. 19-25; pg. 191 L. 1-2) M.A. continued to go up on weekends when he was not working to see his son. M.A. was working in Mason City at Jaslyn Cleaning (T. Vol. I p. 191, L. 21-22) When he was unable to go up to visit he continued to stay in contact with the hospital. (T. Vol pg 192, L. 11-25; pg 193, L. 1)

When B.H.A was released from the hospital, the doctors gave instructions that B.H.A. was not to be around people smoking or second-hand smoke (T. Vol I p.46, L 5-15). B.H.A and his mother went to live with her parents in Charles City. J.R. and M.A. initially planned on finding a place to live so J.R. and B.H.A. could move in with M.A. This was pushed back by J.R. and eventually fell through. It was stated by J.R. she never intended to move in with M.A. (T. Vol. I 193, L. 6-13) J.R. would come to Mason City to have B.H.A spend time with M.A. (T. Vol I p. 19-25; p. 194, L. 1-2) M.A. also went to Charles City to see B.H.A. when he was able to get a ride, he would spend time with B.H.A. (T. Vol I p. 194, L. 3-19) When M.A. was able to be with B.H.A he changed diapers, fed him, dressed him, bathed him, and read to him. (T. Vol I p. 194, L 20-25; pg 195, L. 1-2) The couple eventually broke up on December of 2014 (T.Vol I p. 35, L. 11-13) Up until 2015, M.A saw his son on a regular basis (T.Vol I p. 196, L. 4-5) In 2015, it

became harder for M.A. to see his son. He saw his son on his first birthday in April (T. Vol. I p. 196, L. 10-25; p. 197 L. 1-9) This interaction was awkward for M.A., but did the best he could at being present for his son (T. Vol I p. 180, L. 2-14; p. 197, L. 2-9) He also saw his son in May 2015 and for Father's Day.

Father's Day was the last day he was able to see his son (T Vol I p. 197, L. 12-19) M.A was accused of being drunk or high when he came for Father's Day and was not allowed to visit his son. He was on probation at the time and offered to get a UA done. He chose to walk away from the situation and not put his child in harms way (T. Vol. I p. 198, L. 6-25; p. 199, L. 1-9) M.A. continued to ask J.R. if he could see his son. He tried to see his son a couple of weeks later and ended up having the police called on him regarding a suicide attempt. The police did not find this credible and let him go (T. Vol I p. 200, L. 11-25; p. 201, L. 16)

In November of 2015, M.A. was stopped in Floyd Count for driving while suspended and possible possession of a controlled substance (T. Vol. II p.12, L. 1-5) He was released, but then put in the Cerro Gordo County jail in December of 2015 and has since remained incarcerated. (T. Vol II p. 12, L. 6-10; p 18 L. 17-23) M.A. was sent to Federal prison for conspiracy of distribution of methamphetamines, he will be incarcerated for 121 months, his release date is September 18, 2024 (T.Vol. p. 218, L. 15) M.A. is currently in Fort Worth, Texas at a Federal Incarceration Medical Facility (T. Vol II p. 4, L. 21-25; p. 5, L. 1-5)

A petition to change B.H.A.'s name was filed in March of 2016. It was denied on March 21st, 2016 by Honorable Judge Foy. (T. Vol I, p. 78, L. 12-23; Exhibit 12) It was stated in the Order denying the Petition that the lack of contact between you (M.A.) and your son (B.H.A.) is properly attributable more to poor communications and hard feelings between you and J.R. than to your intent on the part of yourself to abandon your (M.A.) son. (T.Vol. I p. 216, L. 10-19, Exhibit 12)

J.R. has not fostered the relationship between M.A. and B.H.A (T. Vol I p. 208, p. 16 – 25) M.A.'s name was not put on the birth certificate even when he did what he needed to do to have his name added (T. Vol I p. 210, L. 11-22)

During his time being incarcerated he has been taking parenting classes, going to N.A., and A.A. (T. Vol II p 211 L. 3-25; p. 212, L. 1-14; Exhibit 1; Exhibit 2) M.A has signed up to start taking college classes for an Associate's Degree in business. He is also working in an electric shop and the metal shop to learn new skills. (T. Vol II p. 219, L. 14-24)

While incarcerated M.A. has tried to maintain contact with B.H.A. M.A. sent letter to B.H.A. on December 23, 2015; February 10, 2016; April 12, 2016; April 13, 2016; July 4, 2016; August 16th, 2016; September 28th, 2016; December 7, 2016; March 27, 2017; July 7, 2017. (T. Vol II p. 205, L. 2-23) He sent birthday cards to B.H.A and sent drawings (T. Vol II p. 205, L. 23-25) M.A. also tried to contact J.R. and B.H.A by phone. He called several times to see how B.H.A was

doing. He did talk to J.R. a few times, but was not told how his son was doing (T.Vol I p. 206 L. 13-25; p. 207 L. 24) M.A. has not been told when J.R. moved, nor been given information regarding B.H.A., he found out most of this information at trial (T. Vol. p. 207, L. 25; p. 208, L. 1-12)

ARGUMENT

II. The Juvenile Court was correct in finding it was not in the B.H.A.'s best interest to terminate M.A. parental rights.

“The Juvenile Court stated in their decision M.A. certainly has made positive gains while incarcerated; is learning a trade; has been substance free for years and voices a desire to have contact with his son. It is impossible to know if these circumstances will continue once he is released, but if it does... it would not be in B.H.A's best interest to rob him of that opportunity.” (App. 46-55(54)) The trial Court was correct, to rob B.H.A of a relationship with his father at the age of three would be wrong. M.A. has shown he is capable of change and more so, he wants to change. He has taken responsibility for his actions and making the most of the situation he is in (T. Vol I p. 218 L.20-25; p. 219 L. 1-25) He is taking parenting classes, has participated in A.A. and N.A. He has also completed a 12-hour program and is currently working on a 40-hour program. *Id.* He is further working on learning a trade and getting a degree so he is able to provide for himself and his son once he is released. *Id.*

The best interest of the child requires a parent to have a continued interest in the child, demonstration of a genuine effort to maintain communication with the child, and demonstration of the establishment and maintenance of a place of importance in the child's life. *Iowa Code Section 600A.1*. M.A has always shown an interest and has continued to do so while incarcerated to be a part of B.H.A's life. He has demonstrated this by going to see B.H.A in the hospital after his birth, helping with expenses when he could, and giving love and affection when he was with B.H.A as shown in the pictures given as exhibits at trial. He continued to reach out to B.H.A. while he was incarcerated by sending letters, birthday cards, and pictures to B.H.A. He also tried to communicate with the mother by phone, but could not get an answer from J.R. M.A. did not know until the court hearing where J.R. was living so he was unable to send letters to her house, but he continued to send letters to J.R.'s parents house in hopes they would make their way to B.H.A.

The best-interest-of-the-child- test has been observed by the Supreme Court of Iowa as to having both backwards and a look forward aspect. Specifically, the Court has stated, "We look to the child's long range, as well as immediate interests. We consider what the future holds for the child if returned to his or her parents." *In the Interest of Q.G. & W.G.* 911 NW2d 761, 771 (IA 2018). There is no arguing M.A. has had a rough past; as the mother. J.R. also has had.

However, looking at M.A.'s future and how he is bettering himself for him and his son it is looking much brighter. When he is released he will have the skills to obtain employment and be able to help with the financial burden with regards to B.H.A., which if his rights are terminated he would not be able to provide. He will also have better parenting skills because of his parenting classes he is taking while incarcerated.

Currently there is no one identified to take the legal father role by adoption in the event M.A.'s rights were terminated. As a social policy, to terminate M.A.'s parental rights without someone to adopt B.H.A would not be wise as there is no one to help support B.H.A. financially, or is something were to happen to J.R. there would be no legal parent responsible for B.H.A.

The progress shown by M.A would be identical to the progress the father showed in the *Interest of Q.G. and W.G.* Similar to the father in that case, M.A. has recognized the problem he had with drugs, he has completed and continues to participate in drug treatment courses while incarcerated. He has also taken parenting classes so he is better able to parent B.H.A. when he is released. The Court stated in this case because of these things, it showed the father interest in resuming a relationship with his children upon release. *Id.*

The showing that J.R. is and has been a hinderance to M.A. having a relationship with B.H.A. is shown in the Order denying the name change

petition. (Exhibit 12). The Judge recognized that the reason for lack of contact was because of the poor communication and hard feelings between the parents than it was abandoning the child.

B.H.A is a young child. M.A strongly desires to continue to be his father and have contact with him. The limited amount contact is due not only to his incarceration, but to the barriers which have been put up by the mother and her family. The fact that B.H.A is young shows that in the future he may benefit from a relationship with his father. Age was another determining factor in the *Interest of Q.G. and W.G.* Children want a father figure in their life, M.A's family is in Charles City; eventually B.H.A will know who is father is whether M.A has legal ties to B.H.A. or not. To break that tie between father and son at such a young age before B.H.A. has chance to know his father would be more detrimental to B.H.A. then helpful. B.H.A will more than likely know this history of his father and know of him. Being able to have a relationship to his father for M.A. to explain his past would be much more beneficial to B.H.A. than to ignore it completely.

It is to soon to write off M.A's potential at being a positive influence in B.H.A.'s life. Given the fact that M.A. is working on bettering his life, continues to try and reach out to his son, and that there is no one to step in and adopt B.H.A. terminating M.A.'s rights is not in the best interests of B.H.A. at

this time.

CONCLUSION

The Appellee respectfully requests that this Court affirm the Juvenile Courts ruling in not terminating the parental rights of M.A. as it would not be in the best interests of the child.

REQUEST FOR ORAL ARGUMENT

Appellee-Father, respectfully requests that this matter be set for nonoral submission. In the event argument is scheduled, the Appellee asks to be heard.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903 (1)(g)(1) or (2) because:

this brief contains 3144 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

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CERTIFICATE OF FILING

I, Danielle M. DeBower, hereby certify that I will file the attached Appellant's Proof Brief by electronically filing a copy thereof with the Clerk of the Supreme Court, Iowa Judicial Branch Building, 1111 E. Court Avenue, Des Moines, IA 50319.

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CERTIFICATE OF SERVICE

I, Danielle M. DeBower, hereby certify that on the 20th day of August, 2018, I served the attached Appellee's Proof Brief. Parties have been served by electronic filing. Client was sent a copy to the last known address.

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ATTORNEYS COST CERTIFICATE

I, Danielle M. DeBower hereby certify the actual cost of reproducing the necessary copies of the preceding Proof Brief consisted of 16 pages was \$0 and that amount has been actually paid in full by me.

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