

IN THE COURT OF APPEALS OF IOWA

No. 0-478 / 10-0826
Filed July 14, 2010

**IN THE INTEREST OF A.B. and C.B.,
Minor Children,**

**R.J.R., Father,
Appellant.**

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

A father appeals the termination of his parental rights to two children.

AFFIRMED.

Victoria L. Meade, West Des Moines, for appellant father.

Joey Hoover, Des Moines, for appellee mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney, John P. Sarcone, County Attorney, and Andrea Vitzthum, Assistant
County Attorney, for appellee State.

Michelle R. Saveraid of Youth Law Center, Des Moines, for minor children.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

VAITHESWARAN, P.J.

Rey appeals the termination of his parental rights to his two children, born in 2008 and 2009. He contends (1) “[s]ervices were not offered to [him]” and (2) “termination of [his] parental rights and the parent/child relationship is contrary to the best interests of [the children].” On our de novo review of the record, we are not persuaded by these contentions.

The children were removed from Rey’s care after he struck one of them in the head. That child was diagnosed with skull fractures and underwent brain surgery to drain fluid from his cranium. Following the injury, the child did not track people or smile as he did before the injury, could no longer hold his head up as he used to, and did not roll over.

A criminal no-contact order was entered precluding any interaction between Rey and his children. Rey pleaded guilty to child endangerment and began serving a twenty-five year prison sentence. At the conclusion of his sentence, he is to be deported from the country based on his undocumented status.

In its termination order, the juvenile court stated:

Because of his own actions, Rey [] was not available to participate in reunification services. Rey [] was convicted of very seriously injuring his son. [The child] still suffers from the abuse. Ray has been incarcerated throughout the course of this case and is now sentenced to 25 years, so he will not be available to provide for his children in any way throughout the course of their minority. Additionally, when he is released from the Iowa Department of Corrections, he will be deported to Mexico and will not be permitted to re-enter the United States legally.

Although the permanency plan is to maintain custody with the children’s mother, termination of parental rights is in the children’s best interests and would be less detrimental than the

harm that would be caused to them by continuing the parent/child relationships with the father. There are no compelling reasons to maintain [Rey's] parental rights with [the children]. The children's needs for permanency, safety, and stability are best served by eliminating the possibility that their father could disrupt their lives again.

We concur in this assessment.

We recognize that the Department of Human Services has an obligation to "show reasonable efforts as part of its ultimate proof the child cannot be safely returned to the care of a parent." *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). However, the record fails to support Rey's present assertion that he "was not contacted by anyone from the [department] prior to the termination hearing." In fact, a department employee spoke to Rey about her recommendation that he participate in "extensive therapeutic, psychiatric and rehabilitative services" to address his anger issues. This employee also provided Rey with Spanish copies of all department reports.

As for Rey's argument that termination is not in the children's best interests, there can be no doubt that Rey severely compromised the children's safety. See *In re P.L.*, 778 N.W.2d 33, 37 (Iowa 2010) (stating one of the primary considerations under section 232.116(2) is "the child's safety"). Apparently conceding this fact, Rey maintains that because he faces a lengthy period of incarceration and subsequent deportation, "[h]e cannot harm his children." In his view, these facts, together with the fact that the children were placed with their mother, militate in favor of deferring termination and affording the children "the opportunity to continue to know their father in whatever limited arrangement could be set up." See Iowa Code § 232.116(3)(a) (2009) (stating court need not

terminate if “[a] relative has legal custody of the child”). In our view, these are precisely the facts that favor termination. Like the juvenile court, we see no compelling reason to conclude otherwise.

We affirm the termination of Rey’s parental rights to his two children, born in 2008 and 2009.

AFFIRMED.