IN THE COURT OF APPEALS OF IOWA

No. 0-659 / 10-1216
Filed October 6, 2010

IN THE INTEREST OF E.P., J.P., I.R., C.R., and J.R., Minor Children,

S.R., Father,
Appellant.

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor, Judge.

A father appeals from the order terminating his parental rights. **AFFIRMED.**

Katherine Varlas Teel, Davenport, for appellant father.

Christine Frederick, Davenport, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Michael J. Walton, County Attorney, and Julie A. Walton, Assistant County Attorney, for appellee State.

Charles Elles, Bettendorf, for minor children.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ. Tabor, J., takes no part.

DOYLE, J.

A father appeals the termination of his parental rights to his four children: J.P., C.R., I.R., and J.R. He claims he was not properly notified of the juvenile court proceedings and the State failed to prove the grounds for termination by clear and convincing evidence. We review his claims de novo. *See In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

The mother of the four children involved in this appeal[1] lived with the children and their father in Chicago, Illinois. In April 2008, she and the children left the father's home and moved in with the mother's parents, who also lived in Illinois. In February 2009, the mother decided to move to Iowa with the children. The children quickly came to the attention of the Iowa Department of Human Services (Department) after it was reported the mother choked the oldest child and bruised his arm. The children were removed from the mother's care and placed in the custody of the Department for placement in foster care.

A child in need of assistance (CINA) petition was filed in March 2009. The father's address was listed as unknown. Upon application by the State, the juvenile court allowed the State to serve the father with notice of the proceedings by publication in an Iowa newspaper. The children were adjudicated as CINA pursuant to Iowa Code sections 232.2(6)(b) and (c)(2) (2009) in May 2009. A dispositional order entered in July 2009 continued the children's custody with the Department for placement in family foster care.

[1] The mother had a fifth child, E.P., with a different father, who has not appealed the termination of his parental rights. The mother has also not appealed the termination of her parental rights.

In August 2009, the father, who still lived in Chicago, contacted the Department. He informed the social worker assigned to the case that he had just learned of the children's whereabouts and the Department's involvement in their lives by listening to the mother's voicemail. He signed a document titled, "Waiver of Service of Notice Acknowledgment of Receipt of Petition," which stated in part,

> I agree that the Court can notify me by mail of the date and time of the hearing on this petition. I know this means I am giving up the right to be notified IN PERSON of the date and time of the hearing.

The father asked to be considered as a placement option for his children, but the Department denied that request due to reports of domestic violence between him and the mother. The father attended court hearings, participated in an anger management and parenting skills course in Illinois, and had one visit with his children in January 2010.

The State filed a petition to terminate parental rights in February 2010. Following a hearing, the juvenile court entered an order terminating the father's rights to J.P. and I.R. under Iowa Code sections 232.116(1)(d), (e), and (h) and to C.R. and J.R. under sections 232.116(1)(d), (e), and (f). The father appeals.

We first address the father's claim that he was not properly notified of the CINA proceedings. Under section 232.88, the father was entitled to reasonable notice. *See In re M.L.M.*, 464 N.W.2d 688, 690 (Iowa Ct. App. 1990). Section 232.88 provides that "reasonable notice" for CINA adjudicatory hearings is governed by the process of section 232.37, which includes personal service upon known parents by the sheriff or by certified mail at the last known address when the court determines that personal service is impracticable. Iowa Code § 232.37(2), (4). After an initial invalid summons or notice, section 232.37(4)

allows service of notice to be made in accordance with the rules of the court governing such service in civil actions. Iowa Rule of Civil Procedure 1.310 allows service by publication in certain civil actions after an affidavit is filed stating that personal service cannot be had.

The father argues "[n]o due diligence was exercised by the Department to ascertain [his] whereabouts." He also challenges the State's service of notice by publication in an Iowa newspaper, as the Department was aware he resided in Illinois. *But see* Iowa R. Civ. P. 1.313 (stating publication of original notice "shall be made once each week for three consecutive weeks in a newspaper of general circulation published in the county where the petition is filed"). We conclude the father waived any supposed deficiencies in the State's service of notice of the CINA proceedings for the reasons that follow.

The father, as mentioned, found out about the CINA proceedings independently, rather than as a result of statutory notice. At that time, he could have challenged the State's service of notice and requested the adjudicatory or dispositional order be vacated. *See In re J.F.*, 386 N.W.2d 149, 151 (Iowa Ct. App. 1986). He did not do so. Instead, he signed a waiver of notice and began participating in the proceedings. An attorney was appointed to represent him, and services were offered. "Where a party consents to an action by his presence and silence, he is estopped from later challenging the validity of the proceedings." *Id.* at 152 (holding father who learned of CINA proceedings on his own had waived right to later have dispositional order vacated).

Furthermore, the father received notice of the termination petition and hearing, was present at the hearing, and represented by counsel. *See M.L.M.*,

464 N.W.2d at 690 (upholding termination where father received notice of termination proceeding but not of prior CINA proceeding). The State's failure to personally serve him notice of the CINA proceedings does not require a reversal of the termination which, as we will discuss below, was supported by clear and convincing evidence. *See id.* (rejecting father's argument that failure to include him in the CINA proceedings required reversal of the termination because there was clear and convincing evidence the father abandoned the children).

We need only find termination proper under one ground to affirm. *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). In this case, we choose to focus our attention on section 232.116(1)(e) as the basis for termination. Under that section, parental rights may be terminated if the court finds by clear and convincing evidence (1) the children have been adjudicated CINA, (2) the children have been removed from the physical custody of the parent for at least six consecutive months, and (3) the parent has not maintained significant and meaningful contact with the children during the previous six consecutive months and has made no reasonable efforts to resume care of the children despite being given the opportunity to do so. Iowa Code § 232.116(1)(e).

Because the first two elements of section 232.116(1)(e) are clearly met, the father's claim implicates only the third element—lack of significant and meaningful contact with the children. "Significant and meaningful contact"

> includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that

> the parents establish and maintain a place of importance in the child's life.

Id. § 232.116(1)(e)(3).

The father begins by arguing his lack of contact with the children from February 2009 "when they were removed from the State of Illinois without his knowledge or consent" until August 2009 "was beyond his control." He maintains he "diligently searched for his children for seven . . . months." This argument implies he was not aware of where the children were during that period of time. However, the father testified the mother called him when she left Illinois and told him she had moved to Davenport, Iowa, with the children. The father and mother spoke on the telephone after the mother left Illinois, yet the father made no attempt to see his children until he learned the Department was involved in August 2009. In any event, the time period we are concerned with is the six consecutive months preceding the termination hearing, which took place in June 2010. *See id*.

On that question, the father asserts:

> Once he located his children, he made every effort to maintain contact with them. He requested visits, kept in touch with the caseworker, and made attempts to determine what he might do in order to be considered a placement option. . . . [His] contact with the children was limited by virtue of their placement in Davenport, Iowa and his residence in Chicago, Illinois.

The record again belies this assertion.

The father was offered visits with the children in Iowa when he first became involved in the case in August 2009. Yet no visit occurred until January 2010. That was the first and only visit the father had with the children, even though he was in Iowa several times after that. He did not speak to the children

on the telephone, though he was allowed to do so, testifying at the permanency hearing, "The foster parents did give me their numbers, and that was my choice not to contact because it was too emotional for me, and I didn't want to ruffle any feathers." There is no indication in the record that the father attempted to provide any financial support for the children after the mother left his home in April 2008. Most importantly, it is clear the father did not "establish and maintain a place of importance" in the children's life. *See id.*

The last time the father saw his children before the visit in January 2010 was in April 2008, before they moved out of his home in Illinois. The only child that seemed to remember him was his oldest son, J.P. He met his youngest son, J.R., for the first time at the visit in January 2010. None of the children expressed any interest in seeing the father again after that visit. Upon our de novo review of the record, we agree with the juvenile court that clear and convincing evidence supports termination of the father's rights under section 232.116(1)(e).

For the same reasons, we find the decision to terminate the father's parental rights to be in the children's best interests. *See P.L.*, 778 N.W.2d at 37 (stating the primary considerations in determining the best interests of a child are the child's safety; the best placement for furthering the long-term nurturing and growth of the child; and the physical, mental, and emotional condition and needs of the child). Aside from the fact that the children had next to no contact with the father for much of their young lives, he was not able to assume care of them at the time of the termination hearing because he was in jail for assaulting the mother. "It is well-settled law that we cannot deprive a child of permanency after

the State has proved a ground for termination under section 232.116(1) by hoping someday a parent will learn to be a parent and be able to provide a stable home for the child." *Id.* at 41.

We affirm the judgment of the juvenile court.

AFFIRMED.