IN THE COURT OF APPEALS OF IOWA

No. 0-698 / 10-1050
Filed October 6, 2010

IN THE INTEREST OF C.G.,
Minor Child,

C.H., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Louise M. Jacobs, District Associate Judge.

A father appeals the district court's order terminating his parental rights. **AFFIRMED.**

Tammi M. Blackstone of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellant father.

Joey T. Hoover, Des Moines, for mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, Christina Gonzalez, Assistant County Attorney, for appellee State.

M. Kathryn Miller of Juvenile Public Defender's Office, attorney and guardian ad litem for minor child.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

VAITHESWARAN, P.J.

A father appeals the termination of his parental rights to his child, born in 2009. He contends (1) the juvenile court should not have terminated his rights pursuant to Iowa Code sections 232.116(1)(b) (2009) (requiring proof of abandonment or desertion), 232.116(1)(d) (requiring proof of several elements including proof of physical abuse or neglect), and 232.116(1)(e) (requiring proof of several elements including proof of the absence of significant and meaningful contact); (2) termination was not in the child's best interests; and (3) the termination trial should have been continued to give him additional time to prepare for the proceeding.

I. We may affirm if we find clear and convincing evidence to support any of the grounds cited by the juvenile court. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our review is de novo. *Id.*

A court may terminate a parent's rights to a child if the court finds "there is clear and convincing evidence that the child has been abandoned or deserted." Iowa Code § 232.116(1)(b). "Abandonment of a child" is defined as follows:

> [T]he relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Id. § 232.2(1). By its terms, this definition requires proof of two elements: (1) conduct and (2) an intention to abandon. *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994); *cf.* Iowa Code § 600A.2(19) (containing no intent requirement). In contrast, "desertion" does not contain an intent requirement. *See* Iowa Code

§ 232.2(14) ("Proof of desertion need not include the intention to desert, but is evidenced by the lack of attempted contact with the child or by only incidental contact with the child."). It simply requires proof of "the relinquishment or surrender for a period in excess of six months of the parental rights, duties, or privileges inherent in the parent-child relationship." *Id.*

The juvenile court found that the father did not have contact with the child for over six months and had showed little interest in the child since the child's birth. The record supports this finding.

The child was born in July 2009. The father was incarcerated in September 2009 and remained incarcerated through the termination hearing in May 2010. Although he was aware he had a child and testified he visited him and voluntarily paid child support prior to his imprisonment, he acknowledged he had no contact with the child after his confinement. Based on this record, we conclude the father deserted the child within the meaning of Iowa Code section 232.116(1)(b).

II. We must next determine whether termination was in the child's best interests. On this question, the Iowa Supreme Court recently stated:

> In considering whether to terminate, "the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child."

In re P.L., 778 N.W.2d 33, 39 (Iowa 2010) (quoting Iowa Code § 232.116(2)). The father testified his tentative discharge date was February 2012. Accordingly, he was in no position to monitor the child's safety, further the "long-term nurturing and growth of the child," or attend to "the physical, mental, and emotional

condition and needs of the child." *See* Iowa Code § 232.116(2). The father conceded as much, testifying his hope was not to have the child returned to him, but to have him placed with one of his relatives. The relative he identified received a picture of the child from the father but had no contact with the child. Under these circumstances, termination of the father's parental rights was in the child's best interests.[1]

III. The father finally contends the juvenile court should not have denied his motion to postpone the termination hearing. Our review is for an abuse of discretion. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996).

The record reveals the State had trouble serving the father with notice of the child-in-need-of-assistance petition that preceded the termination action. The State located the father only after the termination petition was filed and did not formally establish his paternity until shortly before a scheduled termination hearing.

When the paternity test confirmed he was a biological parent of this child, the juvenile court rescheduled the termination hearing as to the father. The State had the father personally served with the termination petition and notice of the rescheduled hearing date. The court appointed an attorney for the father who was to serve as his personal attorney and guardian ad litem.

Two days before the rescheduled termination hearing date, the father's attorney moved for a continuance "to prepare a defense." At the beginning of the scheduled termination hearing, the father's attorney stated she was appointed

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[1] *In re P.L.* also instructs that we consider the "exceptions" to termination set forth in Iowa Code section 232.116(3). *P.L.*, 778 N.W.2d at 39. The father does not argue that these exceptions apply.

just shy of a month earlier and "had a limited amount of time to speak and work" with the father on this matter and to explore the possibility of participating in services. She also suggested the hearing should be postponed until his mandatory minimum sentence was "done in December of 2011." The district court denied the motion and proceeded with the termination hearing. This denial did not amount to an abuse of discretion.

With respect to the attorney's assertion that she needed additional time to mount a defense, she did not indicate what additional evidence she would have garnered or presented had she been afforded additional time. Moreover, the father was available to testify and was allowed to testify by telephone.

As for the attorney's claim that the father required additional time to participate in reunification services, the "abandonment or desertion" ground for termination on which we affirm the termination decision does not require the provision of reasonable reunification services as a predicate to termination. *See* Iowa Code § 232.116(1)(b).

Finally, the attorney's request to postpone the hearing until the father's mandatory minimum sentence expired would have left the child in limbo for more than eighteen additional months. As has been repeatedly stated, we must view the statutory time periods preceding termination with a sense of urgency. *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000). For these reasons, we conclude the juvenile court did not abuse its discretion in denying the motion to continue.

We affirm the termination of the father's parental rights to this child.

AFFIRMED.