IN THE COURT OF APPEALS OF IOWA

No. 0-764 / 10-1386
Filed November 10, 2010

IN THE INTEREST OF S.C.-D.,
Minor Child,

D.J.D., Father,
Appellant.

Appeal from the Iowa District Court for Grundy County, Kellyann M. Lekar, Judge.

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

Michael H. Bandy of Bandy Law Office, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Kirby D. Schmidt, County Attorney, and Erika Allen, Assistant County Attorney, for appellee.

Tammy Banning, Waterloo, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

SACKETT, C.J.

Daniel, the father of two-year-old S.C.-D., appeals from the juvenile court order terminating his parental rights. He contends the court should have deferred permanency for six months to "allow him to continue the progress he had made in the short time since his release from incarceration." We affirm.

I. Background.

The child, born in March of 2008, first came to the attention of the Department of Human Services in May of 2009 because of concerns about the mother's mental health and substance abuse. The father has a long history of alcohol abuse and criminal drug activity and was incarcerated when the child was born. The court found the child to be in need of assistance in July and allowed the child to remain in the mother's care as long as the mother remained in inpatient treatment. The father did not appear at the adjudication hearing. A dispositional order in October continued the child's placement with the mother under the protective supervision of the department as long as the mother was in inpatient treatment. At the time of the disposition hearing, the father was incarcerated because of a parole violation. He had been in contact with the child only once in her life up to that time. The court appointed special advocate for the child expressed concerns with the father's lack of involvement in the child's life and "if he has any intention to become involved in the family."

In early December the court removed the child from the mother's care based on her arrests in Wisconsin for operating while intoxicated and for child neglect. Neither the father nor his attorney appeared at the removal hearing.

The court placed the child with the maternal grandparents. After a disposition review hearing in February of 2010, the court continued the child's placement with the maternal grandparents. At the time, the father was incarcerated in Wisconsin, but had a scheduled release date in June. He wrote a letter to the department noting his desire to be considered an option for the child's placement after his release. There is some indication he may have participated in the hearing by telephone. The court noted:

> The father indicated a desire to be considered for placement or that his relatives be considered for placement. The father is presently incarcerated. Upon the father's release from incarceration he will need to prove his ability to parent his child before the Court can consider his request for placement. This matter is approaching the time for permanency and the child's father has been unavailable to the child during the time of the juvenile court's involvement due to his own actions which led to his incarceration.

The court ordered the father to contact the department "immediately" upon his release from incarceration to begin his involvement with services. It also ordered that the child be evaluated for fetal alcohol syndrome. A permanency hearing was set for May. At the hearing, the State indicated its intention to seek termination of both parents' parental rights. A combined permanency and termination hearing was set for August.

The father was released from his incarceration in Wisconsin in late June, but then had to appear for bond in the county jail. He was there three days. After his release he lived with his mother in Wisconsin. He has no license to drive, but can seek one ninety days after the date of his release. Two weeks before the termination hearing, the father requested permission to travel to Iowa for the hearing. He met with his probation officer the day before the August

hearing and received permission to travel to Iowa for the hearing and for "anything deemed to involve" the child, such as visitation.

At the hearing, the father testified he had not contacted the department after his release, did not have any reunification plan, and had not participated in any services. When asked about his intentions for visitation and establishing a relationship with his child he testified, "I could maybe start with once every other week as a start until I get financially more able to not only travel but to maintain a stable residence also."

The child's paternal aunt testified at the termination hearing and expressed an interest in the child and in being considered as a placement for the child. The aunt and uncle had been in contact with the department about being considered, but no home study had been conducted by the time of the hearing.

In its termination order the court found the father, since his June release, had "done very little to initiate himself with the Department and its services." His travel restrictions "have further hampered his ability to engage in services." It further found, "He is, on all levels except biologically, a stranger to this child."

Concerning the father, the court concluded:

> There exists clear and convincing evidence that the child in interest cannot be placed in the care of her father, that the father has been incarcerated for all but five months of her life, that the father has never given significant or meaningful care to the child and has only had contact with the child one time, that the father has never served in the role of a parent to the child, that the father has a history of substance abuse, criminal involvement and failure to cooperate with authority, that the father has just recently been [released from] prison and is still establishing his stability, that the father has made only minimal attempts to show an interest or participate in services or to establish his intention to fulfill the service expectations to gain custody of his daughter, and that the

> child cannot be placed in the care of the father at this time or within a reasonable period.

The court further concluded, "The parent's request for an additional six months of services is not in the best interests of the child."

The court terminated the father's parental rights under Iowa Code sections 232.116(1)(d) and (h). The father appeals.

II. Scope of Review.

Our review of juvenile court orders in child-in-need-of-assistance and termination-of-parental-rights proceedings is de novo. Iowa R. App. P. 6.907 (2009). The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972).

III. Discussion.

The father contends the court erred in terminating his parental rights. He does not challenge either of the statutory grounds for termination. Any such claim is waived. *See* Iowa R. App. P. 6.903(2)(*g*)(3). Instead, he argues he should have been given an additional six months "to allow him to continue the progress he had made in the short time from his release from incarceration." While we agree it appears the father has obtained employment, has housing with his mother, and has permission to leave Wisconsin to participate in family services, we do not agree he has made any progress toward reunification with the child. He has no relationship with her. He did not take advantage of the more than six weeks between his release and the termination hearing to contact

the department, to seek visitation, or to provide for his child in any way. His past history of alcohol abuse and criminal difficulties mean it would take significant time and participation in services before reunification with his child could even be considered. Once the statutory time periods for reunification have passed, we view the case with a sense of urgency. *See In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa /1987); *In re R.C.*, 523 N.W.2d 757, 760 (Iowa Ct. App. 1994). We have reached the point in this case where the rights and needs of the child rise above the rights and needs of the parents. *See In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Giving "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," we conclude termination, rather than delaying permanency for six more months, is proper. Iowa Code § 232.116(2); *see In re P.L.*, 778 N.W.2d 33, 41 (Iowa 2010); *see also* Iowa Code § 232.104(2)(b) (requiring the court to enumerate the specific changes or conditions that form the basis for a determination the need for the child's removal would no longer exist after the after six-month period).

The father also argues the department "failed to appropriately follow through" with the aunt and uncle as a potential placement for the child. Both the aunt and a worker from the department testified at the hearing concerning what had been done to pursue placement with the aunt and uncle. The court considered the potential placement and rejected it. Given the stability of the child's current relative placement and its potential to become an adoptive

placement, we agree with the decision of the court not to subject the child to a disruptive move.

AFFIRMED.