

IN THE COURT OF APPEALS OF IOWA

No. 0-770 / 10-1229
Filed November 24, 2010

**IN THE INTEREST OF K.L., E.L., and M.L.,
Minor Children,**

**D.A.N., Father,
Appellant.**

Appeal from the Iowa District Court for Benton County, Jane F. Spande,
District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Erek Sittig, Cedar Rapids, for appellant father.

Kristin Denniger, Cedar Rapids, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant
Attorney General, David C. Thompson, County Attorney, and Anthony Janney,
Assistant County Attorney, for appellee state.

Troy Powell, Cedar Rapids, for minor child.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

A father appeals from the termination of his parental rights to his three daughters, born June 2006, August 2008, and September 2009. He contends reasonable efforts were not made for reunification and he was not served with the proper notice of the termination proceedings. We review these claims de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). The father further alleges the juvenile court erred in denying his motion to continue the termination trial. We review a motion for continuance under an abuse of discretion standard and will reverse only if injustice will result to the party desiring the continuance. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa Ct. App. 1996). Because we find termination of the father's parental rights proper under the facts and circumstances of this case, we affirm the order of the juvenile court.

This family came to the attention of the Iowa Department of Human Services (DHS) in March 2009¹ when the father took the two older children to a party where minors were consuming alcohol and using marijuana.² The older two children were adjudicated in need of assistance (CINA) as a result of this incident. The mother was pregnant with the third child at the time. The parents had an off-and-on relationship, and were living together until April 2009, when the father moved out of the home. The father admitted he did not have the needed support from his own family for the children to be placed in his care. The father

¹ The family previously came to the attention of DHS in April 2008, when a child abuse assessment was founded naming the father as a perpetrator of denial of critical care for the oldest child as a result of a domestic violence incident that occurred in the presence of the child while the mother was pregnant with the second child. That case was eventually closed with the children remaining with the parents.

² The father was charged with possession of alcohol under the legal age for the incident.

was facing up to sixteen months in prison for probation violations, and indicated that once he was off probation he was considering moving to Florida. The father has a history of alcohol and drug use.

In May 2009, the mother and the children moved in with her new boyfriend, Michael, and his parents. She reported that she and Michael were going to get married and Michael was going to adopt the children. The mother was not working and was relying on her parents and Michael's parents for financial support. The third child was born in September 2009. In November 2009, Michael ended the relationship and informed the mother that she and the three children had to move out. The mother concluded she was unable to care for the children and placed them with her mother (the children's maternal grandmother). The children have remained in the custody of the maternal grandmother since that time. In March 2010, the mother informed the court of her clear intent to voluntarily relinquish her parental rights.

The father had only one contact with the children from April 2009 to January 2010. Between January and April 2010, the father had two visits with the children and called the maternal grandparents about the children six times.³ Caseworkers advised the father repeatedly that he could contact the maternal grandparents to set up times to visit the children. After April 2010, the father did not visit or speak with the children, or contact DHS about further visitation. DHS made significant efforts to contact the father, but did not know his whereabouts after April 2010. In June 2010, caseworkers learned that the father's girlfriend

³ The record indicates the father has questioned the paternity of the youngest child throughout these proceedings.

had kicked him out of her home and that he was again using illegal substances, including methamphetamine.

Review hearings were held in June 2009, October 2009, and May 2010. A permanency hearing was held in February 2010. On May 11, 2010, the State filed a termination petition. On May 23, the father received notice of the termination petition and of the date and time of the termination hearing.

The termination hearing took place on July 6, 2010. At 9:00 a.m. on the day of the hearing, the court received a call from the father's attorney from the CINA proceedings requesting a continuance because the father's transportation arrangements had fallen through and he could not be present at the hearing. Apparently, the father was living in Anamosa at the time, slightly more than one hour away. The court denied the motion to continue, and at 1:30 p.m. the termination trial began in the father's absence.

On July 13, 2010, the juvenile court entered an order terminating the father's parental rights pursuant to Iowa Code section 232.116(1)(b) (2009) (abandonment).⁴ The actual grounds for termination of the father's parental rights under this section are not being contested.

I. Notice of Termination Proceedings.

On appeal the father contends in part that he did not receive proper notice of the termination proceedings. The father alleges he learned of the termination hearing on the day it was to occur. Due process requires sufficient notice of the complaint against the parent and of the time of the hearing. *In re D.E.D.*, 476

⁴ The court terminated the mother's parental rights pursuant to section 232.116(1)(a) (voluntary consent to termination of parental rights). She does not appeal.

N.W.2d 737, 739 (Iowa Ct. App. 1991), *overruled on other grounds by P.L.*, 778 N.W.2d at 38-39. The record in this case indicates the father was served personally in Anamosa with the termination petition and notice of the date and time of hearing on May 23, 2010. Due process requirements were met.

II. Motion to Continue.

On the morning of the termination hearing, the father's attorney contacted the court and requested a continuance because the father's transportation arrangements had fallen through and he could not be at the hearing. The court denied the motion and proceeded with trial. In its termination ruling, the court noted that "[a]s of that time the father had not sought appointment of counsel as to the termination proceedings, was not participating in services or having regular visits with these children and had at least four hours to make alternative transportation arrangements." The father contends the court erred in denying his motion to continue.

Denial of a motion to continue must be unreasonable under the circumstances before we will reverse. *C.W.*, 554 N.W.2d at 281. A sense of urgency exists in termination cases due to the importance of stability in a child's life. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). The juvenile court is not obligated to grant a continuance because "children simply cannot wait for responsible parenting." *Id.*

In this case, the father knew the date and time of the termination hearing over a month in advance. An individual requiring travel assistance should make arrangements sufficiently in advance of the hearing to assure timely attendance. Here, the father apparently made his travel plans to the hearing on the day of the

hearing as the court was only notified of the problem that morning. The father had to travel approximately one hour and ten minutes to attend the hearing. He had not regularly attended other hearings. He still had time to arrive promptly, as the hearing was set for 1:30 p.m., and his attorney's call was made at 9:00 a.m. Upon our review, we believe fault can be placed upon the father for not making responsible or reliable travel arrangements. Under the facts and circumstances of this case, we find the juvenile court's decision is reasonable and does not result in injustice to the father. See *C.W.*, 554 N.W.2d at 281. The court did not abuse its discretion by denying the father's motion to continue the termination hearing.

III. Reasonable Efforts.

The father has received extensive remedial, family support, and family safety risk and placement services since March 2009. He contends on appeal, however, that the State failed to make reasonable efforts to reunify the family or eliminate the need for removal. He alleges the maternal grandparents frustrated his attempts to see the children and points to DHS's failure to assist him with transportation.

Throughout these proceedings, the father made minimal effort to visit or contact the children. He had visited the children two or three times since April 2009, and had spoken with them on the phone only a few additional occasions. Only the oldest child recognizes him as her father. As the juvenile court stated, "None of these children have had recent regular and frequent contact with their father such as to establish or maintain a parental bond with him."

The father was timely served with both the CINA petition in April 2009 and the termination of parental rights petition in May 2010. Although he and his attorney attended at least two of the review hearings, no mention was ever made in regard to the sufficiency of the services. A parent's challenge to services by the State should be made when they are offered, not when termination of parental rights is sought after services have failed to remedy a parent's deficiencies. *In re A.A.G.*, 708 N.W.2d 85, 91 (Iowa Ct. App. 2005). The father fails to indicate that he requested or otherwise challenged the adequacy of services prior to the termination hearing. We conclude this issue has been waived.

IV. Conclusion.

Having considered all issues raised on appeal,⁵ we find no reason to further delay the children the permanency they need and deserve. We affirm the termination of the father's parental rights.

AFFIRMED.

⁵ We also note that the attorney for the father filed a motion to supplement on August 12, 2010. Our supreme court denied the motion on August 17, 2010, but submitted it to our court for a final consideration to determine whether full briefing should be ordered under the circumstances. We have considered the motion and order, and decline full briefing of this action.