IN THE COURT OF APPEALS OF IOWA

No. 1-004 / 10-1995
Filed February 9, 2011

IN THE INTEREST OF A.H., N.H., E.H., and T.H.,
Minor Children,

D.L.H., Father,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

A father appeals the termination of his parental rights to his children under the federal and state Indian Child Welfare Acts. **AFFIRMED.**

Patrick H. Tott, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Patrick Jennings, County Attorney, and Diane M. Murphy, Assistant County Attorney, for appellee.

Angela Kayl, Sioux City, for mother.

Stephanie Parry of Forker & Parry, Sioux City, attorney and guardian ad litem for minor child.

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

EISENHAUER, J.

A father appeals the termination of his parental rights to his children under the federal and state Indian Child Welfare Acts (ICWA). He does not dispute the grounds for termination were proved. Instead, he contends the State failed to prove beyond a reasonable doubt continued custody would likely result in serious emotional or physical damage to the child. He also contends the juvenile court erred in failing to give full faith and credit to the public acts, records, and judicial proceedings of the Indian tribe. Finally, he contends the State failed to prove active efforts under ICWA. We review de novo termination proceedings under chapter 600A. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

The four children at issue were age six or under at the time of termination. The three oldest children were adjudicated in need of assistance in March 2008 as a result of the parents' drug usage. After the parents successfully participated in the Family Drug Court Program, the CINA proceedings were dismissed in July 2009. However, the parents had relapsed by February 2010 and the children were removed from the parents' care and once again adjudicated in need of assistance. Neither parent was able to demonstrate an ability to maintain sobriety, and a petition to terminate parental rights was filed.

The father is not an Indian. However, the mother is a member of the White Earth Band of Ojibwe and accordingly, the children are members of the White Earth Band. The State notified the White Earth Band of the proceedings and on November 3, 2010, the White Earth Band's motion to intervene was granted. The DHS's permanency plan presented at the termination hearing was

to terminate the parents' rights and allow the maternal grandmother to adopt. To this end, the maternal grandmother was completing foster parent training and it was believed she would be licensed as a foster parent by the end of November 2010. The mother, the guardian ad litem, and the White Earth Band were supportive of this plan.

The termination hearing was held on November 12, 2010. On November 17, 2010, the juvenile court entered its order terminating both the mother and the father's parental rights to all four children. It ordered the children remain in the custody of the DHS for adoptive placement. Only the father appeals from the order.

The federal and state ICWAs provide a court shall not order termination of parental rights over an Indian child in the absence of a determination by proof beyond a reasonable doubt—including qualified expert testimony—that the continued custody of the child by the parent is "likely to result in serious emotional or physical damage to the child." 25 U.S.C. § 1912(f); Iowa Code § 232B.6(6)(a) (2009). The father contends the State failed to meet its burden of proving such likelihood. Although a qualified expert witness testified the children would likely suffer harm if returned to the father's care, the father argues this is insufficient evidence to support termination. We disagree.

At the time of termination, the father had been using methamphetamine for over half his life. He had smoked it as recently as August 2010. He failed to submit to drug testing in August or September 2010. When the children were removed from the parents' care, the mother had tested positive for marijuana

while the father had tested positive for methamphetamine/amphetamine. All four children had tested positive for methamphetamine/amphetamine. The expert witness testified the children would likely suffer harm if returned to the father's care. Given the father's long history of drug abuse, his failure to remain drug free after completion of the drug court program, his recent use of methamphetamine, the children's past exposure to methamphetamine while in the father's care, and the danger methamphetamine exposure presents the children, we find the record is sufficient to establish the children would likely suffer serious emotional or physical damage if returned to the father's care.

The father next contends the juvenile court erred in failing to give full faith and credit to the public acts, records, and juvenile proceedings of the White Earth Band as required by the federal and state ICWAs. *See* 25 U.S.C. § 1911(d); Iowa Code § 232B.5(15). His argument stems from the qualified expert witness's testimony regarding the circumstances under which the tribe would terminate a parent's rights. The expert testified she was "not sure" if the White Earth Band had a policy regarding termination. She testified the White Earth Band requests termination in egregious cases, such as those involving child rape or abandonment. The father claims the juvenile court was required to apply this standard for termination

We conclude the qualified expert's testimony is insufficient to establish any public act, record, judicial proceeding, or judgment of the White Earth Band limiting termination only to the most egregious cases. Therefore, the juvenile

court did not err in failing to extend full faith and credit to any alleged tribal custom regarding termination of parental rights.

Finally, the father contends the State failed to make active efforts to reunite the family. A party seeking termination of parental rights over an Indian child must provide evidence to the juvenile court that "active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." 25 U.S.C. § 1912(d); Iowa Code § 232B.5(19). A challenge to the sufficiency of such services should be raised when the services are offered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). The father failed to raise this issue prior to termination and therefore it is not preserved for our review.

Finding the issues raised by the father to be without merit, we affirm the termination of his parental rights to his children. Accordingly, we need not consider the State's argument concerning standing of a non-Indian parent to make claims under the ICWAs.

AFFIRMED.