IN THE COURT OF APPEALS OF IOWA

No. 1-179 / 11-0203
Filed April 13, 2011

IN THE INTEREST OF B.M.M., W.B.E.M., J.S.R.M., R.S.M., M.F.S. and D.L.J., Minor Children,

J.M., Father of J.S.R.M. and R.S.M.,
Appellant.

Appeal from the Iowa District Court for Carroll County, James A. McGlynn, Associate Juvenile Judge.

A father appeals the termination of his parental rights to his two children. **AFFIRMED.**

Robert E. Peterson, Carroll, for appellant father of J.S.R.M. and R.S.M.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, John Werden, County Attorney, and Tina Meth Farrington, Assistant County Attorney, for appellee State.

Melissa C. Lewis of Beverly Wild Law Office, Guthrie Center, for appellee father of M.F.S.

Patrick W. Hall of Hall Law Office, Carroll, attorney for D.L.J.

Jennie L. Wilson of Wilson Law Firm, Perry, for appellee mother.

Mark J. Rasmussen of Rasmussen Law Office, Jefferson, guardian ad litem for minor children and attorney for B.M.M., W.B.E.M., J.S.R.M., R.S.M., and M.F.S.

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

VAITHESWARAN, P.J.

A father appeals the termination of his parental rights to his two children, born in 2005 and 2008. He contends: (1) his "Constitutional Rights . . . were violated in that the Judge considered material that was not included in the termination hearing or reports," (2) "[p]roper notice was not given to [him] concerning the Permanency hearing and complicated proceedings," (3) "[t]he record lacks clear and convincing evidence to support the grounds for termination cited by the District Court," (4) "[t]he record lacks proof that termination is in the child's best interest," and (5) "the concept that a poor person cannot adequately provide for his children is an unpermitted bias." Our review of these issues is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010).

I. Evidence Outside the Record. This appeal involves two of several children born to the mother, all of whom were the subject of child-in-need-of-assistance proceedings. With respect to these two children, the juvenile court found "disturbing circumstances surrounding [the father's] involvement with this family." The court explained that

> [the father] first became acquainted with the family when he was 17 years old and was dating the oldest child . . . who was then just 12 years of age. At some point, he quit dating the 12-year-old girl and instead began dating her mother. . . . Eventually [the father and mother] were married, and [these children] were born to them.

The father contends "neither the transcript nor Reports to the Court mentioned that the father had dated one of the children previously." To the contrary, a report prepared by a Department of Human Services child protective worker and filed with the court states that the father "was a 17-year-old boyfriend of [the

mother's] 12-year-old daughter." Based on this evidence, we reject the father's first argument.

II. Notice. The father next contends he did not receive notice that a permanency hearing scheduled prior to the termination hearing was indeed a permanency hearing with respect to his children. He asserts "proper notice was not given to the attorneys that the hearing would be a permanency hearing." In fact, an order faxed to the father's attorney in January 2010 states,

> The combination hearing should be scheduled in these cases on March 17, 2010, at 9:30 a.m. in the courtroom in the Carroll County Courthouse, Carroll, Iowa. The hearing will encompass all issues pending for any and all of the children, including permanency hearing, review hearing and modification hearing and hearing on the motion for concurrent jurisdiction.

While the father asserts the attorneys did not anticipate that permanency for all the children would be litigated at this hearing, he did not furnish a transcript of the March 17 hearing to verify this assertion. It was his obligation to do so if he wished to controvert the clear language of the order. *See Blackford v. Prairie Meadows Racetrack & Casino, Inc.*, 778 N.W.2d 184, 191 (Iowa 2010) (noting that appellant failed to order a trial transcript and citing Iowa Rule of Appellate Procedure 6.803(1), which puts the onus on the appellant to provide a proper record for review of issues urged by that party). On this record, we conclude the father had appropriate notice that permanency would be established at the March 17, 2010 hearing.

Even if the father was not properly notified of the permanency hearing, he does not assert that he received inadequate notice of the termination proceedings that followed. Indeed, his attorney appeared at two termination

hearings scheduled in August and December 2010 and vigorously defended the father's interests. For that reason, we conclude any possible inadequacy with the notice of the March 17 hearing was not prejudicial. *See In re M.L.M.*, 464 N.W.2d 688, 690–91 (Iowa Ct. App. 1990) (declining to reverse termination ruling where father was not notified of child-in-need-of-assistance proceedings but did receive notice of termination action).

III. Grounds for Termination. The father next contends the record lacks clear and convincing evidence to support the grounds for termination cited by the juvenile court. We may affirm if we find clear and convincing evidence to support any of the cited grounds. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). On our de novo review, we conclude the State proved that the children could not be returned to the father's custody. Iowa Code § 232.116(1)(h) (2009) (requiring proof of several elements including proof that child could not be returned to parent's custody).

Although the father testified that he was able to have the children returned to his care, a department social worker stated he never requested more than weekly supervised visits with his children. Even during the limited three-hour visitation period outside his home, he required "continued prompting from the in-home providers to assure that he [was] providing the appropriate care during that time." He declined to participate in parenting classes offered through a service provider despite evidence that his older child was displaying aggressive, difficult-to-manage behaviors in school. And, two prior reports of child abuse against him inspired little confidence in his ability to safely care for the children.

IV. Best Interests. The father next contends termination was not in the children's best interests. *See P.L.*, 778 N.W.2d at 40. While a department social worker agreed the father loved his children, the children's safety was at risk of being compromised had they been returned to the father. For this reason, we conclude termination of the father's parental rights was in the children's best interests.

V. Poverty. It is established that a parent's impoverished condition should not be the sole basis of a termination decision. *See In re Z.T.D.*, 478 N.W.2d 426, 428 (Iowa Ct. App. 1991). That said, a parent must be able to provide children with the basic necessities of life, including a roof over their heads and food on the table. *See P.L.*, 778 N.W.2d at 39 (citing Iowa Code section 232.116(2) and stating that the court considers "the physical, mental, and emotional condition and needs of the child" when determining whether to terminate parental rights). The record reflects the father was financially capable of furnishing these basic necessities but chose not to do so.

At the time of the second termination hearing, the father was twenty-three years old and had two jobs, one with a realty company paying wages of $11 an hour, and another with McDonald's restaurant. In addition to earning up to $444 per week from his realty job, he received rent assistance from his mother in the amount of $275 per month. Despite these income sources, his mother conceded her son was barely caring for himself, much less his two small children. Tellingly, when asked by the juvenile court whether the father could have the children returned to his care today, his mother responded, "Probably not today." We conclude poverty was not the basis of this termination ruling.

We affirm the termination of the father's parental rights to his two children.

AFFIRMED.