

IN THE COURT OF APPEALS OF IOWA

No. 2-315 / 12-0412
Filed May 23, 2012

**IN THE INTEREST OF A.V.,
Minor Child,**

**B.V., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Rachael E. Seymour,
District Associate Judge.

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

Barbara O. Hoffman, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John P. Sarcone, County Attorney, and Cory McClure and Jennifer
Galloway, Assistant County Attorneys, for appellee State.

Jared Harmon of Carr & Wright, P.L.C., Des Moines, for appellee mother.

Nicole Garbis-Nolan of Youth Law Center, Des Moines, attorney and
guardian ad litem for minor child.

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

VAITHESWARAN, P.J.

A father appeals the termination of his parental rights to his son, born in 2008. He takes issue with the district court's findings that (1) "[he] failed to demonstrate long-term sobriety and an understanding of his sex offending behaviors" and (2) "it was not in [the child's] best interest to continue the termination proceedings so that [the child] may be reunified with [him]."

I. The father has a criminal history that includes sexual abuse of two fourteen-year-old girls as well as drug abuse. His child was removed from his custody in November 2009 based on evidence of drug use in the home. The child was placed with relatives, where he remained throughout the proceedings.

The father exercised supervised visits with the child and participated in other services, including drug testing and sexual offender evaluations. Iowa Department of Human Services employees noted sufficient progress that they initially declined to recommend termination of the father's parental rights. The child's guardian ad litem disagreed with the department's stance and filed her own petition to terminate the father's parental rights. Following the final day of a several-day termination hearing, the State advised the court that it too agreed with termination. The State elected not to proceed with its own termination petition but to support the guardian ad litem's petition.

The district court determined that the child could not be returned to the father's custody. See Iowa Code § 232.116(1)(h) (2011) (setting forth a ground for termination as including several elements, including that the child could not be returned to the parent's custody). The court reasoned that the father did "not adequately address . . . his sexual offending issues" and continued to miss

requested drug screenings. On our de novo review, we agree with this determination. See *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000) (setting forth standard of review).

The father acknowledged prior abuse of alcohol, cocaine, methamphetamine, and marijuana and conceded he was using marijuana when the department became involved with the family. While he stated that he took steps to maintain his sobriety following the child's removal, the record reflects otherwise.

A department social worker reported that the father tested positive for marijuana in November and December 2009 and again on January 13 and January 19, 2010. After that point, the tests the father underwent were negative for the presence of drugs, but he failed to appear for sixteen tests. At the termination hearing, the father admitted he "would periodically miss" the drug screenings; he blamed the problem on a website designed to inform him of the test dates. He acknowledged he could have gone "a step further" and looked into the precise test dates. He also acknowledged that he failed to take almost as many tests as he actually took. Given the father's tepid explanation, the district court acted well within its authority in inferring that the "no shows" coincided with periods of drug use.

We turn to the father's sex abuse history. The father correctly asserts that he participated in a sex offender treatment program while incarcerated for the sex crimes. It is also true that he was reported to have done "very well" in the program. Nonetheless, several parts of the record raise red flags, not the least of which is the father's own testimony about his crimes. The father minimized the

gravity of those crimes, stating that he had sex with the fourteen-year-old girls only after they expressed feelings for him and blaming his actions on his drug and alcohol use.

The father's cavalier attitude toward the crimes also was reflected in his statements to a psychologist who performed a psychosocial evaluation. When twice asked about his legal history, he neglected to mention one of the sex offenses. After a department employee told the evaluator of this omission, the evaluator amended her report to state that the new information placed the father "at a higher risk for sexual abuse, especially for females." While the evaluator acknowledged that the child, as a boy, might be spared victimization by his father, she stated that she could not eliminate the concern. She reported that the father "is likely to be impulsive and immature and tends to seek immediate gratification of his wishes, often without apparent concern for the consequences." She continued, "Such clients are easily frustrated and may continue to engage in socially and/or legally problematic behavior even though they have been previously punished for it in the past." At the termination hearing, she noted the "matter of fact way" in which the father described the crimes to her and testified she "didn't get the sense of remorse" from him that she had seen in other offenders. She found it "quite significant" that the father "would not acknowledge his victims" especially when questioned about other victims.

We recognize that an evaluator who performed a risk assessment of the father concluded that the father was at low risk of sexually abusing his son. However, he inserted the caveat that the father's "level of risk is dependent on him staying sober."

This brings us full circle to the father's missed drug tests. The father was advised to implement a safety plan to minimize the risk of abusive conduct. That plan included abstinence from mood-altering substances. The missed drug tests do not inspire confidence that the father was committed to sobriety and, in turn, was committed to avoidance of sexual abuse. For that reason, we agree with the district court's conclusion that the child could not be returned to his father's custody.

Notably, the father concurred in this assessment, stating it would not be appropriate to return his child to him immediately given his relapse on marijuana and given the year that had elapsed since the child was in his care. Instead, he asked to move from supervised to semi-supervised visits and "gradually step" toward reunification. He asserted the process would take "a minimum of six months." The father agreed, however, that his history did not bode well for reunification. Our record is necessarily limited to his history and we concur in his assessment.

II. Termination must also be in the best interests of the child. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). Father and son shared a bond that was evident during his two one to one-and-a-half hour supervised visits per week. The father also acted appropriately toward his son during those visits. But these slivers of proper parenting under the watchful eye of a service provider said little about the father's ability to parent his child safely on a full-time, unsupervised basis.

Notably, the service provider who supervised visits recommended semi-supervised visits only if the father could "provide consistent UAs and not miss any more." When confronted with the significant number of previously missed

tests, she acknowledged these failures were “concerning.” The father’s sister similarly acknowledged the stress the father was under and his inclination to resume alcohol use. We conclude the risk of substance abuse combined with the risk of sex abuse made termination of the father’s parental rights the best option for the child.

We affirm the termination of the father’s parental rights to his son.

AFFIRMED.