

IN THE COURT OF APPEALS OF IOWA

No. 3-1260 / 13-1798
Filed January 23, 2014

**IN THE INTEREST OF D.J. AND T.J.,
Minor Children,**

**J.J., Father,
Appellant.**

Appeal from the Iowa District Court for Mitchell County, Karen R. Salic,
District Associate Judge.

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

Nicholas T. Larson, Osage, for appellant father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, and Mark Walk, County Attorney, for appellee State.

Richard Gross, Osage, attorney and guardian ad litem for minor children.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

VAITHESWARAN, J.

A father appeals the termination of his parental rights to two of his children, born in 2006 and 2009 respectively. He contends: (1) the district court should not have taken judicial notice of the child-in-need-of-assistance (CINA) record without properly referencing, noting, copying, and providing the record to his attorney; (2) the district court should not have denied his application for an expert at State expense; (3) the department of human services did not make reasonable efforts to reunite him with the children; (4) the grounds for termination cited by the district court were not proved; and (5) termination was not in the children's best interests.

I. CINA Record. It is permissible to take judicial notice of a CINA file in a termination proceeding, providing certain safeguards are followed:

Papers requested to be noticed must be marked, identified, and made a part of the record. Testimony must be transcribed, properly certified, marked and made a part of the record. Trial court's ruling in the termination proceeding should state and describe what it is the court is judicially noticing.

In re Adkins, 298 N.W.2d 273, 278 (Iowa 1980). The district court implemented these safeguards. The judge said she would have the clerk of court "make a copy of the . . . files from the CINA to include as exhibits . . . so there's a little clearer record"; the termination hearing was transcribed; and the court's ruling made reference to the files and facts that were judicially noticed. Because these safeguards were employed, reversal of the termination decision is not warranted.

II. Expert Witness. The father contends the district court should have paid the costs of having his counselor appear and testify at the termination hearing. This issue was neither raised nor decided by the district court.

Accordingly, it was not preserved for our review. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

III. Reasonable Efforts. The department is obligated to make reasonable efforts to reunify parent with child. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). The father contends the department did not satisfy this obligation. In his view, he should have been afforded a chance to care for at least one of the two children. On our de novo review, we disagree. See *id.* at 492 (setting forth the standard of review).

The father has a history with the department that dates back to 2008. He was investigated for multiple incidents of physical abuse involving these children and one of the mother's children. Two of these incidents resulted in criminal convictions.

In February 2012, after the culmination of two child-in-need-of-assistance proceedings and reunification of the children with their father, the children were again removed from the father's care based on the discovery of bruises on both. By this time, the father had separated from the mother, and the children were placed with the mother. The father was ordered to complete a substance abuse evaluation, obtain mental health treatment to deal with his anger, and take medication as prescribed.

Meanwhile, the district court ordered the children removed from the mother's care and placed in foster care. The younger child challenged his caretakers with behaviors that included physical aggression, property destruction, tantrums, and sexual acting out. The older child also acted out

sexually, often with his younger sibling, which ultimately led to his placement in a separate foster home.

From the beginning, the department afforded the father visits with the children. Initially, the visits were semi-supervised. In time, the department attempted a trial home visit. During that stay, one of the children obtained a knife from the kitchen and stabbed the other child in the hand. The children said the incident occurred while the father was sleeping. According to their statement, included in a department investigative report:

[T]hey were in bed and were supposed to be sleeping. ([The older child] reports it 'being dark out'). [The older child] says he was asleep but [the younger child] woke him up. They went into the living room. [The older child] got a bag of Fruit Loops to eat. [The younger child] ended up with the knife. He started stabbing their dad's chair repeatedly according to both boys. [The older child] said dad and his girlfriend . . . were both upstairs sleeping. They woke up when he 'screamed bloody murder' because of getting stabbed.

The father told the department he left the children downstairs for ten or fifteen minutes while he went upstairs to speak to his girlfriend and the incident occurred while he was upstairs.

Citing both versions, the department determined that the father failed to supervise the children properly. The home visit was curtailed, and all subsequent visits were supervised.

The father contends the department should have made another effort to move one or both of the children to his home. We are persuaded that the risk of harm to the children was simply too great. As the department social worker overseeing the case stated:

[T]he Department has provided services to this family since 2008. I believe the first case was closed for less than a month before we had another allegation of abuse. It was closed a year later, and within four days we had another allegation of abuse. . . . [W]e've offered numerous services to the family, and there's been lack of follow-through with mostly all of them. I'm not aware of anything else that we could provide to this family to—services to help them make sure that their children are safe.

She continued:

This has been an ongoing pattern of behavior for this family. The Department comes in, provides services, works with the family. We close the case. Within a short period of time we're open again for similar concerns. This has happened—this is now our third try with this family. What happens is we move to the point where we're unsupervised, start to back out, and we have an incident like the stabbing. Prior to that it was physical abuse on a child. This has been a pattern of behavior. As soon as we back off on supervision we . . . have issues. We have issues of supervision and discipline.

We recognize the father completed an anger management class and regularly met with a counselor, who opined that “he would be able to provide a safe environment for his children.” The counselor’s opinion, however, was based entirely on the father’s description of his interactions with the children and not on personal observation of those interactions. The service provider who supervised the three-hour weekly visits was less sure about reunification. He stated, “I guess I’m a little bit torn on that. From what I’ve seen during my visits I don’t see anything that’s problematic, but knowing some of the past from the case . . . there have been concerns and have been issues.”

Based on this record, we conclude the department made reasonable efforts to reunify the father with his children notwithstanding the department’s return to supervised visitation following the stabbing incident.

IV. Grounds for Termination. The district court terminated the father's parental rights under two statutory grounds. One of them requires proof of several elements, including proof that the children cannot be returned to the parent's custody. Iowa Code § 232.116(1)(f) (2013). Given the risk of harm to the children, as described above, we agree with the district court that the children could not be returned to the father's custody. Accordingly, we affirm the termination decision under section 232.116(1)(f).

V. Best Interests. Termination must also be in the children's best interests. *In re P.L.*, 778 N.W.2d 33, 39 (Iowa 2010). The father correctly points out that the children were placed in multiple foster homes following their removal and the older child was not in a permanent placement as of the date of the termination hearing. In light of the numerous upheavals in their young lives, he argues "[t]he children's best interests dictate[] keeping these children together and reunifying them with [him]."

We acknowledge that the children were not well served by the many moves, which may have exacerbated their already volatile behaviors. Nonetheless, those behaviors required constant monitoring, and the father failed to provide that level of supervision when given the opportunity to do so. Accordingly, we affirm the termination of the father's parental rights to these children.

AFFIRMED.