

IN THE COURT OF APPEALS OF IOWA

No. 6-268 / 06-0297
Filed June 14, 2006

**IN THE INTEREST OF J.P. and K.P.,
Minor Children,**

**B.P., Father,
Appellant.**

Appeal from the Iowa District Court for Dickinson County, David C. Larson, District Associate Judge.

A father appeals a juvenile court order terminating his parental rights.

AFFIRMED.

Jack B. Bjornstad of Bjornstad Law Office, Spirit Lake, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Rosalise Olson, County Attorney, for appellee State.

James Hastings, Okoboji, for mother.

Shannon Sandy of Sandy Law Firm, P.C., Spirit Lake, guardian ad litem for minor children.

Considered en banc. Sackett, C.J., and Vogel, J., take no part.

PER CURIAM***I. Background Facts & Proceedings***

Bruce and Michelle are the parents of Kimberly, born in September 2001, and Joshua, born in December 2004. Michelle has mental health problems and she was unable to care for the children. In April 2005, the children were adjudicated to be in need of assistance (CINA) under Iowa Code sections 232.2(6)(b) (2005) (parent is imminently likely to neglect child), (c)(2) (child is likely to suffer harm due to parent's failure to supervise), and (n) (parent's mental condition results in child not receiving adequate care). After the dispositional hearing in May 2005, the children were placed in foster care.

Bruce has a history of alcoholism. He left the family home late 2004 and engaged in a lifestyle of criminal activity. He has been in prison, serving a seven-year sentence on forgery and burglary charges, since January 2005. Bruce has never seen Joshua, and he has not seen Kimberly since late in 2004. While in prison, Bruce sent the children one letter and one postcard. He attended AA while in prison. Bruce expected to appear before the parole board in February 2006, and could be approved for work release at that time.

Kimberly has significant behavioral issues. She has been diagnosed with reactive attachment disorder. Her counselor has stated that she needs a permanent, stable home as soon as possible.

In December 2005, the State filed a petition seeking to terminate the parents' rights. Michelle consented to the termination of her rights. On Bruce's request, the juvenile court entered an order for him to be transported to the

hearing, to be held in Dickinson County, from the North Central Correctional Facility, in Calhoun County. The day before the hearing, however, the facility stated it did not permit transportation for termination hearings. The court then orally quashed the order to transport and made arrangements for Bruce to participate in the hearing by telephone.

The juvenile court terminated Bruce's parental rights under sections 232.116(1)(e) (child CINA, removed for six months, parent had not maintained significant and meaningful contact) and (h) (child is three or younger, CINA, removed for at least six months, and cannot be safely returned home) (Joshua). The court noted that prior to his incarceration, Bruce "exhibited a very limited ability and desire to parent his children." The court found:

Due to Bruce's incarceration, he is not available to parent his children at the present time or in the near future, and even if he possessed sufficient parenting abilities to meet his children's needs, a substantial transition period would be required.

The court concluded termination of Bruce's parental rights was in the children's best interests. Bruce has appealed the termination of his parental rights.

II. Standard of Review

The scope of review in termination cases is de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be proven by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the best interest of the children. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000).

III. Due Process

Bruce contends that the State's decision on the day prior to the hearing not to allow him to be transported to the hearing violated his due process rights. Bruce admits that he did not have a due process right to be physically present at the termination hearing. See *In re J.S.*, 470 N.W.2d 48, 52 (Iowa Ct. App. 1991). He asserts his due process rights were nonetheless violated because (1) the correctional facility refused to release him; (2) the county attorney had not resisted his application to be released; and (3) the refusal came only the day before the hearing.

When the State seeks to terminate the relationship between a parent and a child, the State must comply with the requisites of the Due Process Clause. *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 37, 101 S. Ct. 2153, 2165, 68 L. Ed. 2d 640, 656 (1981). In considering what process is due to a parent, we have stated:

Where a parent receives notice of the petition and hearing, is represented by counsel, counsel is present at the termination hearing, and the parent has an opportunity to present testimony by deposition, we cannot say the parent has been deprived of fundamental fairness.

J.S., 470 N.W.2d at 52.

Thus, as Bruce recognizes, he did not have a due process right to be physically present at the termination hearing. Although the juvenile court had ordered him transported to the hearing, the court later orally quashed that order, as it had the right to do. See Iowa Code § 622.82 ("A person confined in a penitentiary or jail in the state may, by order of any court of record, be required to be produced for oral examination in the county where the person is imprisoned,

and in a criminal case in any county in the state; but in all other cases the person's examination must be by a deposition."); see also *Madden v. City of Eldridge*, 661 N.W.2d 134, 137 (Iowa 2003) (noting a court has the power to correct its own perceived errors, as long as it has jurisdiction of the case and the parties). We conclude Bruce's due process rights were not violated.

IV. Best Interests

Bruce claims termination of his parental rights is not in the children's best interests. Even if Bruce is released to a work-release facility soon, he would not be able to have the children with him there. Furthermore, prior to his incarceration, Bruce showed a limited ability to care for the children, and he would need to show an improvement in his parenting skills. The children need stability and a permanent home soon. They cannot wait for Bruce to make the necessary changes in his life so he can care for them. As has been stated many times, "patience with parents can soon translate into intolerable hardship for their children." *In re C.K.*, 558 N.W.2d 170, 175 (Iowa 1997). We conclude termination of Bruce's parental rights is in the children's best interests.

We affirm the decision of the juvenile court.

AFFIRMED.