

IN THE COURT OF APPEALS OF IOWA

No. 6-858 / 06-1314
Filed October 25, 2006

IN THE INTEREST OF G.A. and O.A.L.A.,
Minor Children,

R.F.A., Father,
Appellant.

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

A father appeals from the order terminating his parental rights.

AFFIRMED.

Peter Monzel, Sioux City, for appellant.

Chad Thompson, Kinsley, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Patrick Jennings, County Attorney, and Dewey Sloan, Assistant County Attorney, for appellee State.

Lori Ubbinga, Sioux City, for minor children.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

ZIMMER, J.

A father appeals from the termination of his parental rights to his two children. Upon our de novo review, we affirm.

I. Background Facts & Proceedings

Ricky and Molly are the unmarried parents of Grace, born in September 2004, and Owen, born in May 2006. The Iowa Department of Human Services (DHS) removed Grace from Molly's care in September 2005 due to Molly's drug abuse and her instability. Molly has exposed Grace to harm by associating with drug addicts, by maintaining relationships plagued by domestic violence, and by living with a sex offender. Owen was removed from Molly's care the day after he was born.

Ricky has an extensive criminal history as well as a lengthy history of drug abuse. Ricky was in prison for drug-related charges when Grace was born. He remained incarcerated during the first several months of his daughter's life. Services were offered to Ricky beginning in August 2005; however, by the time Owen was adjudicated CINA almost one year later, Ricky still had not begun a substance abuse program. Ricky failed to cooperate with drug testing and in-home services, and he has not had contact with Grace since August 2005 due to his failure to cooperate with reunification services. Ricky has never seen Owen.

The juvenile court adjudicated Grace as a child in need of assistance (CINA) on October 24, 2005, and adjudicated Owen CINA on June 12, 2006. On June 16, 2006, the State filed a petition to terminate Molly's and Ricky's parental rights. Ricky was in prison when the termination hearing was held. The juvenile

court terminated the parental rights of Molly and Ricky in an order filed August 24, 2006. Ricky has appealed.¹

II. Scope & Standards of Review

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). We are primarily concerned with the best interests of the children in termination proceedings. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

III. Discussion

On appeal, Ricky contends the court erred in finding reasonable efforts had been made toward reunification. He suggests he should have been given additional time to complete treatment, and he argues the children could have been placed with the maternal or paternal grandmothers. Ricky also maintains his trial counsel was not competent. We find no merit in any of these claims.

The juvenile court terminated Ricky's parental rights to Grace pursuant to Iowa Code sections 232.116(1)(b), 232.116(1)(d), 232.116(1)(e), 232.116(1)(h), and 232.116(1)(i) (2005) (abandonment; child CINA for physical or sexual abuse (or neglect), and circumstances continue despite receipt of services; child CINA, child removed for six months, parent has not maintained significant and meaningful contact with the child; child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home; child CINA, parent has substance abuse problem, child cannot be returned within a reasonable time). The court terminated Ricky's parental rights to Owen pursuant

¹ Molly had not appealed from the termination of her parental rights.

to Iowa Code sections 232.116(1)(b), 232.116(1)(d), and 232.116(1)(f). Ricky does not dispute any of the statutory grounds for termination, and we find clear and convincing evidence supports the juvenile court's decision to terminate his parental rights on all of the grounds alleged by the State.

Ricky first contends the court erred in finding reasonable efforts had been made toward reunification. He argues he should have been given additional time to complete treatment. We disagree. DHS offered Ricky services, including drug testing, in-home services, and substance abuse treatment. However, Ricky failed to cooperate with services and failed to show up for drug testing. In addition, Ricky was incarcerated for much of the CINA and termination proceedings. An incarcerated parent cannot fault DHS for being unable to provide additional services when the parent's own actions prevented the parent from taking advantage of services. *In re M.T.*, 613 N.W.2d 690, 692 (Iowa Ct. App. 2000). Children should not be forced to endlessly await the maturity of a natural parent. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983).

Ricky also suggests his trial counsel was not competent for failing to pursue a relative placement with his children's grandparents, including a home study, and for failing to ensure he could testify at the termination hearing by telephone from prison. A party claiming ineffective assistance of counsel must show a deficiency in counsel's performance and actual prejudice. *In re J.P.B.*, 419 N.W.2d 387 (Iowa 1988). We find Ricky was not prejudiced by his counsel's failure to pursue relative placement. A psychosocial evaluation reveals Molly reported her parents were alcoholics and her mother physically abused her. Molly was removed from her parents' care and spent time in foster care. The

evaluation also reveals Ricky reported his stepfather and mother were alcoholics and his stepfather was verbally and physically abusive. The juvenile court found the families of both parents were dysfunctional. The record clearly shows the grandparents would not be appropriate placements for the children. Furthermore, even if Ricky had testified at his termination hearing, it is clear the court would have terminated his parental rights based on his extensive criminal record, his history of chronic substance abuse, his lack of involvement in the children's lives, his failure to cooperate with services, and his incarceration at the time of the termination hearing.² We reject this assignment of error.

Even when the statutory grounds for termination are met, the decision to terminate parental rights must reflect the children's best interests. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). When we consider the children's best interests, we look to their long-range as well as immediate best interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). Ricky has been absent for most of his daughter's life and all of his son's life. He did not make a serious effort to participate in DHS services. In addition, he is incarcerated and has failed to fully address his substance abuse issues. The children are currently living with a foster family that is willing to adopt them, and both children are bonding with the foster parents. We agree with the juvenile court's finding that termination of Ricky's parental rights is clearly in the children's best interests.

² The record does not support Ricky's claim that his attorney's actions prevented him from testifying. In its ruling, the juvenile court noted the father's attorney filed a motion for telephonic appearance prior to the termination hearing, but then the father informed his attorney he had elected not to testify in these proceedings or appear by telephone.

IV. Conclusion

We affirm the juvenile court's decision to terminate Ricky's parental rights.

AFFIRMED.