

IN THE COURT OF APPEALS OF IOWA

No. 7-175 / 07-0228
Filed March 28, 2007

IN THE INTEREST OF D.T.K.,
Minor Child,

T.M.K., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen,
Associate Juvenile Judge.

A father appeals the termination of his parental rights to his child.

AFFIRMED.

Jesse A. Macro, Jr., Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, John P. Sarcone, County Attorney, and Andrea Vitzthum,
Assistant County Attorney, for appellee State.

Nicole Garbis Nolan, Des Moines, for minor child.

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

VAITHESWARAN, J.

Thomas is the father of Devin, born in 1994. The juvenile court terminated Thomas's parental rights to Devin pursuant to Iowa Code sections 232.116(1)(f) (requiring proof of several elements including proof that child cannot be returned to parent's custody) and (l) (2005) (requiring proof of several elements including proof that child cannot be returned to parent's custody within a reasonable period of time). On appeal, Thomas contends the State failed to prove these grounds for termination.

We may affirm the termination ruling if we find clear and convincing evidence to support either one of the grounds. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Reviewing the record de novo, we are persuaded that Devin could not be returned to Thomas's custody. Iowa Code § 232.116(1)(f)(4).

Devin was removed from Thomas's care in 2004 after allegations surfaced that he and other children were choked and kicked by an adult drug user in Thomas's home. Following a short-term placement in foster care, Devin was returned to Thomas's care. A day after this order was entered, Thomas used amphetamines. Devin was returned to foster care.

Thomas exercised supervised visitation with Devin. These visits initially went well. However, Thomas did not comply with other aspects of the Iowa Department of Human Services (Department) case plan. For example, he did not regularly provide urine samples for drug testing and he did not maintain consistent contact with the Department.

In 2005, the State filed a petition to terminate Thomas's parental rights. Several months elapsed. During this time, Devin insisted that he wished to

return to his father's care. Based on the evident bond between father and son, Devin's therapist recommended against termination. The State concurred in this recommendation and moved to dismiss the petition. The juvenile court granted the motion, effectively affording Thomas additional time to meet Department expectations.

Thomas did not use this additional time wisely. In April 2006, he had unauthorized contact with Devin at a local library. He also stopped furnishing urine samples for drug testing.

Meanwhile, Devin's foster parents decided to relinquish their foster care license and Devin was moved to another foster home. The Department recommended the suspension of visits for three months while Devin and his new foster parents had a chance to bond. The Department also recommended that Thomas schedule and pay for subsequent visits.

In a permanency review order, the juvenile court adopted these recommendations. The juvenile court ordered Thomas to have "only that contact specifically approved by DHS and [the therapist]," on pain of contempt.

Thomas acknowledged he did not contact the Department or the therapist to schedule additional supervised visits. He exercised no sanctioned visitation with Devin after May 2006. He also violated the no-contact order by again making unauthorized contact with Devin. The juvenile court found him in contempt and sentenced him to a jail term.

In October 2006, the State filed a second petition to terminate Thomas's parental rights to Devin. At the termination hearing in January 2007, Thomas

was asked what reunification efforts he made within the previous six months. He responded, "Stayed clean, seen my doctor, been in the hospital, got a job."

The record supports Thomas's contention that he obtained a job. However, the record contains no independent verification of Thomas's assertion that he maintained his sobriety in the six months preceding the termination hearing.

There also remained the problem of where Thomas would house Devin in the event of reunification. Thomas testified he was living with his adult daughter. The daughter had earlier advised the Department that she might be interested in caring for her brother, Devin. She later determined that the goal was unrealistic, as she was parenting four young children of her own. This left Thomas without a home for his son.

We affirm the termination of Thomas's parental rights to Devin on the ground that Devin could not be returned to his father's custody.

AFFIRMED.