

IN THE COURT OF APPEALS OF IOWA

No. 7-878 / 07-1711
Filed November 15, 2007

**IN THE INTEREST OF A.G. and A.G.,
Minor Children,**

**L.M.R., Father,
Appellant.**

Appeal from the Iowa District Court for Polk County, Joe E. Smith, District Associate Judge.

A father appeals from the order terminating his parental rights.

AFFIRMED.

Scott Bandstra, Des Moines, for appellant father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee State.

Steve Clarke, Des Moines, for minor children.

Samantha Kain, Ankeny, for mother.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

A father appeals from the order terminating his parental rights under Iowa Code sections 232.116(d) and (f) (2007). He claims his parental rights were not properly terminated because it was not his actions that led to A.G.'s adjudication as a child in need of assistance and there was no clear and convincing evidence the child could not be returned to the father's custody at this time. We affirm.

I. Background Facts and Proceedings

The father has one son, A.G., who is the subject of this termination action. A.G.'s half-brother was also the subject of these termination proceedings, but is not the subject of this appeal. A.G. is five years old. A.G. and his half-brother were removed from their mother's care on August 24, 2006, and adjudicated children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (h) on November 2, 2006. Their removal was prompted by neglect due to the mother's drug use. A.G. and his half-brother currently reside in the home of a relative.

Although the father's attorney was present at all of the hearings, he took no position with regard to the CINA adjudication on November 2, 2006, and the review hearing on July 3, 2007. The father did not personally attend a court proceeding until the April 10, 2007 review hearing. His paternity of A.G. was established through testing on May 3, 2007. Families First was hired to provide supervised visitation between the father and A.G. The first scheduled visit was cancelled by the provider. The father failed to call one hour prior to the second scheduled visit to confirm the meeting and did not answer his phone. Although he called twenty minutes later, the visit did not happen as scheduled. Because

the father obtained a new phone, there was a lapse of any contact between him and the provider between May 13, 2007, and June 1, 2007. A third visit was scheduled for June 7, 2007, but the father again failed to call and confirm the meeting. The visit did not happen.

The father re-contacted the provider in August regarding visits with A.G. Two one-and-one-half-hour supervised visits were then provided. The provider noted in a report dated August 28, 2007, that A.G. was quiet and withdrawn from his father. He did not return a hug to his father during the initial visit, nor did he respond to encouragement from the provider to interact with his father. He did, however, energetically show his father a nickel he had received at school that day. On the second visit, the father and A.G. played a computer game together for the majority of the visit. A.G. was more comfortable with his father during this visit, allowing his father to show him how to work the computer. However, it was clear that A.G. was not bonded with his father. These two visits in August 2007 were the only contact between A.G. and his father since the child was removed from his mother's home in August 2006. The record lacks information on the extent of the father's involvement in A.G.'s life before the date of removal.

The father lives in a three-bedroom house with his girlfriend and his brother. At the termination hearing on August 28, 2007, the father testified that he works forty-five to fifty hours per week drywalling. He stated that he has adequate housing and income to support A.G. on a full-time basis. He stated that his mother would help him care for A.G. He did not pay anything toward the support of A.G. since A.G. has been living in the home of the relative. There is no court order requiring him to pay child support.

The father admitted to not being involved in the case in its early stages but stated that he would now like custody of A.G. Specifically, he testified as follows:

Q. You would agree that your past involvement hasn't been quite what it should have been, correct? A. I believe if I had been involved from the beginning I would not be here right now with you people, I would be with my son at my house.

Q. And why should the judge and everybody else in this room believe that you are committed to doing what you need to do now to take care of your son when you haven't done it up to this point?

A. Maybe because of fear of coming to court. I thought I shouldn't be afraid. I'm not a criminal, and I haven't done anything.

Q. Is that why, you were afraid to come to court? A. I believe yes.

Q. Did you have any other problems or any other difficulties that kept you from coming to court or getting involved in this case?

A. No.

The record shows that the father pled guilty to a charge of possession of a controlled substance on January 24, 2003, and was given a deferred judgment. As a result, he was deported.¹ The father was also arrested on July 8, 2004, for possession of a controlled substance. He used an alias and pled guilty to this charge on September 16, 2004.

The district court terminated both the father's and the mother's parental rights pursuant to Iowa Code sections 232.116(d) and (f) on September 13, 2007. In regards to the father's efforts, the district court stated:

[The father's] efforts, while commendable are too little too late. It is unfortunate that [he] was afraid to come to court, but that is what was required of him. Arriving as he has at the eleventh hour does not mean I should delay while he decides whether or not he wants to serve as a parent.

....

I recognize that [the father] has come forward, but it would be months before I could establish to my satisfaction whether or not he would be in a position to parent [A.G.]. . . . If [the father] were to

¹ The record is devoid of any indication as to the results of the deportation, but it is clear the father is back in Iowa.

demonstrate that he could be a safe parent for [A.G.] and could attain his custody I would be required to separate these siblings. That is a move that I would make with greatest reluctance. For all these reasons, the inescapable conclusion is that these young boys' best interests will be best served by termination of parental rights to all parents.

The father now appeals.

II. Standard of Review

We review the termination of parental rights *de novo*. *In re D.G.*, 704 N.W.2d 454, 457 (Iowa Ct. App. 2005). The State must prove the circumstances for termination by clear and convincing evidence. *In re L.E.H.*, 696 N.W.2d 617, 618 (Iowa Ct. App. 2005). Our primary concern is the best interests of the child. *Id.* In determining the child's best interests, we look to both long-term and immediate needs. *Id.*

III. Merits

The father's parental rights to A.G. were terminated under Iowa Code sections 232.116(d) and (f). When the district court terminates parental rights on more than one statutory ground, we are only required to find termination proper under one ground to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Because we find termination proper under section 232.116(f), we do not address the merits of termination under section 232.116(d).

Termination of parental rights is proper under section 232.116(f) if: (1) the child is four years of age or older; (2) the child has been adjudicated a child in need of assistance; (3) the child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty

days; and (4) there is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102. The father disputes only the presence of the fourth element.

The father claims that A.G. can be returned to his custody at this time. He points out that the neglect that caused A.G. to first be removed and adjudicated a CINA did not involve him, but instead A.G.'s mother. He states that he is ready, willing, and able to have custody of his son. However, the record is clear that before their August 2007 supervised visits, the father had not seen his son for at least one year. It was apparent that A.G. had no bond with the father. In order to return A.G. to the father's home, much more time would be needed. The child would need to feel comfortable with his father and his father's home. This would have to be achieved gradually through supervised, unsupervised, and eventually overnight visits. A.G. could not have been sent home to his father's house on the date of the termination hearing to live with a man he feels little connection to and to stay in a home that is strange to him. The father failed to sufficiently take advantage of the visitation offered him until the last month before this termination hearing. It cannot reasonably be anticipated that he would adequately take advantage of additional parenting services in order to regain custody of his child. We find clear and convincing evidence that A.G. cannot be returned to his father at this time.

We turn now to the best interests of A.G. First, we note, that the father did not take issue with the district court's determination of A.G.'s best interests. Regardless, we agree with the district court that termination of the father's parental rights is in A.G.'s best interests. Parenting is a full-time job that "cannot

be turned on and off like a spigot. It must be constant, responsible, and reliable.” *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). The father had no contact with A.G. in the past year until his two brief visits the month of the termination hearing. He has made no financial contributions to the child’s support. Although he has made attempts since last April to visit A.G., the father has been completely unreliable and difficult to reach up until the last month before the termination hearing. His sudden interest in visiting his son is not enough. See *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) (holding that a parent’s sudden interest in parenting in the two or three months before the termination hearing is insufficient to reunify the parent and child). The father’s past performance as a parent is a significant indicator of his future performance. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). There is no reasonable basis to believe that the father will be able to provide the child with the stability and sense of safety he needs in the near future. Children grow up too fast to be forced to wait indefinitely for responsible parents. *L.L.*, 459 N.W.2d at 495.

AFFIRMED.