IN THE COURT OF APPEALS OF IOWA

No. 8-545 / 08-0841
Filed July 16, 2008

IN THE INTEREST OF M.V., Jr. and R.V.,
Minor Children,

M.V., Sr., Father,
Appellant.

Appeal from the Iowa District Court for Wapello County, William S. Owens, Associate Juvenile Judge.

A father appeals from the order terminating his parental rights. **AFFIRMED.**

Ryan Mitchell of Osborn, Milani & Mitchell, L.L.P., Ottumwa, for appellant father.

Robert Breckenridge of Breckenridge & Duker, P.C., Ottumwa, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, Mark Tremmel, County Attorney, and Seth Harrington, Assistant County Attorney, for appellee State.

Sarah Wenke, Ottumwa, for intervenor.

Joni Keith of Keith Law Firm, Ottumwa, for minor children.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Mark appeals the district court's order terminating his parental rights to his two-year-old son, M.V., and his one-year-old daughter, R.V. We affirm.

I. Background Facts and Proceedings.

M.V. and R.V. are the children of Mark and Kim.[1] The children came to the attention of the Iowa Department of Human Services (DHS) in May 2007, when allegations were raised that Kim was using drugs up to three days prior to R.V.'s birth on April 26, 2007. DHS founded a report on July 13, 2007, for denial of critical care and failure to provide proper supervision in regard to Kim. The report indicated that Kim tested positive for methamphetamine, cocaine, and marijuana, and R.V. tested positive for exposure to marijuana.

Also in May 2007, and shortly before DHS became involved in this case, Mark was arrested for violating conditions of his probation.[2] He remains in the Mt. Pleasant correctional facility at this time. Prior to Mark's arrest, M.V. was in Mark's physical care and had been for approximately seven months since Mark and Kim separated. R.V. has never been in Mark's physical care.

When Kim was under DHS assessment based on the May 2007 allegations, she was arrested for a probation violation. Kim and Mark were unable to agree on a voluntary placement for the children, and the court entered an ex parte order for temporary removal of the children on July 27, 2007. The children were placed in foster care on August 2, 2007. They were adjudicated

[1] The parental rights of Kim were also terminated, but she does not appeal.
[2] Mark's probation resulted from his 2003 conviction for conspiracy to manufacture methamphetamine, a class C felony. He was sentenced to a suspended term of imprisonment not to exceed ten years.

children in need of assistance (CINA) on August 15, 2007, and were placed in the legal custody of their maternal grandmother, where they remain today.

Again, Mark has been in prison since May 2007. He has received monthly visits with the children and parent skill development services in prison since November or December 2007. He is also participating in substance abuse treatment and other services offered through the prison. The earliest Mark could be released is late August or early September 2008.

On March 18, 2008, the State filed a termination petition. After a contested hearing, the court terminated Mark's parental rights on May 7, 2008, pursuant to Iowa Code section 232.116(1)(h) (2007). Mark appeals.

II. Scope and Standard of Review.

We review termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). Our primary concern is the best interests of the children. *Id.*

III. Issues on Appeal.

A. Clear and Convincing Evidence.

Mark argues the State failed to prove the grounds for termination by clear and convincing evidence. Under section 232.116(1)(h), parental rights may be terminated if the court finds by clear and convincing evidence (1) the child is three or younger, (2) the child has been adjudicated in need of assistance, (3) the child has been removed from the home for six of the last twelve months, and (4) there is clear and convincing evidence that the child cannot be returned to the custody of the parents at the present time. Mark does not dispute he

cannot take custody of M.V. and R.V. at present, as he is incarcerated and will remain in prison until late August or early September. Rather, Mark contends he has cooperated with court ordered services and should be allowed more time to reunify with the children after his release.

Although Mark is working toward completing his substance abuse treatment in prison and acknowledges he has made mistakes, we agree with the juvenile court's decision that he should not be allowed more time. Mark does not have a firm release date from prison, and once released, it would take additional time for him to put himself in a position to care for the children. The tender age of the children only exacerbates their need for permanency and stability. Returning M.V. and R.V. to Mark's home is not an option now and may not ever be an option. It would be too much of a risk to wait an additional six to nine months to determine whether the children could be returned to Mark's care. We find clear and convincing evidence supports termination of Mark's parental rights.

B. Best Interests.

Mark argues termination of his parental rights is not in the best interests of the children. The State claims Mark has not preserved this issue for our review because he did not raise the exceptions for termination pursuant to Iowa Code section 232.116(3), and the termination order does not address this issue.

Even if we assume Mark preserved error on this issue, we find his argument meritless. Although Mark has a plan for employment and housing after his release from prison, is taking advantage of services offered in prison, and has monthly visitations and parenting skill services with his children, he does not have a firm release date. The statutory period set forth in section 232.116(1)(h)

directs that six months is the point when the rights and needs of the children surpass the needs of the parents. The children cannot wait an additional six to nine months for consistency and stability.

We are convinced M.V.'s and R.V.'s interests are best served by terminating Mark's parental rights and placing them in a safe and stable home. By the termination hearing, M.V. had been removed from Mark's care for almost a year. Mark had never had physical care of R.V., as she was born only several weeks before his incarceration. The law demands patience to allow parents to remedy their deficiencies, but that time must be limited because the delay may translate into intolerable hardship for the children. *In re C.D.*, 524 N.W.2d 432, 435 (Iowa App. 1994). There is no reason to further delay M.V. and R.V. the permanency they need and deserve. In the termination of parental rights order, the juvenile court stated in part:

> In this case, Mark, Sr. has been in prison since the Court's involvement with the family. His incarceration caused him to lose physical care of Mark, Jr. and to miss the first year of Rhiannon's life. Mark acknowledges that he has made mistakes, and that those mistakes have caused him to be in prison, and his children to be without their father. He asks today, however, that the Court gamble the children's safety, permanency and well-being on the chance he will be released from prison in three or four months, and the further chance that if released he will be able to put himself in a position to care for the children within an additional six months. That is simply too much risk for these children. The evidence shows that they are in need of permanency, and that the best way for that to be established is for their parents' parental rights to be terminated so that they can be freed for adoption in a loving, stable home.

We agree and find termination of Mark's parental rights is in M.V.'s and R.V.'s best interests.

AFFIRMED.