IN THE COURT OF APPEALS OF IOWA

No. 8-745 / 08-1222
Filed October 1, 2008

IN THE INTEREST OF T.B.V.,
Minor Child,

O.D.K., SR., Father,
Appellant.

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

A father appeals from a juvenile court order terminating his parental rights to his child. **AFFIRMED.**

Jesse Macro of Gaudineer, Comito & George, L.L.P., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, John P. Sarcone, County Attorney, and Cory McClure, Assistant County Attorney, for appellee.

Edward Bull of Bull Law Office, P.C., for mother.

Kayla Stratton, Des Moines, guardian ad litem for minor child.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

MILLER, J.

Otis is the father of one-year-old Tina V. He appeals from a July 2008 order terminating his parental rights to her.[1] We affirm.

Otis and his long-time companion, Tina Sr., have thirteen children together, several of whom are named Tina. Tina V., born in March 2007, is their youngest child. Their family has been involved with the Iowa Department of Human Services (DHS) intermittently since 1993 due in part to Tina Sr.'s severe mental health problems, which she refuses to treat.[2] Otis has acknowledged that she is not an appropriate caregiver for their children. She often displays unpredictable and volatile behavior, necessitating police intervention at times. Yet she primarily resides with Otis and their children.

In 2006 Otis, Tina Sr., and eleven of their children were residing in a two-bedroom home that was infested with mice and rats. Otis's oldest child, who was twenty years old at the time, provided care for her ten minor siblings during the day while Otis worked at various odd jobs. Children in need of assistance (CINA) proceedings were initiated after an investigation by the Child Protective Services Unit of DHS revealed that one of the youngest children, an infant, was left alone in a room with Tina Sr. Otis's minor children were subsequently removed from his physical custody at the beginning of 2007 due to concerns regarding the

[1] The order also terminated the parental rights of Tina V.'s mother, Tina Sr. She has not appealed the termination of her parental rights.

[2] Tina Sr. was diagnosed with "psychotic disorder, not otherwise specified with significant paranoid delusions" in a June 2007 competency evaluation. Otis has also reported that she suffers from schizophrenia.

home environment and Otis's failure to adequately provide for some of the children's special needs.[3]

When Tina V. was born, four of her siblings were still in foster care placements. Her other siblings had been returned to Otis's care and were residing with him in temporary housing paid for by DHS while the family's house was being exterminated. Tina Sr. adamantly denied that Otis was Tina V.'s father. Tina V. was consequently removed from her mother's physical custody shortly after she was born due to concerns regarding Tina Sr.'s mental health. She was placed in the temporary legal custody of a maternal aunt under the supervision of DHS where she has since remained. She was adjudicated CINA in July 2007 pursuant to Iowa Code sections 232.2(6)(c)(2) and (n) (2007).

After paternity testing performed in April 2007 revealed that Otis was Tina V.'s father, DHS informed him that he could immediately begin visiting her at the maternal aunt's home whenever he desired. Unfortunately, Otis chose not to take advantage of the liberal visitation offered by DHS. His first visitation with Tina V. did not take place until August 2007 when DHS service providers began bringing her to his house once a week.

In September 2007, Otis sent some of his other children to live with the maternal aunt after the family was evicted from their home. Otis began seeing Tina V. more during this time because he "made it a priority to go to [the maternal aunt's] . . . to visit when the older children" were there. By October of that year,

[3] Several of the children exhibited behavior problems in school and required additional assistance with their education, which Otis was slow to address. The children's teachers were also concerned regarding whether their basic needs, such as food and clothing, were being adequately provided for. One teacher noted the children often wore the same set of clothes for a week at a time and they frequently appeared to be hungry.

Otis had secured new housing for himself and the children in his care. He stopped visits with Tina V. shortly thereafter due to an unknown "family situation." Visits briefly resumed only to be stopped once more by Otis in November because of his disagreement with a change in service providers. He did not see Tina V. again until early December. He then limited his visits with Tina V. to the weekly visit supervised by DHS at his home. Otis did not continue to visit Tina V. at the maternal aunt's home once his other children were living with him again, although he could have done so any time he wished.

The State filed a petition to terminate parental rights in April 2008. Following a hearing ending in late June 2008, the juvenile court entered an order terminating Otis's parental rights to Tina V. pursuant to Iowa Code sections 232.116(1)(e) and (h). Otis appeals.

> We review termination proceedings de novo. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. The primary interest in termination proceedings is the best interests of the child. To support the termination of parental rights, the State must establish the grounds for termination under Iowa Code section 232.116 by clear and convincing evidence.

In re C.B., 611 N.W.2d 489, 492 (Iowa 2000) (citations omitted).

Otis initially claims the juvenile court erred in finding there was clear and convincing evidence supporting termination of his parental rights under section 232.116(1)(e).[4] His claim implicates only the third element of that section, which requires a finding that he has not "maintained significant and meaningful contact

[4] Because we conclude termination of Otis's parental rights was proper under section 232.116(1)(e), we need not and do not address his claim regarding section 232.116(1)(h). *See In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.").

with the child during the previous six consecutive months and ha[s] made no reasonable efforts to resume care of the child despite being given the opportunity to do so." Iowa Code § 232.116(1)(e)(3).

Otis argues that the State failed to prove this element because he had "regular visits with his child, he has met with the in-home workers, . . . he has exposed the child to her siblings, [and] he has obtained employment and safe and suitable housing." We believe, however, that section 232.116(1)(e) requires more than the minimum efforts put forth by Otis in this case to maintain significant and meaningful contact with his child and resume care of her.

Section 232.116(1)(e) provides that

> "significant and meaningful contact" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

Our de novo review of the record reveals that Otis did not affirmatively assume the duties encompassed by the role of being a parent to Tina V. Although he could have started visits with Tina V. as soon as his paternity was established in April 2007, he chose not to have any contact with her until August 2007 when the DHS service provider began delivering her to his house for visits "at the guardian ad litem's request." He stopped visits with her in October 2007 "due to some family situations." It then appears that visits resumed for a short period of time before again ceasing at Otis's initiative for a period of four weeks or so. When visits started again, Otis made no effort to visit Tina V. beyond the weekly two-hour visits supervised by DHS at his home.

As the juvenile court found, "It is significant that throughout the course of this case, there was never a time when [Otis] was limited in his opportunities to spend time with Tina V." Tina V.'s maternal aunt maintained a "very generous open door policy," which Otis unfortunately chose not to take advantage of. Instead, he limited his visitation with Tina V. to the weekly visits arranged and provided by DHS and "flatly refused to have any contact with Tina V. except when she was delivered to his home." He occasionally canceled even those visits when he was "angry with the Department or the provider about their progress reports." He never once contacted Tina V.'s maternal aunt to inquire about Tina V.'s well-being.

The juvenile court found, and we agree, that Otis "has allowed his pride and sanctimonious feelings of righteousness to prohibit the development of a healthy emotional bond with Tina V." He was upset that DHS was once again involved with his family, testifying, "I'm not a willing participant in this process I don't believe in." He never asked for the visits arranged and provided by DHS to be increased because he did not "understand why [he] was visiting [his] child in the first place." He testified, "If there was a reason for you to have this baby–if I been on drugs or abused the other kids or the kid that's in question–then perhaps I would pursue visiting this other baby." But, according to Otis, "[t]here's absolutely nothing in [DHS's] records . . . saying that I should be visiting my child." He stated several times during the termination hearing that he "didn't want visits at all. [He] wanted the baby just to be returned." He "didn't want to go nowhere to visit [his] child."

The problem in this case was not with the services provided by DHS but rather with Otis's response to those services. *See C.B.*, 611 N.W.2d at 495 (emphasizing the critical need for parents to actively and promptly respond to the services implemented by DHS). He was openly hostile to DHS's presence in his life despite his need for the State's assistance in order to provide housing and food for his large family. His resistance to the services offered by DHS and unwillingness to make any effort to visit Tina V. outside of the visits arranged and provided by DHS impacted the bond he was able to form with her.

All of the professionals involved in this case observed that Tina V. was not emotionally attached to Otis. The service provider who transported Tina V. for her visits with Otis testified that, with the exception of the few weeks preceding the termination hearing, she would usually cry on the way to the visits and during the first several minutes of the visit. She observed that when Tina V. was at Otis's home, her "affect is very flat" and "she's very quiet." In the maternal aunt's home, however, "she's much more active . . . . [S]he verbalizes and she laughs and she smiles and she starts running through the house."

An attachment assessment performed by Janice Hill in February 2008 revealed that Tina V. was "strongly emotionally attached to [the maternal aunt] and [her husband] . . . the only parents she has known since birth." Hill recommended that she remain with them permanently as Otis did not have the "necessary emotional attachment with baby Tina." She noted he had "not done what is necessary to enable her to feel a safe and close emotional bond with him," possibly due to his "feeling overwhelmed and struggling to provide a home for his other children and their mother." She testified that "bonding is a reciprocal

process," which Otis had not engaged himself in "as demonstrated by his not going to see her . . . . A parent who is bonded emotionally couldn't go without seeing their child."

In light of the foregoing, we conclude the State established that Otis did not maintain "significant and meaningful contact" with Tina V.; nor did he make reasonable efforts to resume care of her despite being given ample opportunity to do so. *See id.* at 494 (stating if a parent ceases to have contact with his child during the statutory limitation periods, the legislature has made a determination that the needs of a child are promoted by termination in cases meeting the conditions of section 232.116(1)(e)). We further conclude, as the juvenile court did, that termination of Otis's parental rights is in Tina V.'s best interests.

Tina V. has been in the legal custody and care of her maternal aunt for more than a year. She is doing very well. She needs and deserves permanency, which her aunt and uncle are committed to providing as evidenced by their stated desire to adopt her. *See In re J.E.*, 723 N.W.2d 793, 801 (Iowa 2006) (Cady, J., concurring specially) ("A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests."). She should not be made to wait any longer for Otis to affirmatively assume his parental duties. *See In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997) (stating a child should not be forced to endlessly suffer in parentless limbo).

We reject Otis's final claim that the court abused its discretion in allowing the State to "call a witness not listed on its witness list during its case in chief

under the pretense that it was a rebuttal witness."[5] Without addressing whether the juvenile court abused its discretion in admitting this evidence, we conclude Otis suffered no prejudice from its admission. *See* Iowa R. Evid. 5.103 ("Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of a party is affected . . . ."); *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993).

After Otis objected to the State presenting its supposed rebuttal witness, the guardian ad litem offered to call that witness during her case-in-chief, which she was scheduled to present more than one month later. Otis did not respond to this offer. Although he now argues he suffered prejudice when the witness testified "regarding issues that were not contemplated during the preparation phase of the trial," he had ample time to prepare a response to her testimony during the month-long break in the termination hearing. Moreover, excluding this evidence from our own de novo review, we find there is sufficient other evidence supporting termination of Otis's parental rights for the reasons already detailed. We therefore affirm the judgment of the juvenile court.

AFFIRMED.

[5] The State called Otis as a hostile witness during its case-in-chief. During the State's examination of him, Otis testified that he had one child with a woman other than Tina Sr. and that he had last visited that child the week before the termination hearing. The State then called that child's mother as a witness in order to rebut that testimony. She testified that Otis had in fact not seen their child for over a year.