

IN THE COURT OF APPEALS OF IOWA

No. 1-685 / 11-1120
Filed September 8, 2011

**IN THE INTEREST OF A.I.-A.M.,
Minor Child,**

**A.J.M., Father,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Mary J. Sokolovske, Judge.

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

REVERSED.

Robert B. Brock II of Law Office of Robert B. Brock II, P.C., Le Mars, for appellant father.

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

John C. Polifka of State Public Defender's Office, Sioux City, for appellee mother.

Martha M. McMinn, Sioux City, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

VAITHESWARAN, J.

Anthony appeals the termination of his parental rights to his daughter, born in 2010. He contends the State failed to prove the grounds for termination cited by the district court.

I. Background Facts and Proceedings

Anthony and his wife had one child together. Also in the home was the wife's older child from a prior relationship. Both parents were unemployed and lacked their own means of transportation.

In mid-2010, when the child involved in this appeal was five months old, Anthony was arrested on outstanding warrants for theft and child endangerment, based on a 2009 attempt to steal electronic equipment from a department store while having a small child in his care. At the same time, the mother was arrested for fifth-degree theft based on her recent attempt to steal spaghetti noodles, ground beef, jumbo hot dogs, spaghetti sauce, cheese, and peanut butter from a grocery store. Both children were removed and placed in foster care.

A Department of Human Services care coordinator made contact with the parents to assess their needs. The mother advised her that the parents needed clothes and furniture and were looking into renting lower income housing. The mother also stated she had applied for cash assistance. Both parents indicated they were looking for work.

The department authorized semi-supervised visits between the parents and children, to take place in the parents' apartment. The department transported the children to and from the visits. Meanwhile, Anthony entered a plea to the pending charges and was placed on probation.

Through most of 2010, the department reported that “[f]inancial stability” was a “major concern” for the family. The department stated this factor affected

a) getting the kids to their medical appointments consistently; b) Anthony and [mother] stealing to provide for their children; c) need a car so that Anthony and [mother] can take [the older child] to doctor visits; d) need drivers’ licenses.

The department noted that the parents needed to obtain furniture, keep their jobs, move into a new apartment, maintain their new apartment in “a manner appropriate for the kids-safety-wise, cleanliness-wise,” and pay off court fines.

Sometime in 2010, Anthony secured work as a temporary employee at a local company. He was later hired on as a permanent employee, working the evening shift. At the time of the termination hearing, he testified he had been with the company for a total of nine months.

Anthony continued to visit both children, even though the older child was not biologically his. In September 2010, the department reported:

Mom and dad appear motivated and able to protect. Mom and dad are alert and watchful with their children. The parents keep doors locked when children are inside and the home is free of hazards consistent with the five-year-old and a baby.

The department also reported that “Mom and dad have a willingness to meet the . . . children’s food, shelter and clothing needs. Mom and dad are willing to accept the services necessary to ensure the safety of their girls.” Finally, the department reported:

Provider has observed the family as they spend time together. Mom and dad appear to have a routine for taking care of the girls, and provider has seen no safety concerns. Provider has encouraged parents to find suitable housing for their family.

In December 2010, the department reported:

Mom and dad have shown a willingness to meet the [] children's food, shelter and clothing needs with the help of community supports. Mom and dad are willing to accept the services necessary to ensure the safety of their girls. Mom and dad cooperate with services and [the case care coordinator].

Visits continued into 2011. Up to early 2011, the only parenting concerns that were raised were the parents' failure to attend all the children's medical appointments, some of which were in Sioux Falls, South Dakota, failure to call the foster parents regularly to check on the children's health and well-being, failure to confirm the visits in advance, and occasional oversleeping by Anthony. The parents indicated they lacked transportation to the out-of-state appointments and lacked reliable and affordable telephone service.

In March 2011, the older child alleged that Anthony pushed her on the floor. Anthony responded by stating he no longer wished to visit her. The department briefly held separate visits between Anthony and his baby daughter and required them to be supervised. Following an investigation, the department determined that the older child's complaint was unconfirmed.

By April 2011, Anthony had consulted with a professional about his response to the older child's abuse allegation, processed with her the anger he felt at the time, and reinitiated visits with the older child. After the first visit between them in April 2011, the care coordinator reported that the older child "did not act afraid of Anthony and spoke to him." In a subsequent visit that month, the care coordinator reported that "[b]oth parents were appropriate with the girls." She also noted,

Mom and dad appear motivated to protect their children. Dad continues to be employed, . . . and parents have obtained a home phone. Both parents accept the services necessary to ensure the safety of their children.

She found continuing problems with transportation and stated she “has discussed the merits of having transportation for the girl’s medical appointments that occur in Sioux Falls, SD.”

The case proceeded to a termination hearing in late April 2011. Following the hearing, the district court terminated the parental rights of all the parents to both the children. Only Anthony appealed.

II. Grounds for Termination

The district court terminated Anthony’s parental rights to his daughter pursuant to Iowa Code sections 232.116(1)(d), (e), and (h) (2009). On our de novo review, we agree with Anthony that the State failed to establish these grounds for termination.

A. Conditions Continue to Exist Following Adjudication

Regarding the first relied-upon ground for termination, the State was required to prove two elements, including the following:

Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and circumstance continues to exist despite the offer or receipt of services.

Iowa Code § 232.116(1)(d)(2). As noted, the children were removed due to the arrests of their parents. At the time of the children’s adjudication, the department also expressed concern about the parents’ unemployed status, housing, budgeting abilities, parenting abilities, participation in the children’s medical care, and housekeeping.

By the time of the termination hearing, Anthony had resolved his criminal problems, but for a \$300 fine, which he included in his monthly budget and expected to pay off by February 2011. He had a full-time job and had obtained a new apartment deemed appropriate by the department. His financial condition, while still precarious, had significantly improved from the time of the removal.

With respect to Anthony's parenting abilities, the worst that could be said of his interaction with his daughter was that he tried to keep her awake during one visit by pulling a bottle out of her mouth before she had finished drinking it, and he overslept after his evening of work and did not immediately participate in certain scheduled visits. While a department social worker testified that Anthony, "to a degree," shared a propensity with the mother to be "immature and self-centered," she did not explain whether or how these personality traits affected his ability to parent his daughter. Indeed, in discussing the parents' interaction with the children, the social worker stated only that the parents needed to be "prompted more frequently to interact with the children unless it's [the younger child], and at times their interaction with [the younger child] can be questionable." She acknowledged that the abuse report concerning the older child was unconfirmed.

We turn to Anthony's failure to attend his daughter's out-of-state medical appointments. At the termination hearing, Anthony testified that his supervisor had a car for sale for \$500 that he intended to look at the following day. He further testified that he was studying to get his Iowa driver's license. It was clear, therefore, that he was attempting to resolve this concern notwithstanding his marginal financial situation.

What remained was Anthony's housekeeping skills. The department found the apartment sufficiently clean to continue visits in that setting. While one department report indicated that the kitchen and bathroom needed to be cleaned, little else was deemed lacking.

In sum, the State failed to prove that the circumstances that led to the adjudication continued to exist at the time of the termination hearing.

B. Lack of Significant and Meaningful Contact

The second ground for termination relied on by the juvenile court requires, among other things, clear and convincing "evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so." *Id.* § 232.116(1)(e)(3).

"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.

Id. There is scant, if any evidence to suggest, let alone prove, that Anthony failed to exercise significant and meaningful contact with his daughter. He regularly attended visits with her, provided her with food, shelter, and clothing, and attended to her developmental needs, both physical and emotional. We conclude this ground was not established.

C. Return of Custody to Parent

In order to establish the third termination ground relied upon by the juvenile court, the State was required to prove by clear and convincing evidence, among other things, that Anthony's daughter could not be returned to his custody. *Id.* § 232.116(1)(h)(4). In an effort to establish this ground, the State re-called the department social worker to the stand following Anthony's testimony.

The social worker first suggested that Anthony would be unable to meet the child's physical needs because the toddler was "on a specialized formula which is expensive to say the least." We are not persuaded this fact precluded a return of the child to Anthony's custody, as Anthony had employment that allowed him to make ends meet. Additionally, the parents had received various forms of public assistance when the child was in their care, including help from the Women, Infants, and Children Program, and the social worker did not state they would be ineligible for this assistance if the child were returned to their care.

The social worker also cited Anthony's non-attendance at the child's out-of-state medical appointments. She did not indicate whether the department followed up on the service provider's request to provide transportation assistance and, as noted, Anthony had made arrangements to address this concern.

Finally, the social worker expressed a concern that Anthony would be unable to provide the child with "ongoing stimulization [sic] and care to assist in [] her development." The summaries of visits prepared by the care coordinators reveal no such concern. If anything, one report expressed isolated unease over his stimulation of the child when she wanted to go to sleep. With that exception,

the record reveals Anthony played with the child, cuddled her, and helped her to walk.

In sum, Anthony is a parent who took the department's expectations seriously and followed through with those expectations. At the beginning, he was in jail and destitute. At the end, his criminal troubles were essentially behind him, he was able to support himself and his family, and he was affectionate and nurturing toward his daughter.

Commendably, the department provided significant assistance in Anthony's achievement of these goals, scheduling visits to accommodate his work schedule, transporting his daughter to and from visits, helping him process his anger in the wake of the child abuse allegation, providing furniture for the family, and connecting the family with community resources. But for transportation assistance to the children's South Dakota medical appointments, the services afforded him were timely and tailored to his needs.

And they worked. By the time of the termination hearing, Anthony was in a position to have his daughter returned to his custody. Conversely, the State failed to prove that the child could not be returned to Anthony's custody.

We reverse the termination of Anthony's parental rights to his daughter.

REVERSED.