IN THE COURT OF APPEALS OF IOWA

No. 9-411 / 09-0627
Filed July 22, 2009

IN THE INTEREST OF S.E.,
Minor Child,

R.W.E., Father,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge.

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

John O. Moeller, Davenport, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Michael J. Walton, County Attorney, and Gerda Lane, Assistant County Attorney, for appellee State.

Robert Gallagher of Gallagher, Millage & Gallagher, Davenport, for the mother.

Steven W. Newport of Newport & Newport, P.L.C., Davenport, for intervenor foster parents.

Neill Kroeger, Davenport, guardian ad litem for minor child.

Considered by Mahan, P.J., and Eisenhauer, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

ROBINSON, S.J.

I. Background Facts & Proceedings

Robert and Margaret are the parents of Shyanne, who was born in 2007. Margaret has a history of substance abuse, and the child was born with crack cocaine in her system. The parents voluntarily placed the child with a maternal uncle and aunt. The parties stipulated the child was in need of assistance (CINA) under Iowa Code section 232.2(6)(o) (2007). The juvenile court approved the placement with the maternal relatives.

Robert sustained a head injury in an automobile accident, and now suffers from organic brain dysfunction and has some intellectual limitations. He lacks parenting skills, and needs continual prompting to meet the child's needs. In January 2008, Robert was permitted an unsupervised visit, but he allowed Margaret to visit the child, even though he had been specifically told that Margaret was not to have contact during the visit because of her drug use.

In June 2008, the Department of Human Services (DHS) increased Robert's unsupervised visitation with the child, although he had these visits at the home of his niece because his own home was deemed unfit. In July 2008, the maternal aunt noticed, while giving the child a bath, that the child's vaginal and anal areas were swollen and red. After an examination, Dr. Barbara Harre gave the opinion that the child had not necessarily been sexually abused, but that she had suffered clear acute trauma to the genital and anal area. A hair test also showed that the child had been exposed to cocaine, and had either inhaled or ingested it.

On August 27, 2008, the State filed a petition seeking termination of the parents' rights. Robert filed a motion seeking to exclude the test results from the hair test because he was unable to review the testing procedures. The juvenile court issued an order on November 17, 2008, denying the motion to exclude the test results. The court determined the lab report contained relevant information significant to the best interest of the child, and was admissible.

On December 18, 2008, Robert filed a motion for production and discovery. He sought to conduct his own independent test of the child's hair. The State responded with a motion to quash subpoenas for production of documents. The court granted Robert's motion for production and discovery, and denied the State's motion. Hair was collected from the child on February 19, 2009, by a lab technician for a second hair test.

The case proceeded to a hearing. On April 14, 2009, the juvenile court terminated the parents' rights. Robert's rights were terminated under section 232.116(1)(h). The court found the child could not be safely returned to the father's care. The court determined Robert was unable to provide for the child's needs, and that termination of his parental rights was in the child's best interests. Robert appeals the decision of the juvenile court.

II. Standard of Review

The scope of review in termination cases is de novo. In re R.E.K.F., 698 N.W.2d 147, 149 (Iowa 2000). The grounds for termination must be proven by clear and convincing evidence. In re T.P., 757 N.W.2d 267, 269 (Iowa Ct. App. 2008). Evidence is clear and convincing when it leaves no serious or substantial

doubt about the correctness of the conclusion drawn from it. In re D.D., 653 N.W.2d 359, 361 (Iowa 2002). Our primary concern is the best interests of the child. In re A.S., 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

III. Merits

A. Robert contends the evidence of the drug test should not have been admitted. He asserts the State concealed evidence because he was not able to subpoena the testing lab concerning chain of custody, testing methodology, or laboratory notes. Robert claims the juvenile court should have granted his motion to exclude the test results.

We review evidentiary rulings by the juvenile court for an abuse of discretion. In re E.H., 578 N.W.2d 243, 245 (Iowa 1998). We will find an abuse of discretion where the decision is clearly unreasonable, is not based on substantial evidence, or is based on an erroneous application of the law. Id. at 246.

On this issue the juvenile court stated:

> The Court determines that the lab report is admissible. It is relevant information significant in the best interest of the child. It is in the form received and relied upon by the Department of Human Services in making their decisions relating to the best interest of the child. It is the form received and considered by the Court in 20 to 30 cases every year. The Court determines that the test results are themselves admissible. The value that the Court gives to the evidence will depend upon the rest of the evidence that the Court receives and considers when the merits are tried.

We note that under section 232.96(6) a DHS or hospital report "is admissible notwithstanding any objection to hearsay statements contained in it provided it is relevant and material and provided its probative value substantially

outweighs the danger of unfair prejudice to the child's parent." "[E]vidence, which under ordinary rules of evidence would be excluded as hearsay, is made admissible by statute in a juvenile proceeding, leaving the nature of the evidence to be considered as it affects its probative value rather than its admissibility." In re Long, 313 N.W.2d 473, 478 (Iowa 1981).

While section 232.96(6) does not directly address lab reports, we determine that the lab report in the present case is akin to a hospital test or report. We find no abuse of discretion in the juvenile court's decision to admit the results of the lab test. See In re J.L.W., 570 N.W.2d 778, 780 (Iowa Ct. App. 1997) (finding no abuse of discretion in the admission of a hospital record). As noted by the juvenile court, Robert's concerns go to the weight of the evidence, not its admissibility.

Robert also raises an argument that the State engaged in concealment because the State attempted to prevent the production of Dr. Harre's records. His argument admits, however, that the records were finally produced.

B. Robert claims the State spoiled evidence by allowing the aunt and uncle to cut the child's hair when he was seeking to have an independent test of the child's hair. This issue was not addressed by the juvenile court. When the juvenile court fails to address an issue, a party should file a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) to bring the matter to the court's attention. In re N.W.E., 564 N.W.2d 451, 456 (Iowa Ct. App. 1997). We determine this issue has not been preserved for our review.

C. Robert asserts the State misrepresented evidence in the case. The facts referenced by Robert were not mentioned or relied upon by the juvenile court. In any event, our review on appeal is de novo. See Iowa R. App. P. 6.907. We have not considered those facts Roberts claims were misrepresented in the juvenile court.

D. Robert contends he would be reunited with his child except that there was a false claim of sexual abuse in this case. While the evidence in this case did not show that Robert had sexually abused his child, there was clearly evidence that the child had received an injury to the genital and anal area during a time she had been in the father's care.[1] The evidence is relevant to the father's supervision of the child.

Other evidence in the record also supports a finding that the child could not be returned to the father's care. There was ample evidence in the record that the father lacked parenting skills. Robert had to be continually reminded of basic safety precautions. He often did not recognize hazardous situations, such as leaving the child alone inside the house while he went outside to smoke a cigarette, or letting her play with a plastic bag. We concur in the court's conclusion "the child cannot be safely returned to the father's custody."

E. Robert claims the State did not engage in reasonable efforts to reunite him with his child. He does not state, however, what services DHS should have offered to him that were not offered. DHS has an obligation to make

[1] Dr. Harre testified that she could not state with any certainty what has caused the injury to the child. She also testified that DHS was not incorrect in expressing a concern that this could have been sexual abuse.

reasonable efforts toward reunification, but a parent has an equal obligation to demand other, different, or additional services prior to a termination hearing. In re A.A.G., 708 N.W.2d 85, 91 (Iowa Ct. App. 2005). We conclude Robert has not preserved error on his claim the State did not engage in reasonable efforts to reunite him with his child.

F. Robert claims his parental rights were terminated because the DHS worker and the maternal aunt and uncle were biased against him. He argues that other caseworkers viewed him more favorably and would have reunited him with his child. The record does not support Robert's claims of bias.

G. Robert filed a request to supplement the record to include in the record a decision by DHS, filed May 22, 2009, concerning whether DHS had correctly classified a reported incident of child abuse involving the mother and S.E. as "Founded, Confirmed and Registry Placed." The State filed a motion to strike the supplemental record.

This May 22, 2009 decision was not included in the juvenile court record at the time of the termination proceedings. The composition of the record on appeal includes documents, exhibits, and the transcript from the district court proceedings. Iowa R. App. P. 6.10(1). We conclude the May 22, 2009, decision is not properly considered part of the record on appeal. However, even if the decision were considered it would not change our ruling on appeal.

We affirm the decision of the juvenile court.

AFFIRMED.