

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE INTEREST OF HALEY P.

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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IN RE INTEREST OF HALEY P., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

CLINTON P., APPELLANT.

Filed January 10, 2012. No. A-11-606.

Appeal from the County Court for Kearney County: ROBERT A. IDE, Judge. Affirmed.

Kent E. Person, of Person Law Office, for appellant.

No appearance for appellee.

INBODY, Chief Judge, and CASSEL and PIRTLE, Judges.

CASSEL, Judge.

INTRODUCTION

In this juvenile abuse and neglect proceeding regarding Haley P., Clinton P. claimed that the doctrine of in loco parentis established his standing to participate. The trial court disagreed. Because Clinton ceased fulfilling all obligations incident to the parental relationship after he entered prison in August 2009, his in loco parentis status terminated. And because the court's decision is consistent with Haley's best interests, we affirm.

BACKGROUND

Haley is the biological daughter of Samantha H. and an unknown father. Although Clinton and Samantha never married, they were living together during Samantha's pregnancy and at the time of Haley's birth in May 2003. Despite that Clinton was not Haley's biological father, he was listed on her birth certificate. In 2004, Clinton and Samantha had a child together

named Landon P. Clinton, Samantha, and the two children lived together until Clinton and Samantha separated in 2006, at which time the children stayed with Samantha in Oklahoma.

Shortly after Clinton and Samantha separated, the State of Oklahoma removed Haley and Landon from Samantha's home due to allegations of abuse. A district court in Oklahoma placed the children with Clinton in 2007, believing him to be the natural father of both children. Clinton never informed the Oklahoma court that he was not Haley's biological father.

From February 2007 until August 2009, Haley and Landon lived with Clinton and his girlfriend. During that time, they lived in four states and moved five times.

In August 2009, while living in South Dakota, Clinton was arrested on separate charges of using someone else's credit card in both South Dakota and Nebraska. He was convicted and sentenced to terms of imprisonment in both states, to be served consecutively. He was paroled in South Dakota in June 2010 and began serving his sentence in Nebraska immediately thereafter. Clinton was released on parole in Nebraska in February 2011.

When Clinton was arrested, Haley and Landon went to stay with Clinton's sister in Nebraska. After Landon died from serious injuries in December 2009 and a medical examination revealed evidence of abuse on Haley's body, she was removed from Clinton's sister's home. On December 22, the State of Nebraska filed a petition in the county court for Kearney County, Nebraska, sitting as a juvenile court, to adjudicate Haley as being within Neb. Rev. Stat. § 43-247(3)(a) (Reissue 2008). Haley was initially placed in a foster home in Hastings, Nebraska. In July 2010, she was placed with a maternal aunt and uncle in Oklahoma pending completion of the proceedings.

As part of the adjudication proceedings, the juvenile court ordered a genetic paternity test to determine if Clinton was Haley's biological father. The test revealed that he was not.

At some point during the adjudication proceedings, Clinton moved to join the proceedings as an interested party. On November 30, 2010, Samantha filed a motion to dismiss him as an interested party. The juvenile court held hearings in February and March 2011 to determine whether Clinton had standing.

At both hearings, Crystal L'Heureux, the Nebraska Department of Health and Human Services (DHHS) caseworker assigned to Haley's case, testified as to Clinton's involvement with Haley since the beginning of the adjudication proceedings in December 2009. She testified that Clinton had been incarcerated the entire time she was working on Haley's case and that he had no face-to-face contact with Haley during that time. The only contact he had with Haley was through written letters, the content of which was filtered by Haley's therapist. L'Heureux also testified that Clinton provided no financial support for Haley while he was in prison.

Clinton testified at the second hearing and confirmed what L'Heureux had reported regarding his relationship with Haley. He testified that he had not seen Haley since he went to prison in August 2009 and that he did not provide financial support for her while in prison. He was not allowed to speak with Haley on the telephone, but he did write to her two to three times per week and also made her a DVD of himself reading a book and several other crafts. Clinton acknowledged that he was advised by DHHS to send his letters through Haley's therapist.

Clinton also testified more broadly about his relationship to Haley. He stated that during the first several years of Haley's life he developed a relationship with her and agreed that he "did the normal things during that time period that a father would do with children." He was adamant

that he was Haley's "real father" even if he was not her "natural father." And when asked whether he cared for Haley, he responded, "Yes, sir. She's my daughter." In an affidavit received into evidence at the hearings, Clinton also stated that "he stands in the relationship of father to [Haley] and is the only father that she has ever known."

While Haley's therapist did not testify, many of the therapist's opinions regarding Haley's situation were included in the DHHS court reports, court-appointed special advocate reports, and Nebraska Foster Care Review Board findings and recommendations entered into evidence at the hearings. The therapist said that Haley was in "a very fragile state because of so many moves, separation from her father, and her brother's death" and that she was "grieving over 'everything' - her brother's death, separation from her father [Clinton] and other circumstances that were out of her control." The therapist observed that Haley had a "strong attachment" to Clinton, that she "shows concern for [Clinton's] welfare," and that she "talks about going to live with [him]." And the therapist noted that when Haley viewed the DVD that Clinton made for her during therapy, she appeared comforted by the DVD. However, L'Heureux stated in one of the DHHS court reports that

[DHHS], Boys and Girls Home, the Guardian ad Litem, and the therapist . . . do not feel that it is in Haley's best interest to have visitation with Clinton while he is incarcerated, but do support continued contact through written correspondence. Due to Haley's age and her current placement in Oklahoma, face[-]to[-]face visitations will not be pursued with Clinton, but written correspondence will continue.

The exhibits received at the hearings also noted that Haley had gone through kindergarten twice and that she was behind in school. L'Heureux opined that "[t]his may be due to her inconsistent home life and moving several times over the course of [2] years."

After considering all the evidence and accepting written arguments from the parties, the juvenile court ruled at a June 2, 2011, hearing that Clinton did not have standing to intervene in the adjudication proceedings.

Clinton timely appeals. Pursuant to authority granted to this court under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

ASSIGNMENTS OF ERROR

Clinton alleges that the juvenile court erred (1) in finding that he had no standing by failing to properly apply the doctrine of in loco parentis and (2) in failing to consider the best interests of Haley when it held that Clinton had no standing.

STANDARD OF REVIEW

An appellate court reviews juvenile cases de novo on the record and reaches its conclusions independently of the juvenile court's findings. *In re Interest of Lakota Z. & Jacob H.*, 282 Neb. 584, 804 N.W.2d 174 (2011).

ANALYSIS

In Loco Parentis.

As Clinton first argues that the doctrine of in loco parentis supported his standing in the proceeding, we begin by recalling the applicable principles of that doctrine. A person standing in

loco parentis to a child is one who has put himself or herself in the situation of a lawful parent by assuming the obligations incident to the parental relationship, without going through the formalities necessary to a legal adoption, and the rights, duties, and liabilities of such person are the same as those of the lawful parent. *Latham v. Schwerdtfeger*, 282 Neb. 121, 802 N.W.2d 66 (2011). The primary determination in an in loco parentis analysis is whether the person seeking in loco parentis status assumed the obligations incident to a parental relationship. *Id.* In order to stand in loco parentis, one must assume all obligations incident to the parental relationship. *In re Interest of Destiny S.*, 263 Neb. 255, 639 N.W.2d 400 (2002). These obligations include providing support for the child and providing day-to-day care for the child. *Id.* Accordingly, the doctrine must be applied flexibly and is dependent upon the particular facts of each case. *Latham v. Schwerdtfeger, supra.*

It is apparent that at one time Clinton did assume the obligations incident to the parental relationship with Haley. Haley was in Clinton's constant care for the first 3 years of her life and again from February 2007 to August 2009.

However, it is equally apparent that Clinton ceased fulfilling these obligations as to Haley when he was incarcerated in August 2009 and has not provided any support or care for her for over 2 years. Haley's day-to-day care has been provided by Clinton's sister, foster parents, or Haley's maternal aunt and uncle since Clinton's incarceration. Clinton has provided no financial support.

Clinton's cessation of these duties terminated his claim to a parental relationship under the in loco parentis doctrine. Once the person alleged to be in loco parentis no longer discharges all duties incident to the parental relationship, the person is no longer in loco parentis. *In re Interest of Destiny S., supra.* Therefore, because Clinton has assumed none of the obligations of parenting Haley since August 2009--indeed, has done nothing but write letters to her--he does not currently stand in loco parentis to Haley.

Clinton concedes that "there is no statutory authority directly granting standing" to him. Brief for appellant at 6. We agree. In the absence of statutory authority for standing and because the doctrine of in loco parentis does not otherwise grant standing to Clinton, the juvenile court properly concluded that he has no standing to join the adjudication proceedings.

Best Interests.

Next, Clinton alleges that the juvenile court erred in failing to consider the best interests of Haley when addressing the issue of standing. Clinton correctly argues that the best interests of the child must be considered. Indeed, because the purpose of the doctrine of in loco parentis is to serve the best interests of the child, it is necessary to assess the relationship established between the child and the individual seeking in loco parentis status. *Latham v. Schwerdtfeger, supra.*

Clinton focuses on "'psychological bonds'" that exist between him and Haley. Brief for appellant at 11. We recognize that Haley acknowledges Clinton as her father, has a "strong attachment" to him, and has even "talk[ed] about going to live with [him]."

However, the best interests analysis considers much more than the emotional relationship or bond between parent and child. As defined in the Parenting Act, Neb. Rev. Stat. § 43-2920 et seq. (Reissue 2008, Cum. Supp. 2010 & Supp. 2011), best interests of a child include consideration of the relationship of the child to each parent; the desires and wishes of the child;

the general health, welfare, and social behavior of the child; and credible evidence of abuse inflicted on any family or household member, child abuse or neglect, or domestic intimate partner abuse. See § 43-2923(6). The Parenting Act also states that the best interests of a child require “[a] parenting arrangement and parenting plan or other court-ordered arrangement which provides for a child’s safety, emotional growth, health, stability, and physical care and regular and continuous school attendance and progress for school-age children.” § 43-2923(1). Our best interests analysis in the instant case focuses on these other enumerated factors, such as the general health and welfare of the child, emotional growth, stability, and regular and continuous school attendance and progress.

We emphasize that Haley is in a very delicate emotional state and requires stability in her life. Haley’s therapist noted that she was in a “very fragile state” and cautioned that “new things needed to be introduced very slowly.” A review of Haley’s entire situation led a court-appointed special advocate to recommend that “Haley’s emotional state be stabilized before there is change of placement and the transition should be made slowly and over time.” The Nebraska Foster Care Review Board similarly recommended that “[m]ore time is needed for [Haley] to become more emotionally stable.” The need for stability is also evident in Haley’s education. L’Heureux testified that Haley’s poor performance in school was likely caused by “her inconsistent home life and moving several times over the course of [2] years.”

The evidence demonstrates that Clinton is unable to provide the stability Haley requires. A significant portion of Clinton’s testimony at the hearing was devoted to enumerating and explaining the frequent moves made by Clinton over the course of Haley’s life. He explained that the moves resulted from his work in sales, which “means a lot of traveling here and there sometimes.” During these moves, he often lived with friends or family and there were times when he and his children were homeless. There is no evidence to indicate that Clinton’s life would be more stable now.

Further, the evidence suggests a pattern of arrest and incarceration in Clinton’s life. Clinton admitted during the juvenile hearings that he had been arrested twice during the early years of Haley’s life while he was still living with Samantha. We have already discussed his arrest in 2009 that led to convictions in both South Dakota and Nebraska. And there is evidence that there are active bench warrants against him in Nebraska and that there may be charges pending against him in Kansas and Colorado. Clinton’s incarceration was the main reason that DHHS, the Boys and Girls Home, the guardian ad litem, and Haley’s therapist all advised the juvenile court that it was not in Haley’s best interests to have visitation with Clinton. In the light of all of this evidence, we agree.

Finally, we note that Clinton relinquished his parental rights to a previous child because he did not want to pay child support. The import of this fact hardly needs explaining.

We cannot ignore the fact that Haley currently needs stability and that Clinton cannot provide the stability necessary for her emotional well-being. The evidence persuades us that it is not in Haley’s best interests for Clinton to have standing in this proceeding.

CONCLUSION

We have conducted a de novo review on the record. Because Clinton has assumed none of the obligations of parenting Haley since he was incarcerated in August 2009 and has not

provided any support or care for her for over 2 years, the juvenile court did not err in concluding that he did not have standing under the doctrine of in loco parentis. Neither did the juvenile court ignore Haley's best interests when ruling that Clinton did not have standing. Accordingly, we affirm.

AFFIRMED.