IN THE COURT OF APPEALS OF IOWA

No. 1999-307 (9-537) / 98-2270
Filed October 27, 1999

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CLERK SUPREME COURT

IN THE INTEREST OF Z.A., J.M., and K.M., Minor Children,

M.A.A., Father of Z.A.,
Appellant,

M.A.T., Mother,
Appellant.

Appeal from the Iowa District Court for Harrison County, Kathleen A. Kilnowski, District Associate Judge.

Father of Z.A. and mother appeal separately from a juvenile court order terminating their parental rights. **AFFIRMED.**

Joel T. Niebaum of Kellogg Law Firm, Missouri Valley, for appellant-father.

Joseph C. Lauterbach of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellant-mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman and Chris Odell, Assistant Attorneys General, and Susan Larson Christensen, Assistant County Attorney, for appellee-State.

Noel Mumm, Missouri Valley, guardian ad litem for minor children.

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

HUITINK, J.

Marva is the mother of Kelly, born in September 1985; Jeremy, born in March 1988; and Zachariah, born in August 1990. Myron is the father of Zachariah. Marva and Myron appeal the decision of the juvenile court which terminated their parental rights. Marva claims the juvenile court should have reopened the record, the State did not present sufficient evidence to support termination of her parental rights, and she should be given more time. Myron claims the State did not present sufficient evidence to support termination of his parental rights. We affirm on appeal.

Marva and Myron have a history of substance abuse. The family became involved with the Iowa Department of Human Services (DHS) in 1989. DHS issued a founded report of denial of critical care against the parents for failure to provide adequate food and shelter for the children. There was also a finding Marva had physically abused Jeremy causing bruises on his buttocks. Kelly was sexually abused by an unknown perpetrator. DHS issued a founded report against Marva for failing to properly supervise Kelly. Kelly and Jeremy were in foster care from October 1989 until June 1991.

In 1995 DHS issued a founded report against Marva and Myron for failing to provide adequate mental health care for Jeremy. Jeremy had been diagnosed with attention deficit hyperactivity disorder and was prescribed medication for this condition. The parents took the medication themselves instead of giving it to Jeremy.

In January 1996 Marva voluntarily placed the children in foster care because she was unable to care for them. Myron was in jail. Marva received a psychiatric evaluation and was diagnosed with an intermittent explosive disorder and a personality disorder. The evaluation noted Marva had problems with volatility and impulsiveness and recommended the children not be returned to her care. Marva received a second evaluation, which gave her a diagnosis of major depression and attention deficit disorder.

The juvenile court adjudicated the children to be children in need of assistance pursuant to Iowa Code sections 232.2(6)(b)(2) and (n). The court determined the children should remain in foster care. The court ordered the parents to have a drug and alcohol evaluation and follow through with the recommendations, and that they have periodic drug tests. The court also ordered Marva to receive individual counseling.

The parents were not cooperative with services and were inconsistent in attending visitation. Myron had a substance abuse evaluation in March 1996, which determined he had a severe polysubstance dependency. The report found Myron had a minimal concept of how to function successfully in any life area without being under the influence of drugs. In August 1996 he was sentenced to a term of imprisonment not to exceed five years on a burglary charge.

Marva entered an outpatient substance abuse treatment program in July 1996, but was unsuccessfully discharged in September 1996 for failure to meet with her

counselor. Marva and Myron were divorced in May 1997. In November 1997 Marva successfully completed an inpatient substance abuse treatment program. Soon afterward, she moved to North Carolina with her new husband, Billy. Billy is a registered sex offender. This relationship involved domestic violence. Marva had little contact with the children while she was in North Carolina.

Kelly has done well in foster care. She has stated she does not want to live with her mother. Zachariah is in the same foster home as Kelly. He has some learning disabilities and a speech defect. He is fearful of being returned to Marva's care. The foster parents would like the children to stay with them and are considering adopting them.

Jeremy has a history of severe behavioral difficulties and psychiatric treatment. He has been diagnosed with a conduct disorder and an oppositional defiant disorder. He was hospitalized for a week in an adolescent mental health unit in January 1996. Jeremy was in foster care from January to March 1996, but because of behavioral problems was placed in a group home. Jeremy remained in the group home until August 1997, when he was again placed in a foster home.

In June 1998 the State filed a petition to terminate the parental rights of Marva and Myron. Marva returned to Iowa in August 1998. Visitation was not reinstated because the children's therapist felt it would be confusing for the children. At the time of the termination hearing, Marva was living with her mother and was attempting to obtain housing for herself and the children.

Marva's parental rights were terminated under sections 232.116(1)(b), (d), (e), and (k). Myron's parental rights were terminated under sections 232.116(1)(b), (d), and (e). The parental rights of the fathers of Kelly and Jeremy were also terminated. The court found termination was in the children's best interests. Marva and Myron appealed.

I. Scope of Review.

The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Marva.

A. Marva asked the juvenile court to reopen the record to allow her to present evidence she had obtained suitable housing after the date of the termination hearing. The court denied the motion, finding the evidence would not have changed the decision to terminate her parental rights. On appeal, Marva claims the juvenile court abused its discretion by denying her request to reopen the record.

The question of whether to reopen the record for additional evidence is within the court's discretion. *In re J.R.H.*, 385 N.W.2d 311, 318 (Iowa 1984). In order to show an abuse of discretion, a party must show the juvenile court's action was unreasonable under the attendant circumstances. *In re J.L.L.*, 414 N.W.2d 133, 135

(Iowa 1987). The juvenile court did not abuse its discretion by denying Marva's request to reopen the record. Adequate housing was only one factor Marva was required to address before the children could safely be placed in her care.

B. Marva contends the State did not present sufficient evidence to support termination of her parental rights. She claims she maintained significant and meaningful contact with her children.

When Marva first lived in Iowa, she attended visitation sporadically. She was often late and usually did not avail herself of the full visitation time. While she was living in North Carolina, Marva had limited contact with the children. She called them on Christmas and their birthdays. She wrote letters, although the record does not say how many. These letters were intercepted by DHS due to inappropriate content. After Marva returned to Iowa, she did not have any contact with the children because the children's therapist did not recommend visitation. There is clear and convincing evidence to show Marva did not maintain significant and meaningful contact with her children. Her parental rights were properly terminated under section 232.116(1)(d).

C. 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. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996). If we determine Marva's parental rights were properly terminated under

section 232.116(1)(d), we need not address her claims regarding sections 232.116(1)(b), (e), and (k).

D. Marva asks for more time to address her parenting problems. She states she has overcome her addiction to illegal drugs. She claims this was her largest impediment to successful parenting. Marva feels that within a short time she would be ready to care for the children.

We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children. *In re A.Y.H.*, 508 N.W.2d 92, 96 (Iowa App. 1996). A child should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.*, 499 N.W.2d 334, 339 (Iowa App. 1993). The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. *In re D.A.*, 506 N.W.2d 478, 479 (Iowa App. 1993). Children simply cannot wait for responsible parenting. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990).

We determine Marva has been given sufficient time to address her parenting deficiencies. The children have been in foster care since January 1996. They should not be forced to wait any longer for a stable home.

III. Myron.

Myron contends the State did not present sufficient evidence to support termination of his parental rights. He did not raise an argument concerning section 232.116(1)(e). The father's failure to argue this issue may be deemed waiver of the

issue. Iowa R. App. P. 14(a)(3); *In re W.C.*, 489 N.W.2d 40, 41 (Iowa App. 1992). As noted above, 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. *In re A.J.*, 553 N.W.2d at 909. Because we have found Myron's parental rights were properly terminated under section 232.116(1)(e), due to the fact he has not appealed the termination under this code section, then we need not address his claims regarding sections 232.116(1)(b) and (d).

In any event, there is sufficient evidence to show Zachariah could not be returned to Myron's care. Myron was in prison at the time of the termination hearing. He admitted he was unable to care for his child at the present time. There is sufficient evidence to support termination of Myron's parental rights.

We affirm the decision of the juvenile court terminating Marva's parental rights to Kelly and Jeremy, and terminating Marva's and Myron's parental rights to Zachariah.

AFFIRMED.