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IN THE COURT OF APPEALS OF IOWA

No. 0-131 / 99-1641
Filed May 31, 2000

IN THE INTEREST OF K.C., S.C. and G.C., Minor Children,

S.A., Mother,
Appellant,

J.C., Father,
Appellant.

Appeal from the Iowa District Court for Marshall County, Victor G. Lathrop, Associate Juvenile Judge.

Mother and father appeal separately from a juvenile court order terminating their parental rights pursuant to Iowa Code sections 232.116(1)(e) and 232.116(1)(g) (1999). **AFFIRMED.**

Patrick L. Wilson, Marshalltown, for appellant-mother.

Chad R. Frese of Moon Law Office, Marshalltown, for appellant-father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and James DeTaeye, Assistant County Attorney, for appellee-State.

John Swain, Public Defender's Office, Marshalltown, guardian ad litem for minor children.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

HECHT, J.

Mother and father appeal separately from a juvenile court order terminating their parental rights pursuant to Iowa Code sections 232.116(1)(e) and 232.116(1)(g) (1999). The mother contends the State failed to prove the allegations in the termination petition. The father contends the State failed to prove the children could not be returned to the parental home. We affirm the district court's order.

I. Factual Background and Proceedings. Jeff and Sheri are the young parents of Gabriel, born October 10, 1993; Kenneth, born October 7, 1994; and Samantha, born January 25, 1996. The children were voluntarily placed in foster care on July 21, 1997, after a child abuse assessment indicated the children had been denied critical care. The youngsters were adjudicated CINA on September 17, 1997. On October 28, 1997, the district court held a dispositional hearing. Jeff was incarcerated at the time following conviction of sexual abuse and drug possession charges. The court transferred temporary custody of the children to the Department of Human Services ("DHS") and continued the foster care placement.

DHS provided numerous forms of services to the family. These included extensive supervised home visits, parenting skills training, meal preparation, mental health therapy, and home hygiene instruction. The family's caseworker spent up to ten hours per week in the home during the pendency of these proceedings.

Jeff, who was nineteen years of age at the time of Gabriel's birth, was in the custody of the Marshall County Sheriff and accused of a probation violation at the time of the termination hearing. Sheri testified she anticipated Jeff would be going to prison as a consequence of the alleged violation.

Sheri, who was sixteen years of age at the time of Gabriel's birth, quit school after the eighth grade. She reported a long history of depression for which she is medicated. Sheri's mental health professional has diagnosed her with an adjustment disorder with mixed anxiety and depressed mood.

The three children are extremely difficult to manage because of their behavior problems. They were placed as a group in three different foster homes after their removal from Jeff and Sheri's home. The foster parents in the second of these homes were unable to manage Gabriel, Kenneth, and Samantha and relinquished their care of the children. A founded report of child abuse resulted when the second foster mother slapped Kenneth during a physical altercation.

Although Gabriel was described as "out of control" at earlier times, he had shown some improvement by October of 1998. He had become consistent in his potty training at the age of five years, and had not been observed breaking toys and other things in his parents' home during visits. He was no longer using profanity and was otherwise less aggressive. Despite the noted improvement, Gabriel's behavior was described by Head Start representatives as "aggressive" on fifty-eight occasions between October of 1998 and February of 1999. On three occasions he was sent home by those representatives because of such behavior. During home visits, he was observed biting wheels off toys, tearing

books, throwing items to break them, and stomping on toys with his feet. The boy's sleep pattern also posed special challenges for his parents. He often arose between 3:00 o'clock and 5:00 o'clock a.m. and was almost always up by 7:00 a.m. Sheri testified school representatives encouraged consideration of medication to manage Gabriel's behavior, but the mental health provider declined to pursue such treatment because a foster parent opposed the idea.

Kenneth, too, continued to exhibit aggressive behaviors after he was removed from Jeff and Sheri's home. He tended to scream, cry, and hit when he became unhappy or frustrated and engaged in conduct similar to his older brother's.

Samantha also exhibited aggressive behaviors after removal from her parents' home. These included taking toys from her siblings, hitting her mother when disciplined, hitting her siblings when she disagreed with them, crying or refusing to respond when disciplined, and throwing toys when unhappy about her mother's attempts to redirect her.

While services were provided to the family, gradually escalating home visits were permitted. At first supervised and brief in duration, the visits had increased to six days and five nights in February of 1999. In March of 1999, DHS made its fourth finding Jeff and Sheri had denied the children critical care. The finding was based upon an incident that occurred in February of 1999 when Gabriel and Kenneth were seen on the roof of the family residence early in the morning. DHS also found the children had been playing in an overflowing tub of water and climbing on top of the stove while unsupervised. Jeff was sleeping at

the time of these incidents after returning home from his night shift employment. Sheri's failure to supervise the children was claimed to have resulted from an improper dosage of a new medication that had been prescribed for her depression and insomnia.

The only issue tried at the termination hearing in this case was whether the children could be returned at that time to the custody of Jeff and Sheri as provided in Iowa Code section 232.102. The district court terminated parental rights as to Gabriel and Kenneth pursuant to Iowa Code section 232.116(1)(e); and terminated parental rights as to Samantha pursuant to Iowa Code section 232.116(1)(g). Jeff and Sheri claim the district court erred in finding, if returned home, the children would likely suffer harmful effects as a result of the parents' failure to exercise a reasonable degree of care in supervising them. The State contends the district court properly found the children could not be returned home even after extensive services had been provided to the parents.

II. Standard of Review. Our review of termination cases is de novo. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996). We review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). We have recognized there exists a parental interest in the integrity of the family unit, but such interest is not absolute and may be forfeited by certain conduct. *Dameron*, 306 N.W.2d at 745. The State

has the duty to see every child within its borders receives proper care and treatment and must intercede when parents abdicate that responsibility. *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988). At a minimum, this care includes proper food, clothing, discipline, and supervision. *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990). "Every child deserves a safe, healthy, and stimulating environment in which to grow and mature." *Id.* 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 child; we look to both the long range and immediate interests of the child. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa App. 1998). A parent's past performance may be indicative of the quality of future care. *Dameron*, 306 N.W.2d at 745.

III. The Merits. At the time of the termination hearing, the three children had been in foster care for almost two years during which time family reunification services were continuously offered. Despite numerous attempts to provide Jeff and Sheri with parenting skills necessary to supervise and manage the children, they remain unable to do so. Jeff's failure to provide appropriate parenting is significantly related to his inability to avoid criminal activity and the resulting punishment.

We are convinced the three children pose special challenges for anyone who would parent them. After carefully reviewing the record, we view with some skepticism DHS's suggestion Gabriel, Kenneth, and Samantha are not "special needs" children. We note Sheri's testimony medication has been recommended by school representatives to assist in the management of Gabriel's behavior.

There is no evidence in the record tending to prove this suggestion has been seriously considered by representatives of DHS. We find no evidence of a meaningful psychiatric assessment of whether medication would assist in the management of the children's behavior. Indeed, the record suggests the consideration of medication was vetoed not by a mental health professional, but by a foster parent.

Our decision to affirm the district court's decision on termination is strongly affected by the inability of Jeff and Sheri to properly supervise the children notwithstanding the services provided to them since foster care was instituted in July of 1997. The legislature has statutorily determined the interval for which patience with parents may last. *In re A.J.*, 553 N.W.2d at 913. Parents cannot be dilatory in taking steps necessary to improve their parenting. We have stated, "the crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). Although it could be reasonably argued the children exhibit behaviors that would challenge even the most effective parents, we believe the State met its burden to prove Gabriel, Kenneth, and Samantha cannot be returned to Jeff and Sheri's home because of the likelihood they would not be safely supervised. The evidence does clearly and convincingly show the children's behaviors do deteriorate when they are in the presence of Jeff and Sheri, whether during supervised or unsupervised visitation. We also credit the expert testimony suggesting the children's conduct has improved in the current foster care environment. Though Sheri testified she is now better able to

manage the children because her sleep-inducing medication is appropriately regulated, the district court appropriately assessed her future parenting in light of her past shortcomings. Finally, in view of Jeff's incarceration, his immediate availability to provide supervision for the children is uncertain at best. The children need permanency. We affirm the district court's order.

AFFIRMED.