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IN THE COURT OF APPEALS OF IOWA

FILED
OCT 05 1993
CLERK SUPREME COURT

No. 3-397 / 93-466

IN THE INTEREST OF S.M., A Minor Child,

M.M., Mother,

Appellant.

Appeal from the Iowa District Court for Polk County, Richard A. Strickler, Judge.

The mother appeals the district court's judgment terminating her parental rights to her minor child. **AFFIRMED.**

Ben C. Chatman of Cook, Gotsdiner, McEnroe & McCarthy, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Judy Sheirbon, Assistant Attorney General, and Ray M. Blase, Assistant County Attorney, for appellee State.

David Adams, Des Moines, guardian ad litem for minor child.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

SCHLEGEL, J. 000294

The mother appeals the district court's judgment terminating her parental rights to her minor child pursuant to Iowa Code section 232.116(1)(g) (1991).[1] The mother argues the district court erred in: (1) finding sufficient evidence to support the conclusion that the child could not be returned to the mother and the child's siblings; and (2) failing to identify which of the definitional grounds of the "child in need of assistance" adjudication remain, preventing the child from being returned to the parental home.

M.M. is the mother of three children, A.M., born in 1989; S.M., born in 1990; and B.M., born in 1992. A.M. had previously been adjudicated a child in need of assistance but had been returned after M.M. completed an in-parent and infant nurturing program. In 1990 M.M. indicated she was stressed and frustrated by caring for A.M. and the new baby, S.M. On March 19, 1991, the State filed a petition alleging that S.M. was a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (1991).

At the May 1991 CINA hearing, both A.M. and S.M. were placed in M.M.'s physical care, provided that M.M. attend individual therapy, the children attend day care, and the Iowa Department of Human Services maintain supervision over

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1. The parental rights of the child's father were also terminated by the district court pursuant to Iowa Code section 232.116(1)(b) (1991). The father has not appealed the court's judgment.

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the family. During that summer M.M. made slow progress toward rehabilitation, became pregnant with her third child, and quit school. M.M. also terminated her therapy visits. More child abuse referrals were made as the DHS workers reported that M.M. gave A.M. a sleeping pill.

M.M. ultimately showed good progress toward A.M. but remained abusive toward S.M. As a result, S.M. suffered from slow speech development and had difficulty interacting with others. M.M.'s third child, B.M., was born at this time. M.M.'s therapist reported that M.M. was observed meeting her own needs before those of the children and reported that M.M. expressed no desire to seek therapeutic help. In February 1992 M.M. agreed to place S.M. in foster care. In April 1992 B.M. was adjudicated a child in need of assistance pursuant to section 232.2(a)(c)(2). M.M. visited S.M. only occasionally during this time.

Over the next several months DHS workers reported that M.M. refused numerous attempts to provide her with parenting skills. By July 1992 the district court began to express serious concern about M.M.'s pattern of starting and stopping programs and services. The court continued S.M.'s placement in foster care and warned M.M. that she must continue seeing her therapist, Bonnie Theisen. On August 24, 1992, M.M. voluntarily signed papers terminating her parental rights to S.M.

That fall M.M. attempted suicide on several occasions by overdosing on pills. While hospitalized for the second

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overdose, she withdrew her consent to terminate her parental rights to S.M. At the January 5, 1993, review hearing, the parties agreed to continue the hearing until February 1993, so S.M. could participate in a forty-five-day evaluation through the Des Moines Child and Adolescent Guidance Center. Following the hearing, M.M. made self-mutilating cuts on her arm and stated she would do so again.

During the evaluation several psychologists observed M.M.'s behavior around S.M. They noted that M.M. was uncooperative, argumentative, negative, and threatened injury or killing if the termination of parental rights occurred. M.M. stated she was not interested in parenting services. The psychologists also noted that M.M. associated with several men who had criminal records, one of whom had been convicted of lascivious acts with a child.

At the February 1993 termination hearing the court expressed its fear that S.M. would be the subject of continuing abuse based on reports that stated M.M. had the highest probability of abusing her children of all the patients ever seen by her therapists. Based on the lack of M.M.'s progress in parenting programs and based on the lengthy testimony from DHS observers and psychologists that S.M. would likely be subject to great physical or mental abuse, the district court ordered termination of M.M.'s parental rights to S.M. M.M. appeals. We affirm.

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M.M. argues insufficient evidence existed to justify a termination of her parental rights, contending abundant evidence indicates she and S.M. have bonded well. She further maintains that the foster parents were supportive of M.M.'s relationship with S.M. M.M. claims the therapist used by the court to assist the court's decision only visited with M.M. and S.M. once. M.M. also claims that S.M.'s general insecurity and difficulty in relating to others results solely from S.M.'s placement in foster care. In addition, M.M. argues the district court failed to specify the grounds upon which to terminate M.M.'s parental rights, especially since M.M. still has custody of her other two children.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

> We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. Our statutory

> termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing Dameron, 306 N.W.2d at 745).

In the present case, the mother's parental rights were terminated pursuant to Iowa Code section 232.116(1)(g) (1991), which provides:

> 1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:
>
> (g) The court finds that all of the following have occurred:
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> (1) The child is three years of age or younger.
>
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
>
> (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

At the termination hearing, the mother did not contest the State's evidence which proved the first three elements of this code section. The central issue on appeal is whether the State has proved the fourth element of this section by clear and convincing evidence. We conclude the State has achieved its burden of proving that S.M. cannot be returned to the custody of the mother due to the imminent risk of physical and emotional harm to the child

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which would result as discussed in section 232.102 and specified in sections 232.2(6)(b) and 232.2(6)(c)(1). Proof by clear and convincing evidence of either of these types of harm is sufficient to support termination. See In re A.M.S., 419 N.W.2d 723, 725 (Iowa 1988) (citing In re K.L.C., 372 N.W.2d 223, 228 (Iowa 1985).

The juvenile court determined that S.M.'s best interests would not be served by returning the child to a parent who by her own testimony has attempted suicide six or seven times during her young life. In addition, the court relied heavily upon the professionals at the Des Moines Child and Adolescent Guidance Center (D.M.C.A.G.C.). In particular, the juvenile court placed emphasis on the conclusion of Jeannie S. Sims, Ph.D., a clinical psychologist at the center. Dr. Sims stated that her observations, interview information, and test data all indicate a high risk for physical abuse of S.M. by M.M. if the child is returned to the mother. In addition, Dr. Sims concluded that although a bond does exist between S.M. and M.M., the intensely conflicting relationship which exists between the two seriously impairs S.M.'s social-emotional development.

Dr. Sims opined:

> It appeared that [S.M.] experienced rather constant emotional abuse from her mother, on the basis of my observation of their interactions, which is also devastating to a child's development. It appears questionable whether [the mother] would be able to protect [S.M.], given her difficulties protecting herself. She did not seem aware of the highly destructive impact on a child

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> observing events such as rape and severely traumatic history. [M.M.'s] emotional disturbance is severe and chronic, resulting in frequent crisis and debilitating depression. Her skills for coping with day-to-day problems in addition to the myriad complexities of parenting three children are limited. Her inability to trust, resulting from her past abusive history, has heightened her resistance to cooperating with the extensive services already provided regarding improving her parenting skills.

The mother's contention that the results of the D.M.C.A.G.C. evaluation should not be given weight is without merit. This is especially apparent in light of the fact that the mother introduced some of those evaluations at the termination hearing and the fact that the mother's therapist's opinion that termination is not appropriate was rendered without the therapist having observed the mother with S.M. The testimony of the service providers who have had contact with the mother and S.M. supports the conclusion that returning S.M. to M.M. would pose a serious risk of physical and emotional abuse. Accordingly, we affirm the juvenile court's termination of M.M.'s parental rights to S.M.

A child should not be forced to endlessly suffer the parentless limbo of foster care. In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990); Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977). The child need not endlessly await the maturity of the child's natural parent. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." In re A.C., 415

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N.W.2d 609, 613 (Iowa 1987). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." In re L.L., 459 N.W.2d 489, 495 (Iowa 1990).

AFFIRMED.