IN THE COURT OF APPEALS OF IOWA

No. 0-126 / 99-1250
Filed April 28, 2000

IN THE INTEREST OF

T.H., Jr. and M.H.,
Minor Children,

T.H., Sr., Father,
Appellant,

S.B., Mother,
Appellant.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Clinton County, Nancy S. Tabor, Associate Juvenile Judge.

Father and mother appeal the court's order terminating their parental rights to their two children. The father contends the termination of his parental rights was not in the best interests of the children. He also claims the court erred in finding clear and convincing evidence that grounds existed for termination under Iowa Code section 232.116(1)(e) (1999). The mother contends that the grounds for termination of parental rights were not proven by clear and convincing evidence, and the court erred in finding that reasonable efforts to reunite parent and children were made. **AFFIRMED.**

Marsha J. Arnold, Davenport, for appellant - father.

Jeffrey L. Farwell of Farwell & Bruhn, Clinton, for appellant - mother.

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

Bert Watson, Clinton, guardian ad litem for minor children.

Heard by Huitink, P.J., and Streit and Miller, JJ.

MILLER, J.

Appellant/Father Terry Sr., and Appellant/Mother Salenna appeal the termination of their parental rights with regard to their sons, Terry, Jr. (T.J.) and Matthew. Each contend the State did not prove by clear and convincing evidence all the required elements of each subsection of the Code under which the court terminated their respective rights. Terry and Salenna also contend the State did not provide reasonable services prior to termination. Terry further contends termination is not in the best interests of the boys. We affirm.

Background Facts and Proceedings

Terry and Salenna met in the Quad Cities and dated on and off before getting married in Texas in June 1990. At the time, Salenna was eighteen and pregnant with T.J. They got married so T.J. could have their father's last name. The couple separated soon thereafter with Terry and T.J. going to live with Terry's parents, but reunited when T.J. was one year old. Salenna then learned she was pregnant with her second child, Matthew, when she tried to sell blood plasma. Several more separations ensued, and the couple finally divorced because Salenna repeatedly left Terry and the boys. Terry received an uncontested divorce in June 1993, granting him custody of the boys. It appears Salenna had very little interest in mothering her two boys.

In June 1997, T.J. and Matthew were removed from their father's home in Clinton, Iowa, and placed in the custody of the Department of Human Services (DHS) for family foster care. This was necessitated when the father dumped the boys off at his sister's house because he was frustrated with their behavior. Salenna lived in Davenport, Iowa at this time. Terry's sister, Debbie, who had

just been released from a hospital for suicidal ideation, took the boys out of fear for their safety, as Terry was "yelling at the boys and threatening to 'cut their feet off and stick them up their butts' and 'cut[ ] their heads off and fuck[ ] their skulls.'" Debbie was afraid to say no to Terry because she had seen him physically abuse the boys. Terry had a founded report for physically abusing Matthew only one month earlier. He also had a founded report for denying critical care to both boys fourteen months earlier. At the temporary removal hearing in July 1997, the juvenile court continued custody of the boys with the DHS and ordered supervised visitation with both Terry and Salenna. Terry's visitation was suspended two months later due to the extreme emotional trauma the boys suffered before and after visitations with Terry.

As a result of a child in need of assistance (CINA) adjudicatory hearing in September and October 1997, both boys were found to be CINA as defined by Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2). In its adjudicatory order the court ordered that Terry and Salenna have no contact with the children pending further order. The court also issued separate no-contact orders prohibiting any contact by Terry or Salenna with either child and directing that such contact not be resumed until the children's therapist and the court approved. A December 1997 CINA dispositional hearing resulted in an order that continued placement in family foster care, left the no-contact order in effect, and approved and adopted a case permanency plan. In August and September 1998, the juvenile court held contested hearings on Terry and Salenna's requests for reinstitution of supervised visitation. The juvenile court denied Terry's request entirely, and allowed Salenna supervised visitation once per month, but otherwise kept the no-

contact order in effect. In February 1999 Terry was found in contempt of court for violating the no-contact order by contacting T.J. at school.

The boys have been in several foster homes throughout the pendency of this action, and no longer live in the same placement together. Matthew requires a level of care that a family foster home cannot provide, and it is the unanimous recommendation of the services providers to place him in a psychiatric medical institution for children. It appears his chance of adoption is slim for the near future because of his traumatized condition and extreme behaviors, but he has the potential to get better over time and then his chances of being adopted within a year or two will be excellent. Matthew cannot attend the public school system because of his extreme behavior. T.J. has progressed in foster care, but still requires many services.

In May 1999, the State filed its Petition to Terminate Parental Rights, seeking termination Salenna's parental rights pursuant to Iowa Code sections 232.116(1)(b), (1)(d), and (1)(e), and Terry's parental rights pursuant to Iowa Code section 232.116(1)(e). The juvenile court held hearings on the petition in June 1999, and filed its termination order on July 15, 1999, ordering the termination of Terry and Salenna's parental rights pursuant to the Code sections pled. Both parents appeal.

Scope and Standard of Review

Appellate review of proceeding to terminate a parent-child relationship is de novo; thus it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We accord weight to the fact

findings of the juvenile court, especially when considering the credibility of the witnesses whom that court heard and observed firsthand, but we are not bound by those findings. *Id.*

Central to a determination of this nature are the best interests of the child. *Id.* In this connection, we look to the child's long-range as well as immediate interests. *Id.* Hence, we necessarily consider what the future likely holds for the child if returned to his or her parents. *Id.* 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 that parent is capable of providing. *Id.*

Merits

Termination of Terry's Parental Rights

Terry argues termination was not proper under Iowa Code section 232.116(1)(e) because the State did not prove by clear and convincing evidence the children would remain children in need of assistance if returned to his care. See Iowa Code § 232.116(1)(e)(4); *In re E.B.L.*, 501 N.W.2d 547, 550 (Iowa 1993) (stating "Section 232.116(1)(e)(4) requires proof that the child cannot be returned to the parent because the child remains a 'child in need of assistance' as defined in Section 232.2(6)."). He bases his argument on the fact that he has attended and cooperated with services offered, learned it was wrong to use foul language and corporal punishment, and "he would make a very strong effort to meet the basic physical needs of the children."

His efforts and promises of the future come much too late for T.J. and Matthew. His major roadblock is his refusal to acknowledge his actions are the cause of most, if not all, of the boys problems. He instead believes the behavior

problems of the boys are due to their placement outside of his home. He also blames Selenna, the foster parents, and the service providers. Because Terry has refused to acknowledge and recognize his responsibility, we believe there has been no meaningful change in his parenting skills since the CINA adjudication, even though he has participated in many services. *See In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa App. 1988) ("[P]arents [must] acknowledge and recognize the abuse before any meaningful change can occur."). Terry does not recognize the difference between participation in services and learning and applying the services offered. Terry has made little progress with the services offered. As noted by the trial court, "[d]espite the receipt of these services, the parent-child relationship remains fractured and is not repairable in the immediate or near future."

Further, at the time of the termination hearing, Terry had no place to live and was unemployed. He had just been evicted from his apartment for non-payment of rent. He has an unstable employment history and a history of frequent moves. He testified he has "no energy, no desire to work." He is in arrears on court-ordered child support due a third child not involved in this case. We find, on our de novo review for all the reasons listed above, clear and convincing evidence the children would remain CINA if returned to Terry. Therefore, the juvenile court did not err in determining the section 232.116(1)(e) grounds for terminating his parental rights had been proved.

Terry further argues that termination of his parental rights is not in the children's best interests. He bases this argument on the boys unsuccessful stays at previous foster homes.

Under Chapter 232, the court must first determine whether the statutory criteria have been established by clear and convincing evidence, thus establishing that the parent has forfeited his or her protected interest. *See* Iowa Code § 232.116(1) (1999); *In re T.R.*, 483 N.W.2d 334, 337 (Iowa App. 1992). Only after an affirmative finding that the parent has done so does the court then look to the best interests of the child. *See* Iowa Code §§ 232.116(2), (3) (1999); *In re T.R.*, 483 N.W.2d at 337. That is, once the court concludes that all of the criteria for termination of parental rights have been satisfied, the court must still make a determination as to whether termination would be in the child's best interest. *See, e.g., In re T.R.*, 483 N.W.2d at 337.

We find no merit in Terry's argument. He asks us to compare the possible futures of the children, especially because of the uncertainty of adoption. Contrary to Terry's assertions, it appears T.J. has made substantial progress in foster care and is adoptable. Matthew needs psychiatric treatment for the foreseeable future, a need created in large part by Terry's abuse. He does not have a good chance of being adopted in the short term. However, the evidence shows that after extended treatment his chances for adoption appear to be excellent.

Terry has been very unstable in residence and employment. He had no home or job at the time of the termination hearing. He had no desire to work. T.J. and Mathew had been removed from his home for two years at that time. Terry was at best marginally able to provide for himself, and was unable to provide a home for the boys and care for them. Even if he were able to do so, the likelihood of further abuse and trauma would be high because of his refusal

to acknowledge his actions have been a major cause of the boys' severe problems. It is in T.J.'s and Mathew's best interest Terry's parental rights be terminated.

Termination of Salenna's Parental Rights

Salenna's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(b), (1)(d), and (1)(e). Salenna presents little or no argument that clear and convincing evidence was not presented to prove termination pursuant to section 232.116(1)(d). We find there is clear and convincing evidence to terminate her parental rights pursuant to that section.

There is no contention the first two elements of section 232.116(1)(d) were not met: Mathew and T.J. were adjudicated CINA on October 24, 1997, and had been removed from their parents physical custody for a period of at least six consecutive months.

Our review of the record also finds Salenna did not maintain "significant and meaningful contact," as defined by section 232.116(1)(d)(3), with the children during the previous six months and made no reasonable efforts to do so despite the opportunity to do so. Terry divorced her because she repeatedly abandoned him and the boys. She did not seek custody of the boys during dissolution proceedings and they were placed with Terry. While Terry had custody of the boys, Matthew was placed under the guardianship of another couple and both boys resided with someone else for a year and a half. Salenna did not know of that fact for the year and a half because she made no effort to contact her children. After the boys were adjudicated CINA, Salenna stated she was unable to care for the boys at that time because they were too difficult to handle and

preferred Terry regain custody. Salenna exercised her right to visitation during the pendency of this matter once, and took no affirmative steps to visit the boys again. She sent them no birthday or Christmas presents or cards. She has provided them with no financial support. Salenna has not "affirmative[ly] assum[ed] . . . the duties encompassed by the role of being a parent." *See* Iowa Code § 232.116(1)(d)(3). In fact, for most of Matthew's and T.J.'s lives, she has rejected the role of parenting them, has shown no interest in them, and has not attempted to establish or maintain a place of importance in either child's life. While we recognize Salenna did attend court hearings, and completed the case permanency plan in Scott County with regard to another child of hers, these activities do not come close to being a parent to T.J. and Matthew. We find, on our de novo review, clear and convincing evidence Salenna did not maintain significant and meaningful contact with T.J. and Matthew during the six consecutive months before the termination hearing and order and made no reasonable efforts to resume care of them despite being given the opportunity to do so. The juvenile court did not err in determining the section 232.116(1)(d) grounds for terminating her parental rights had been proved.

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 S.R.*, 600 N.W.2d 63, 64 (1999). Having found termination appropriate under section 232.116(1)(d), we need not reach Salenna's arguments the juvenile court erred in terminating her parental rights pursuant to Iowa Code sections 232.116(1)(b) and (1)(e).

Reasonable Services

Both parents claim the State failed to offer reasonable services to preserve the family unit. Terry's claims center on the lack of visitation and the fact joint therapy was not provided. Salenna argues she was never given an opportunity to become the caretaker of the children.

Before parental rights may be terminated, the State must make reasonable efforts to reunite a family by providing reasonable services in an attempt to eliminate the need for removal. *In re E.K.*, 568 N.W.2d 829, 831 (Iowa App. 1997); *In re A.B.*, 554 N.W.2d 291, 294 (Iowa App. 1996). However, it is the parent's responsibility to demand services if they are not offered, *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa App. 1997), and to do so prior to the termination hearing when the case plan is entered. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997); *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). To raise this issue on appeal an appellant must have presented it before the juvenile court at the termination hearing. *See In re Interest of J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997).

Throughout the pendency of this action, Terry has asked for visitation with his children. We have previously said visitation between a parent and child is an important ingredient to the goal of reunification. *In re M.B.*, 553 N.W.2d 343, 345 (Iowa App. 1996). However, the nature and extent of visitation is always controlled by the best interests of the child. *Id.* This standard may warrant limited parental visitation. *Id.*

Visitation was denied Terry because of the severe emotional problems the boys experienced as a result of how Terry abused them and their reaction to

seeing him or even hearing of him. We find that reasonable efforts and resources were committed to helping T.J. and Matthew recover to a point where contact and interaction with Terry would be possible. However, that point was not reached, largely because of the extreme abuse which had occurred and Terry's refusal to acknowledge his wrongs and make changes.

It appears from the record Salenna responded well to services offered her in Scott County with regard to a third son not at issue in this appeal. Salenna was given the opportunity to exercise visitation with T.J. and Matthew in Clinton County, but failed to take advantage. She did not contact the service providers, instead waiting on them to contact her. This is a continuation of her pattern of disinterest in the welfare of T.J. and Matthew. Salenna asserts this apparent "disinterest" is actually caused by her lack of money, and economic factors may not be considered by the court in terminating parental rights, citing *In re Z.T.D.*, 478 N.W.2d 426, 428 (Iowa App. 1991). However, the rule is a juvenile court may not "base its decision on economic factors *alone*." *In re Z.T.D.*, 478 N.W.2d at 428 (emphasis in original). Given Salenna's history of not showing interest in the boys, we do not believe a postage stamp or a call from a pay phone would put too much strain on her finances if she were truly interested in the welfare of her boys. She does not tell us what other services the State should have provided. We find the State committed reasonable efforts and resources in trying to reunite Salenna with T.J. and Matthew.

AFFIRMED.