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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF D.R. and H.R., Children,	)	Filed April 23, 1986
	)	6-07 85-16
P.R., Natural Mother,	)	
Appellant.	)	

8.1

Appeal from the Iowa District Court for Clayton County (No. PT9-0384) - Joseph C Keefe, Judge.

Appellant mother appeals the termination of her parental rights as to her minor children H.R. and D.R. contending that there was not clear and convincing evidence that H.R. and D.R. could not be returned to her care at the time of the termination proceeding. **AFFIRMED.**

Larry F Woods, Oelwein, for appellant.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General, and Stephen Saunders, Assistant County Attorney, for the State.

Steven McCorkindale, Elkader, guardian ad litem, for the children.

Heard by Donielson, P.J., and Snell and Sackett, JJ.

PER CURIAM

P.R. is the natural mother of four children. The two youngest children are the subjects of the present termination proceeding. D.R. was born on January 14, 1980, and H.R. was born on January 1, 1981. P.R. has never married and has consistently been unemployed.

In March of 1982, the cases of D.R. and H.R. first came before the juvenile referee for Clayton County. The parties stipulated that D.R. and H.R. were children in need of assistance. The grounds for the CHINA adjudications were in-home family conflict, lack of parental supervision, lack of adequate housing, and P.R.'s failure to provide routine health care. Disposition was placement of the children with P.R. subject to the protective supervision of the Department of Social Services. Several review hearings were held in 1982. Placement remained with P.R., however, reports by social workers indicated that P.R. was subject to bouts of excessive drinking, and maintained unsanitary living conditions.

On March 10, 1983, a review hearing was held and the juvenile referee placed D.R. and H.R. in foster care. The referee found that P.R. failed to maintain adequate sanitary conditions in her home, failed to keep the home safe for young children, failed to cooperate with the Department of Social Services, and failed to secure adequate medical and educational services for the children. The referee noted she had two older children living with her, then aged 15 and 16, who did not attend school. The children remained in foster care after a July 21, 1983 review hearing. While P.R. had cooperated with all required chemical dependency counseling and improved her parenting skills somewhat, she still could not provide a minimally sufficient living arrangement to warrant the children's return.

In the fall of 1983, P.R. obtained adequate housing and was informed by the Department of Human Services that it would recommend that the children be returned to her custody. The review hearing was held on December 8, 1983.

On December 27, the court ordered legal custody of H.R. to remain in the Department of Human Services, but awarded physical custody of both H.R. and D.R. to P.R. "within five days of the date this order is filed." The children were never returned to P.R.'s custody because she left Clayton County during the last few days of December. The pipes had frozen in her house and she could not afford to repair the plumbing. P.R. realized it would no longer be a suitable living environment for the children. She left her two oldest children to fend for themselves. She did not return for four months and did not attempt to contact H.R. and D.R. until May of 1984. P.R. testified at the termination proceeding regarding her move as follows:

> Q. . . . Why did you leave Clayton County soon after that Order was entered, when your kids were almost returned to your home?
>
> A. Well, for one thing, I didn't have any place to live. I had already found out that I had to move from that house, and I was confused about a lot of different things; didn't know for sure if I wanted to do anything.

P.R. further described where she traveled during her absence. She left with a boyfriend and they traveled through eastern Iowa, staying briefly in Garnavillo, Guttenberg, Manchester, Edgewood, and Dubuque. They stayed with friends and relatives, but also slept in a park, a gas station restroom, and a hog house. P.R. was arrested for criminal trespass for the latter sleeping arrangement. P.R. admitted to drinking throughout this migration. After leaving her boyfriend because he was beating her, P.R. ended up in Wisconsin and lived at a Salvation Army and a shelter for battered women. At the time of the termination hearing P.R. was residing in Madison with a female friend.

A termination of parental rights hearing was held before the juvenile referee on May 31, 1984. P.R.'s parental rights were terminated by the referee and affirmed on review by the district court.

On appeal, P.R. contends that: (1) there is not clear and convincing evidence that D.R. and H.R. cannot be safely returned to her custody; (2) she did not have adequate representation of counsel; (3) the juvenile referee erred in taking judicial notice of two exhibits, and (4) Iowa Code sections 232.96, 232.102, and 232.116(5) violate her parental equal protection and due process rights.

Our review of proceedings to terminate a parent-child relationship is de novo. In Interest of C.W., 342 N.W.2d 885, 886 (Iowa Ct. App. 1983). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by them. In Interest of W.G., 349 N.W.2d 487, 491-92 (Iowa 1984); Iowa R. App. P. 14(f)(7). "[T]here exists a parental right to integrity of the familial relationship, unless by conduct it be forfeited." In Interest of Lewis, 257 N.W.2d 505, 510 (Iowa 1977). The best interests of the child are central to our determination. In Interest of Chad, 318 N.W.2d 213, 216 (Iowa 1982). "In this connection, we look to the child's long range as well as immediate interests. Hence, we necessarily consider what the future likely 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 that parent is capable of providing. [Authorities]." In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). Children must not be made to await their parent's maturity. In Interest of Kester, 228 N.W.2d 107, 110-11 (Iowa 1975). Children should not be made to suffer indefinitely in a parentless limbo. In re Interest of Griffin, 210 N.W.2d 665, 667 (Iowa 1973).

Sufficiency of Evidence. Under Iowa Code section 232.116(5) (1985), the court may order termination if it finds that the child has been adjudicated in need of assistance, the child's custody has been transferred from the parents for twelve months, and there is clear and convincing evidence the child cannot

be returned to the parents' custody as provided by section 232.102 and section 232.2(5).

It is conceded that D.R. and H.R. were adjudicated children in need of assistance. It is also not disputed that their custody was transferred from P.R. for twelve months. Therefore, the only question we face is whether the evidence sufficiently proved that the children cannot safely be returned to P.R.'s custody.

Iowa Code section 232.102 (1985) provides that a child should not be returned "where the child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance . . . ." The types of harm which would justify such an adjudication are set forth in Iowa Code section 232.2(5) (1983). Subsection (b) thereof states that a child is a child in need of assistance if he or she would be imminently likely to be abused or neglected by the parent. "Abuse or neglect" is defined to be "any nonaccidental physical injuries suffered by a child as a result of the acts or omissions of the child's parent . . . ," Iowa Code section 232.2(37) (1983). Subsection (c) states that a child is in need of assistance if he or she is imminently likely to suffer harmful effects as a result of the failure of the child's parent "to exercise a reasonable degree of care in supervising the child."

P.R. argues that the Department of Human Services acknowledged that D.R. and H.R. could be returned to her custody as of September of 1983. She feels that somehow the two to three month delay between the Department's recommendation and the final review hearing justified her frustration and flight from the area. She argues that she has returned to substance abuse counseling in Madison, found adequate housing there, and is now capable of providing a suitable home for her children.

Unfortunately, P.R.'s conduct belies her stated desire to be reunited with her children. Within four days after the court issued the December 27, 1983,

order requiring the Department to place D.R. and H.R. back in the home of their mother, P.R. disappeared on a four month alcoholic escapade with an abusive boyfriend. She left two teenage children behind to fend for themselves and did not contact anyone regarding her whereabouts. We can perceive no more effective way for P.R. to demonstrate her total disregard for the welfare of her children and abdication of her parenting role.

We find that D.R. and H.R. cannot continue living in a parentless limbo, nor will they be made to wait for their mother's maturity. We find that there is clear and convincing evidence that P.R. cannot provide an adequate living arrangement for her family and does not demonstrate the parental responsibility necessary to meet the physical and emotional needs of her children without probable continuous supervision. The best interests of D.R. and H.R. mandate a severance of P.R.'s parental rights.

Representation of Counsel. P.R. also contends that her trial counsel rendered ineffective assistance by failing to challenge personal jurisdiction and adequately prepare for the termination hearing. She points out that her attorney billed a maximum of four hours for trial preparation, consisting primarily of telephone conferences with her. The only personal conference between P.R. and her attorney occurred fifteen minutes prior to the termination hearing. No witnesses in P.R.'s favor were interviewed prior to trial or presented during trial.

P.R. was represented by the same attorney during the termination proceedings that represented her in the CHINA proceedings which began in March of 1982. We find that her attorney's limited preparation time for the termination hearing was due to his familiarity with the case for the past two years and the fact that P.R. was living out of state.

Furthermore, our search of the record reveals that P.R. was properly served by publication with regard to both H.R. and D.R. pursuant to Iowa Code section

232.112(1), (3)(1985). We conclude that P.R.'s contentions regarding ineffective assistance of counsel are without merit.

Judicial Notice. P.R. next argues that the juvenile referee erred in taking judicial notice of two exhibits during the termination hearing. One exhibit is a report from Clayton County Substance Abuse Services dated November 9, 1983, stating that P.R.'s substance abuse pattern is pathological and poses a progressive threat to her ability to function as a responsible parent. The other exhibit was a report prepared by a social worker from the Department of Social Services dated October 25, 1982, concerning the unsanitary conditions of the R. home and problems with D.R.'s speech. P.R. asserts that these reports do not fall within the hearsay exception of Iowa Code section 232.96(6)(1985) and were, therefore, inadmissible.

While it is true that ordinarily judicial notice may not be taken of court proceedings in related but wholly different cases, the Iowa Supreme Court in In the Interest of Adkins, 298 N.W.2d 273, 277-278 (Iowa 1980), pronounced that it is permissible for a trial court to judicially notice the evidence admitted in the prior CHINA proceedings. The court reasoned, "CHINA and termination proceedings are not separate and distinct actions, but are interdependent and interwoven. The CHINA action may be a prelude or first step to termination of the parent-child relationship." Id.

The exhibits of which P.R. complains were judicially noticed in the termination hearing because they were previously admitted at the December 8, 1983, review hearing. P.R.'s complaint is therefore groundless.

Due Process Challenge. P.R. contends that Iowa Code section 232.116(5) violates her due process rights by requiring the children to be able to immediately return at the time of the termination hearing even when there is a reasonable likelihood that the children could be returned in the near future. P.R.'s argument

apparently relies on the fact that she was found deserving of her children's return for several months at the end of 1983, and therefore, once she settles down again in Madison, she should be entitled to custody.

The central focus under section 232.116(5) is whether the best interests of the children involved require termination. The obvious rationale behind chapter 232, as professed by Iowa case law, is that parents cannot have an endless amount of time to rehabilitate themselves because their children deserve a permanent disposition. In Interest of Long, 255 N.W.2d 140, 146 (Iowa 1977) (children should not be made to suffer indefinitely in a parentless limbo); In Interest of Kester, 228 N.W.2d 107, 110-111 (Iowa 1975) (a child should not be forced to forever wait for uncertain parental maturity).

Furthermore, in making the termination decision, the court does not solely look at returnability at the time of the hearing, but rather examines what the future likely holds for the children, and what the parents' past performance indicates regarding his or her capability to provide future care. Dameron, 306 N.W.2d at 745. We conclude that P.R.'s due process rights are not violated by application of section 232.116(5) in this case.

P.R. also argues that Iowa Code section 232.116(5) violates her equal protection rights because it permits discrimination against her on the basis of wealth. P.R. asserts that her parental rights are being terminated because she cannot afford housing sufficient enough to meet the arbitrary standards required by the Department of Human Services and the judicial system.

We find that P.R.'s parental rights are not terminated because of her socio-economic status, but rather because of her marked inability to responsibly parent and meet the needs of her children. We conclude that the application of section 232.116(5) in this fashion does not violate P.R.'s equal protection rights.

AFFIRMED.