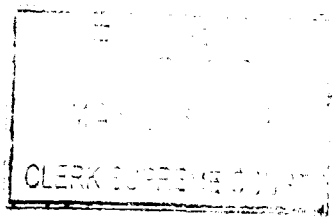
IN THE COURT OF APPEALS OF IOWA

No. 1999-71 (9-228) / 98-2048
Filed May 26, 1999



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

M.R., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott, Associate Juvenile Judge.

Mother appeals from the juvenile court order terminating her parental rights.

AFFIRMED.

Douglas L. Roehrich, Sioux City, for appellant.

Thomas J. Miller, Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee-State.

Joseph Kertels, Sioux City, guardian ad litem for minor children.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

A mother appeals the termination of her parental rights. The juvenile court terminated the mother's rights pursuant to Iowa Code sections 232.116(1)(b), (c), (d), (e), (h), and (k). She contends the termination would not be in the best interest of her children. We find the evidence supports the fact that termination is in the best interest of the children. We affirm the juvenile court's decision.

Monica is the mother of Keanan, born in August 1992; Aleaha, born in September 1994; Idalis, born in December 1995; and Mikah, born in November 1996. Keanan is in the custody of his father and is not a part of this case.

The family came to the attention of the Department of Human Services (DHS) when Aleaha tested positive for amphetamines at birth. Monica told social investigators she had been using cocaine for about a year. Aleaha was immediately removed from Monica's care and was adjudicated in need of assistance in October 1994. Monica completed chemical dependancy treatment in December 1994. In February 1995, Aleaha was placed in relative foster care and Monica was allowed to live with the relative as long as she participated in alcohol and drug treatment programs.

In July 1995, Monica entered the Villa Marie Program and was allowed to have temporary custody of Aleaha. Monica completed the program and did quite well with the classes. She was working part time as well as working toward the completion of her GED. While in the Villa Marie Program, Idalis was born. In March 1996, the

family moved to their own home, but within a month Monica moved back to the Santee Reservation because of threats from Idalis' father. In November 1996, services were provided to Monica to help her and the children move to an apartment in Sioux City. At this same time, Monica gave birth to Mikah.

The Child Protection Unit received anonymous reports Monica was drinking and doing drugs. The children were removed from the home in December 1996 after Monica refused a drug test. A week later she did test positive for cocaine. Idalis and Mikah were adjudicated to be children in need of assistance in February 1997. Monica was given one last chance by the court to reunify her family. She was granted supervised visits and she was to demonstrate she could provide the children with a stable drug-free environment. An April DHS report showed Monica had failed to follow the case plan by not showing up for scheduled visits, not staying in touch with her case worker or the reservation, and being arrested. Monica was arrested again four months later on charges of public intoxication and simple assault. The culmination of these events led to the filing of the termination petition in September 1998. Monica's parental rights were terminated at a hearing in October 1998.

We note when cases involve Indian children, termination of parental rights must be proper under the Indian Child Welfare Act.[1] The State did offer two

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[1] Indian Child Welfare Act, 25 U.S.C. 1912(f) provides:

> No termination of parental rights may be ordered in such proceedings in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

witnesses who were qualified expert witnesses. Both witnesses testified in their opinion the children were likely to suffer serious emotional or physical damage if returned to the custody of either biological parent or Indian custodian. The juvenile court concluded the evidence, along with the experts' opinions, proved beyond a reasonable doubt the children could not be returned to their mother.

We review proceedings to terminate parental rights de novo. Iowa R. App. P. 4; *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa App.1998). We may review the facts as well as the law and adjudicate a parent's rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Our primary concern is the child's best interests, both immediate and long-term. *In re J.W.*, 528 N.W.2d 657, 659 (Iowa App. 1995).

Monica contends termination of her parental rights is not in the best interest of her children. We have long believed the best interests of the children are paramount considerations in determining whether to terminate parental rights. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re N.H.*, 383 N.W.2d 570, 574 (Iowa 1986). In assessing the best interests of the child, we evaluate the child's long-range as well as immediate interests. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989). We must consider what the future likely holds for the child if returned to his or her parents. *Id.* We gain insight into the child's prospects by reviewing evidence of the parent's past performance -- for it may be indicative of the parent's future capabilities. *Id.*

In looking at the best interests of the children involved in this case, we are concerned with the future well-being of the children. Monica claims she does not have a problem with drugs or alcohol; however, the record does nothing to bolster her argument. If anything, the record shows a life filled with alcohol, drugs, crime, and general instability. We echo the statement made by the Woodbury County juvenile court in its termination order:

> Monica, while on the surface making progress at times, has repeatedly relapsed into prior destructive and negative behaviors. . . . All Monica has shown is that she has the ability to complete programs. She has not shown any ability to internalize anything she has learned or should have learned from these programs. She has shown no stability.

If these children were to be returned to Monica, we believe they would be at risk for emotional or physical danger. We acknowledge when Monica was is treatment at the Villa Marie Program she made a positive attempt to put her life in order, but after she left she fell right back into the destructive patterns of instability, crime, and substance abuse. The children need Monica to be a positive influence at all times and they cannot be asked to wait for her to become responsible. "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 at 495. Monica has not displayed any conduct which would lead us to believe she can be a responsible and reliable mother to her children.

We do agree with Monica the court has often recognized a parental interest in the integrity of the family unit; nonetheless, we also are cognizant that this interest is not absolute, but rather may be forfeited by certain parental conduct. *In re Wall*, 295

N.W.2d 455, 457 (Iowa 1980); *In re Voeltz*, 271 N.W.2d 719, 723 (Iowa 1978). Monica's conduct clearly has not been in the best interest of her family. We do not believe there would be a significant change in Monica's conduct if she regains custody since, at this point, she does not even acknowledge she may have a problem with drugs and alcohol.

The children have been in foster care for a great length of time and they have lacked substantial contact with their mother during the time in foster care. Children need not endlessly await the maturity of their natural parents. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1993). These children have waited long enough for Monica to mature, and they now deserve the stable and secure life an adoptive family could offer. We affirm the juvenile court's decision that termination is in the best interest of the children.

AFFIRMED.

No. 98-2048. [1999-71 (9-228)] IN RE A.R.

Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott, Associate Juvenile Judge. **AFFIRMED.** Considered by Huitink, P.J., and Vogel and Mahan, JJ. Opinion by Mahan, J. (6 pages $2.40)

A mother appeals the termination of her parental rights. She contends termination would not be in the best interest of her children. Monica is the mother of Keanan, born in August 1992; Aleaha, born in September 1994; Idalis, born in December 1995; and Mikah, born in November 1996. Keanan is in the custody of his father and not a part of this case. The family came to the attention of DHS when Aleaha tested positive for amphetamines at birth. Aleaha was immediately removed from the home and placed in relative foster care. Monica was allowed to live with the relative as long as she participated in alcohol and drug treatment programs. Monica entered the Villa Marie Program and did quite well. During her time in the program she was allowed to have Aleaha with her and she gave birth to Idalis. In March 1996, the family moved to their own home, but within a month Monica and the children moved back to the Santee Reservation. In November 1996, Monica gave birth to Mikah and the family moved to an apartment in Sioux City. The children were removed from the home in December 1996, after Monica refused a drug test. A week later she did test positive for cocaine. Monica was given one last chance by the courts to reunify her family. An April 1997 DHS report showed Monica had failed to follow the case plan by not showing up for visits, for not staying in touch with her case worker, and for being arrested. Monica's parental rights were terminated at a hearing in October 1998. **OPINION HOLDS: I.** We first note when cases involve Indian children, termination of parental rights must be proper under the Indian Child Welfare Act. The State did offer two expert witnesses who testified the children were likely to suffer serious emotional or physical damage if returned to Monica. **II.** Monica contends the termination in not in the best interest of her children. Best interest of the child is paramount in determining whether to terminate parental rights. We gain insight by looking at the child's future as well as reviewing the parent's past performance. We believe Monica still has a problem with drugs and alcohol. She made some progress but repeatedly relapsed into prior destructive behaviors. We believe if the children were returned to Monica they would be at risk for emotional or physical harm. Monica has not displayed any conduct which would lead us to believe she can be a responsible and reliable mother to her children. Monica's conduct clearly has not been in the best interest of her family. The children have been in foster care for a great length of time and they need not wait for Monica to mature. They deserve a stable and secure life. We affirm the juvenile court's decision that termination is in the best interest of the children.