IN THE COURT OF APPEALS OF IOWA

No. 1-49 / 90-1355

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF C.S., C.S., AND H.A.S., Minor Children,

C.S. and A.S., Parents,

Appellants.

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Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge.

Parents of three children appeal a juvenile court order terminating their parental rights. **AFFIRMED.**

Murray W. Bell of Newport, Bell & Oxley, Davenport, for appellants.

Bonnie J. Campbell, Attorney General, Gorden E. Allen, Deputy Attorney General, and Kathrine S. Miller-Todd, for appellee.

John Molyneaux, Davenport, guardian ad litem for the children.

Considered by Oxberger, C.J., and Schlegel and Habhab, JJ.

OXBERGER, C.J.

This case involves three children, girls born in July 1986, October 1987, and March 1989. Their parents are married to each other, but the marriage is stormy and violent.

The parents began receiving services in September 1986 when their first child was only five weeks old. The Visiting Nurses Association (VNA) began having contacts with the family on a regular basis. During that period the VNA noted that the home was always extremely filthy, with old food and soiled diapers lying around on the floor, and the toilet covered with human excrement. Since then the parents have consistently failed to provide even a minimally healthy home for the children. They have also failed to provide adequate supervision, medical care, or adequate nutrition. The parents' homes are always filthy and the children are permitted to play with dangerous objects, including knives and electrical appliances. One of the children almost died after crawling into a closed car and accidentally locking it on a hot day. Another child's life was endangered when an infected toe became gangrenous because the mother declined to seek medical attention.

The father has a criminal record and a history of probation and parole violations. He has trouble holding a job, partly because of altercations with fellow employees.

He has been consistently abusive to the mother. He has also threatened social workers assigned to the family.

All three children have been adjudicated children in need of assistance. All three have been in foster care continuously since April 10, 1989, when the youngest was only a few weeks old. The two older children had also been in foster care intermittently prior to that time. Social workers testified that the parents have made little progress in their attitudes or parenting skills during the children's foster care. The father has been hostile and uncooperative to social workers.

In May 1990 the State filed a petition to terminate the parental rights of both parents with regard to all three children. At the hearing several social workers testified that both parents had made progress in understanding why events had unfolded as they had, and from where the underlying hostilities had evolved. The social workers had considerably more praise for the mother in her attempts to correct her grave parenting deficiencies, but cautioned that her ability to parent was greatly affected by whether she would be further subjected to her husband's verbal and sexual abuse. The social workers had less praise for the father, stating that the father had made progress, but needed a great deal more therapy. The social workers testifying for both parties admitted that both parents still had deficiencies in basic parenting skills, stating

both parents had to be told when to change diapers and pick up potentially dangerous objects from the floor so that the children would not be tempted to put them in their mouths.

After a hearing, the juvenile court terminated the parental rights of both parents. The juvenile court relied on Iowa Code sections 232.116(1)(e) and 232.116(1)(g), those subsections permitting termination if a child cannot safely be returned to a parent's home after a CINA adjudication and extended foster care.

The parents have appealed from the termination order. They challenge the sufficiency of the evidence to establish that the children cannot safely be returned to their care. In a related issue, they challenge the sufficiency of the evidence to show that the conditions leading to the CINA adjudications still exist. We affirm.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (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 to Dameron, 306 N.W.2d at 745); see also In re A.C., 415 N.W.2d 609, 613 (Iowa 1987).

Iowa Code section 232.116(1)(e) (1989) permits the juvenile court to terminate the parent-child relationship if the child has been adjudicated in need of assistance, has been placed out of the parent's custody for more than twelve of the last eighteen months, and there is clear and convincing evidence that the child will suffer harm specified in Iowa Code section 232.2(6) (1989) if returned to the parent. See In re K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). Section 232.116(1)(g) similarly provides for the conditions upon which termination may be justified, except that this subsection governs the criteria for those children under the age of three years. These sections also require the court to find clear and convincing evidence that the children cannot be returned to parental custody as provided in section 232.102.

Section 232.102 governs the transfer of custody and placement of children. Subsection (4)(b) requires the court to find by clear and convincing evidence that the child cannot be returned to parental custody because the

child would be exposed to "some harm which would justify the adjudication of the child as a child in need of assistance" and "reasonable efforts have been made to prevent or eliminate" the harm. Subsection (6) requires "every effort" be made "to return the child to the child's home as quickly as possible consistent with the best interest of the child."

With all the vast powers afforded the State in achieving its objective of maintaining the family unit, it is without question that such a wide array of intrusions into the family home is bewildering to those to whom the services are directed, and understandably creates some resentment towards such intrusions. However, the parents are expected to make some reciprocal effort to alleviate the problems which resulted in the CINA adjudication, so that the harm is removed. In the present case, we believe that though the parents have made progress toward understanding their role as parents, such efforts are too little, too late, and we affirm the juvenile court's ruling terminating parental rights.

The record reveals the parents have been utilizing the many resources the State offered for over four years. During most of that period the social workers involved had little, if any, success in turning an unfortunate home life into a productive family unit. The father throughout this period was belligerent towards the social workers, and it

is the unanimous observation of all concerned that the father appeared disinterested in disciplining the children, and when called to do so, took no physical part other than to yell. Despite efforts to help the father obtain gainful employment, the father continuously lost jobs due to fighting or failure to accept criticism. The father was abusive toward his wife throughout this period, and altered his behavior only several months prior to the termination hearing, when the threat of losing his children became most real.

Though the record reveals the social workers agreed the father has made some progress towards understanding the origins of his abusive behavior, we are concerned that if the children were returned to the family home, the father would readily revert to his abusive and belligerent behavior.

We also find little evidence the father has increased his ability to hold a job successfully. The father also appeared to have little interest in his youngest daughter, even though he has expressed to the social workers his desire to spend more time with her.

Regarding the mother, however, the record is less clear. The testimony of the social workers at the termination hearing reveals the mother has made considerably more progress in developing basic parenting skills. She has completed her high school degree, and has

begun to take several classes at a local community college in Davenport. She has made improvements in her house cleaning, with several reports indicating that the house was "spotless" on several occasions. She has also made progress in determining the cause of her acceptance of abusive behavior from her husband. The mother has made some effort in utilizing the services provided by the State and the communities in which she has lived.

We are also concerned, however, with the mother's continuing problems with some of the more basic parenting skills. As late as July 1990 the mother had to be told by the social workers to change the diapers of the children, this despite over four years of fairly continuous services. The mother is still under the influence of her dominant husband, and though she has made some progress in standing up against his behavior, the social workers admitted she would still need much more therapy before she is ready to stand on her own.

The mother's past behavior is also of great concern to us, especially the withholding of medical attention to one of the children who had developed a gangrenous toe, simply because she was afraid of being hassled by social workers.

During supervised visits she failed to pick up objects from the floor that could easily be swallowed by any of the children. She failed in the past to supervise the children, the children having been seen playing with plugged-in curling irons unattended.

We conclude that although the parents have made some progress toward becoming better parents, we find their efforts to be insufficient to rebut the clear and convincing evidence in the record that both parents have severe emotional problems that would take a great deal of time to alleviate and control. Though we do not minimize the efforts of the parents to change their lives, our concern in the present case is not with their own well-being, but the well-being of the children. The parents have utilized the services provided by a myriad of agencies for over four years, but have made only limited progress at best. The parents clearly lack the maturity to control their own lives and at the same time tend to the needs of three young girls. The children have been in foster care off and on for over three years. We have consistently recognized that children should not be forced to wait in limbo indefinitely for their parents to mature. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983).

We therefore conclude that based on our de novo review of the record and of the parents' past performance, In re Dameron, 306 N.W.2d 743, 745, (Iowa 1981), the children cannot be returned to the parents and are still children in need of assistance. Based upon our foregoing analysis, we likewise reject the parents' related argument that there was evidence the children could be safely returned to their custody. The children in the past were allowed to

play with large knives, hot curling irons, and eat old, decayed food without any supervision whatsoever. One child was allowed to play in a strange car, lock herself in the car, and nearly die of heatstroke, without the parents even knowing her whereabouts. The scars on one of the children's thighs suggests that she had been tied with a rope so severely that permanent scars were left. The parents have in the past had problems keeping food in the home. The electricity and heat have often been disconnected for lengthy periods of time. We are not convinced the minimal progress made by the parents is permanent, and the children should not be subjected to any further dangerous situations which may be hazardous or terminal.

AFFIRMED.