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CLERK SUPREME COURT

IN THE IOWA COURT OF APPEALS

IN THE INTEREST OF WANDA MAE BEDSAUL, AND ROSEMARIE ANN BEDSAUL,	)	
	)	Filed May 26, 1981
Children,	)	
Linda Benedict,	)	1-38
	)	3-65486
Appellant.	)	

Appeal from Pottawattamie District Court - Gordon C. Abel, Judge.

Natural mother appeals from juvenile court order which terminated the parent-child relationship between herself and her two minor children. AFFIRMED.

Steven R. Walters of Waggoner & Walter, Council Bluffs, Iowa, for appellant.

Thomas J. Miller, Attorney General of Iowa; John G. Black, Special Assistant Attorney General; and Brent D. Hege, Assistant Attorney General; for the children.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Natural mother appeals from juvenile court order which terminated the parent-child relationship between herself and her two minor children.

The children in question are Wanda Bedsaul, born in February, 1967, and Rosemarie Bedsaul, born in December, 1967. Their natural parents are James Bedsaul and Linda Bedsaul Benedict. In 1968 Wanda and Rosemarie were adjudicated to be dependent and neglected under statutes in effect at that time. They were placed in foster care and have not lived with either natural parent since that time. For most of this extended period of foster care, the two children have lived together. They have been in the same foster home continuously since 1976.

The marriage of the natural parents, James and Linda, was dissolved in 1972. Linda remarried ten days later. Her second marriage was dissolved in 1979. This marriage produced one child who survived infancy. That child has lived in foster care since September of 1979 and was adjudicated to be a child in need of assistance in December of 1979.

Linda has maintained regular monthly visitation with Wanda and Rosemary. James Bedsaul has not visited the girls for at least four years, although he continues to reside in or near the city where the children live. James has never provided support for the children. The juvenile court, in terminating James's parental rights, found that James had abandoned the children. He has not appealed from this adjudication.

Both Wanda and Rosemary attend special education classes. Wanda is classified as low normal in intelligence; Rosemary is classified as retarded but educable. Both children also have other special needs. Both have been seeing a psychologist for help in controlling anxiety and coping with stress. The record indicates that the children's anxiety relates to a lack of predictability in their environment.

Linda has had contact with staff members of various public agencies for over a decade. The trial court summarized their testimony as indicating that Linda has had alternating periods of progress and relapse in coping with everyday living. Her periods of improvement have been short-lived. Her difficulties with everyday life have included problems in maintaining a stable residence, a sanitary household, a job and a budget.

The record indicates that Linda's existence has been marked by consistent discord in her marriage and boyfriend relationships. She was last employed eight years ago. She currently receives social security supplemental income because she has been

classified as having a mental disability. Linda currently consults with a psychiatrist, who reported that she responds to stress impulsively, easily becomes distressed and tends not to consider the consequences of her behavior. Linda was hospitalized for a period of one month in September of 1979 with a diagnosis of schizophrenia, simple type, and suicidal ideation. Her psychiatrist, in a report prepared a few days after the most recent petition for termination of parental rights was filed, and two months prior to the hearing on said petition, concluded:

> I would consider her presently to still be a poor candidate to regain custody of her children and would anticipate a chronic pattern to her present behavior. She will at times regroup only to become rather disgruntled and disorganized when pressure once again occurs which normal (sic) occurs in everyday life. In view of the fact that she has not had custody of the two children in question for the past 11 years I would have some doubts as to her being able to resume that custody. Her adequacy as a parent is certainly doubtful since she does behave so impulsively and does not use good judgment either in her own personal life or in her relationship with her children.

I. In the present case the termination of Linda's parental rights was adjudicated pursuant to the statutory grounds found in section 232.114(5), The Code. That section provides for termination of parental rights if the court finds that:

> a. The child has been adjudicated a child in need of assistance pursuant to section 232.96; and
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> b. The custody of the child has been transferred from his or her parents for placement pursuant to section 232.102 for at least twelve months; and
>
> c. There is clear and convincing evidence that the child cannot be returned to the custody of his or her parents as provided in section 232.102.

Linda concedes in the present appeal that the requirements of subsection a and b of this statute have been met. She denies, however, that there is clear and convincing evidence that the child cannot be returned to her custody. The provisions of section 232.114(5) have recently been interpreted in Interest of Adkins, 298 N.W.2d 273, 278-79 (Iowa 1980). In Adkins there was similarly a concession by the appellant that subsections a and b had been satisfied. In determining whether the requirement that "the child cannot be returned to the custody of his or her parents" was satisfied, the court in Adkins stated, 298 N.W.2d at 278-79:

> It is conceded William and Vincent have been adjudicated children in need of assistance. § 232.114(5)(a). It is also conceded their custody has been transferred from George "for placement pursuant to section 232.102 for at least twelve months." § 232.114(5)(b). The fighting issue is whether this record discloses "clear and convincing evidence that the child[ren] cannot be returned to the

> custody of [their parent] as provided in section 232.102." § 232.114(5)(c). Subsection 232.102(6) provides that a CHINA placement of the child apart from its parents "should be terminated and the child returned to his or her home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, subsection 5."
>
> We need not be concerned with the interesting burden of proof problem created by these statutes. We find there is clear and convincing evidence that there has been no palpable change from the conditions that led to the CHINA action, and that the children would suffer abuse and harm if returned to George's care and custody.

In applying the principles established in Adkins we find that the record in the present case contains overwhelming evidence that Wanda and Rosemary will suffer harm if returned to Linda's custody. She is almost totally lacking in ability to provide for their needs and shows no realistic potential for acquiring such ability in the future. The trial court correctly found that the statutory grounds for termination of parental rights contained in section 232.114(5) were established by clear and convincing evidence.

II. Linda next urges that even if this court finds clear and convincing evidence supporting termination under section 232.114(5), The Code, a related issue arises regarding the application of section 232.114(6), The Code. This provision provides certain circumstances in which termination need not be ordered notwithstanding proof of the statutory grounds:

> Notwithstanding the provisions of subsections 2 to 5 the court need not terminate the relationship between parents and child if the court finds:
>
> a. A relative has legal custody of the child; or
>
> b. The child is over ten years of age and objects to such termination; or
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> c. There is clear and convincing evidence that such termination would be detrimental to the child at the time due to the closeness of the parent-child relationship; or
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> d. It is necessary to place the child in a hospital facility or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child.
>
> e. That the absence of a parent is due to the parent's admission or commitment to any institution, hospital or health facility or due to active service in the state or federal armed forces.

Subsections (a), (d) and (e) of this statute are factually inapposite to the present case. In support of subsection (b), Linda relies on a stipulation entered into by the parties at the termination hearing which provides that Wanda and Rosemary, if asked, would indicate a desire to continue the present relationship with their mother. Given the

capacity of these children, we cannot conclude that this preference on their part is sufficient to forestall termination of Linda's parental rights in the face of clear and convincing evidence that the statutory grounds for such termination have been established.

With respect to subsection (c) of the proviso, the closeness of Linda's relationship with the children is necessarily limited by the fact that for the past several years she has been seeing them only once each month for approximately seven hours during which time their activities are directed towards having fun. The degree of "closeness" shown by the record both quantitatively and qualitatively is not great. Such "closeness", in order to defeat termination under the proviso of subsection (c) of the statute must be such to make termination "detrimental" to the children. From the record in the present case we find the converse appears. Absent termination, the children are condemned to the type of parentless limbo condemned in Adkins and which the present statutory scheme for termination is designed to prevent. As viewed in Adkins, the present code, at the conclusion of the twelve-month placement period, contemplates that a determination will be made either to (1) return the child to the custody of a parent as provided in section 232.102(6), or (2) terminate the parent-child relationship and seek a permanent family placement. Adoption has been recommended by the department of social services. The record does not support Linda's claim that the children are not adoptable. Social service case workers testified that there was a fifty-fifty chance for the adoption of these children. This is the record upon which we must make our determination. Given the statutory requirement that termination of parental rights precede adoption and the time requirements for processing a termination petition, it is not practicable to delay termination until adoption is assured. Such delay would only serve to lessen the chances for a permanent family placement for the children. We have considered all arguments and claims presented and conclude that the trial court's determination must be affirmed.

AFFIRMED.

Donielson and Snell, J.J., concur; Oxberger, C.J., and Johnson, J., dissent.

OXBERGER, C. J.

I dissent.

Even though the circumstances of a termination case might fit within the statutory conditions required, the entire action must be guided by the principle of the best interests of the child. In this case these girls are now in their teens. Linda has maintained regular contact with them over the years of separation. It is not in the girls best interest to foreclose this relationship especially as they are nearing adulthood. Even though the girls' special problems require handling that Linda at this time might not be able to assume, no harm is indicated by allowing the relationship to continue. Indeed, I am inclined to believe termination would present additional psychological and mental damage to the girls.