IN THE COURT OF APPEALS OF IOWA

No. 0-130 / 99-1579
Filed May 10, 2000

IN THE INTEREST OF

C.B.T.,
Minor Child,

L.A.T., Mother,
Appellant.

FILED
MAY 10 2000
CLERK SUPREME COURT

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

Mother appeals the court's order terminating her parental rights. She claims the juvenile court erred when it ordered termination of parental rights under the provisions of Iowa Code section 232.116(1)(g) (1997) because the record does not prove by clear and convincing evidence that the child cannot be returned to her. **AFFIRMED.**

Martha M. McMinn, Sioux City, for appellant-mother.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Rhoda Tenuta, Assistant County Attorney, for appellee-State.

Lesley Rynell, Sioux City, guardian ad litem for child.

Heard by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

SACKETT, C.J.

Lori, the mother of Caitlynn, born in August of 1997, appeals a juvenile court order terminating her parental rights under Iowa Code section 232.116(1)(g)(1997). She contends there is not clear and convincing evidence Caitlynn cannot be returned to her care. The juvenile court did not terminate the parental rights of the child's father, Don, and the state does not challenge this finding. Don appeared in this appeal only to file a notice that he was neutral on the issue of the termination of Lori's parental rights. We affirm.

At the time of the child's birth in 1997, Lori, who was born in January of 1971, was married to Caitlyn's father, Don. The couple has since divorced. Both Don and Lori are mentally challenged. Don's disability came as a result of an accident. When Caitlynn was four weeks old Lori either spanked her or pulled her across her crib by her legs. Don reported Lori's actions to the department of human services and they found that Lori had abused the child. The record does not reflect what injury, if any, Caitlynn received as a result of this incident. Following this event the family was given services to improve their level of parenting.

Then on January 21, 1998, law enforcement officer removed Caitlynn from her parents. She was taken following the filing of an application for temporary removal. The application alleged that the child should be placed in family foster care because:

> On January 20, 1998, Caitlynn was diagnosed as having suffered from a transverse fracture to the lower portion of her right arm. This fracture was diagnosed to have been no older than two days. Caretakers for Caitlynn were narrowed to her babysitter and her parents. No parties have given an explanation as to how this fracture could have occurred. Events described by the parents

have drawn suspicion on themselves as possibly causing the fracture identified."

The child ultimately was found to be a child in need of assistance because of the broken arm, and she was placed in foster care. In the order terminating Lori's parental rights the juvenile court noted that although in early proceedings Caitlynn was determined to be the victim of physical abuse by an unknown perpetrator, the evidence at the termination hearing was the broken arm came from a car accident and Don and Lori took Caitlynn to the hospital at the time of the accident but then the doctor indicated the arm was not broken.

After her removal Caitlynn was returned to live with Don and Lori on a trial home visit subject to specific conditions. The placement was from February 20, 1998 until mid-May of that year when Caitlynn was again removed from her parents' care because they had a serious argument. Psychological evaluations of both parents at that time determined Don was the dependent victim of Lori's distorted views and disrespectful behavior and as he attempts to please Lori he became confused and unconfident. The report concluded Lori views herself as a victim and uses it to justify the perpetration of emotional abuse towards Don. Don and Lori had additional counseling with little success and Don filed for dissolution in September of 1998. However, Don and Lori lived together for six months after the petition was filed.

Don received a substantial settlement as a result the injuries his received when at fourteen he was hit while driving a moped. The use of this money was of substantial contention between the parties both during the marriage and at the time of the dissolution. A dissolution decree was entered in July of 1998 following a contest over financial issues.

In February of 1999 Don and Lori's visits with their daughter were increased. In April Don was given unsupervised visits though Lori's remained supervised. In May of that year reunification efforts focused on Don because the workers were of the opinion he had made the most improvements. Prior to the termination petition being filed Don was given increased time with Caitlynn. Lori's time with the child had not increased.

In June of 1999 the state filed a petition to terminate the parental rights of both parents. The guardian ad litem recommended that the parental rights of both parents be terminated. On June 1, 1999 Home Care Services, a provider, discontinued services with Lori at the request of the Department of Human Services. At the time Home Care Services reported it had initiated services with Lori regarding her visitation in January. Initially the visits lasted one-hour a week. Lori's visits were increased in March to four hours every other week. Home Care reported, "During visitation, Lori provides meals for Caitlynn, she helps Caitlynn eat when needed. Lori interacts well with Caitlynn, playing with her on the floor at times. Overall, visitation with Lori has gone well, however, it appears that Lori takes much interest in talking to Home Care worker about personal matters. . . ."

After a hearing on the state's petition to terminate parental rights the juvenile court did not return the child to either parent. It terminated Lori's parental rights but not Don's. The court specifically found there was clear and convincing evidence that Lori was not ready or able to care for Caitlynn. The court further said while it hesitated to terminate one parent's parental rights it did not believe Don would have a full chance to regain custody if Lori were on the fringes. The court reasoned that Don and Lori's relationship led to most of the

problems Don faced. The court believed Don would have a good chance of succeeding in the near future if he did not have the distraction of Lori.

Lori contends that Caitlynn should not have been found a child in need of assistance. She advances that the child came under the jurisdiction of the juvenile court originally on the mistaken belief that the parents had broken Caitlynn's arm. Lori points out that by the time it was discovered she was not responsible for the broken arm Caitlynn had been out of her home long enough to support termination under Iowa Code section 232.116(1)(g). Lori further contends many of her problems during the course of the proceedings were the result of conflicts she had with the workers assigned to this case. She contends some of the requirements placed on her were neither necessary nor reasonable. She advances many of the grievances concerned petty things that do not prove she cannot care for her daughter.

There is no evidence other than the spanking or leg pulling that Lori has ever physically or sexually abused Caitlynn, and the state makes no allegations to the contrary. The state premises its case against Lori on (1) her anger, (2) her lack of parenting skills, and (3) her violent relationship with Don. The state points to few specific instances in the record supporting these allegations. Most particularly we note the absence of evidence Lori was violent. Our review of the record shows us that the record is filled with more opinions and conclusions by a number of providers than evidence of specific instances where Lori put her child at risk.

The reports about Don and Lori consistently report their strengths as (1) loving their daughter, (2) being consistent with visits and in home skill

development, (3) remaining gainfully employed, (4) maintaining stable residences. The reports also made reference to the fact that both Don and Lori's parents remained involved in their children's lives. The primary worker noted that with Don and Lori's limited abilities their parents have continued a role in their lives. The worker then determined Don and Lori's relationship with their parents was not healthy despite the fact they provided valuable help to this couple. In a February 20, 1998 stipulation Don and Lori were asked to and did agree that the grandparents would refrain from interfering and Don and Lori would refrain from seeking the assistance of their extended family and work with providers to resolve their issues. Don and Lori did not challenge at that time the department's attempt to limit their parents' assistance. Lori has pointed out in her brief the state's limitation on her parents' help. Though the issue was not preserved for review our approval of excluding helpful extended family from the case plan of disabled parents.

We review termination proceedings de novo. *In re S.N.*, 500 N.W. 2d 32, 34 (Iowa 1993). The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 231-33, 92 S. Ct. 1526, 1541-42, 32 L. Ed. 2d 15 (1972). The State has the right to terminate the legal relationship between a parent and a child, but the constitution limits its power to do so. *Id.*

Lori's rights were terminated under Iowa Code section 232.116(1)(g)(1999) which provides for termination when the court finds all the following have occurred:

(1). The child is three years of age or younger.

(2). The child has been adjudicated a child in need of assistance pursuant to section 232.96.
(3). The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months and any trial period at home has been less than thirty days.
(4). There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

The state argues the termination was predicated on the alleged fact the child would face family dysfunction, emotional instability and an unhealthy and risky environment if returned home. Unfortunately the state's brief makes few references to the evidence in the record supporting these conclusions. At oral argument the state argued that the relationship between Don and Lori was detrimental to the child.

Lori's only challenge is there is not clear and convincing evidence the child cannot be returned to her care. She denies that the evidence presented meets the clear and convincing evidence standard necessary for termination.

The State has the burden of proving the grounds for termination by clear and convincing evidence. *See In re T.A.L.*, 505 N.W.2d 480, 483 (Iowa 1993). The issue of whether or not to legally sever the biological ties between parent and child is an issue of grave importance with serious repercussions to the child as well as the biological parents. *In re R.B.*, 493 N.W.2d 897, 899 (Iowa App. 1992). The goal of a child-in-need-of-assistance proceeding is to improve parenting skills and maintain the parent-child relationship. *Id.* An underlying issue in a termination action is whether the parent is beyond help. *Id.* Yet a parent does not have an unlimited amount of time in which to correct his or her deficiencies. *In re D.A.W.*, 552 N.W.2d 901, 903 (Iowa App. 1998).

Lori has deficiencies. She has difficulties learning new skills. The troubling part is her difficulties are related to her limited IQ rather than an intentional disregard for not doing what she is told to do. Lori questions some of the requirements placed on her and whether the services offered were actually tailored to her needs. She points to an example where an issue was made about her not having childproof locks on cupboards. She spent considerable time and effort getting her landlord to let her place the locks. She contends her time could have been better spent. We cannot disagree. The problem could have been reasonably resolved by helping her put dangerous substances out of the child's reach.

The state correctly argues Lori has numerous shortcomings. Her inability to be flexible and adaptable, while attributable to the fact she is mentally challenged, makes it difficult to work with her. She fights with her former husband and the father of this child. Although she keeps appointments she argues with the providers. She has been criticized by supervising workers for not giving Caitlynn the attention she needs and not being concerned about her safety.

We recognize as the state advances that the providers have given their opinions that she is not capable of having the child returned. We give weight to opinions of the providers. However, in assessing the weight to be given the opinions we need look at the evidence on which they are based.

The specific instances we find in the reports and evidence in support of the providers' conclusions are (1) the cat eats out of food dishes on the table that the child also eats out of, (2) Lori did not on occasion dress the child

appropriately for cold weather, (3) conflicts between Lori and Don, (4) Lori's failure to grab the child when she started to fall over during a professional photography session, (5) storing things in the home in plastic bags on a shelf in her bedroom and storing soiled laundry in plastic bags in the bathroom, (6) not putting the child in the high chair in an appropriate manner, (7) not providing age appropriate toys, (8) the child started to fall off a chair as Lori tied the child's shoe.

The clear and convincing evidence standard applied to parental termination cases assures that parental rights are not terminated because parents did not always function according to the standard of a perfect parent. There is no authority supporting a termination because parents don't meet this standard. Nor is there authority for terminating parental rights of one parent because he or she disagrees with or doesn't get along with the other parent though such attitudes do not inure to a child's benefit.

A critical look at this record reveals that the only real issue is whether Lori is able to provide for her child's safety. There is evidence she cannot without help because she is mentally challenged. Lori has not contended she is entitled to special accommodations because of her disability. Consequently it is not an issue we can address. Giving the required deference to the juvenile court we affirm the termination.

AFFIRMED.