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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF W.W. AND J.W., Children;	)	Filed May 28, 1987 373
A.L., Natural Mother,	)	7-90
Appellant.	)	86-1257

Appeal from the Iowa District Court for Pottawattamie County (No. Juv. 00254), Gordon C. Abel, District Associate Judge.

The natural mother of two children appeals from the juvenile court order which terminated her parental rights pursuant to Iowa Code section 232.116(5) (1985) (children in need of assistance who have been transferred from parents' custody for at least twelve months cannot be returned there). **AFFIRMED.**

Clarence B. Meldrum, Jr. of Meldrum & Markel, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General; Gordon E. Allen, Special Assistant Attorney General; Valencia Voyd McCown, Assistant Attorney General; and Richard Hauser, Assistant County Attorney, for appellee State of Iowa.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

DONIELSON, J.

The natural mother of two children appeals from the juvenile court order terminating her parental rights pursuant to Iowa Code section 232.116(5) (1985). On appeal, the natural mother asserts that there was not sufficient evidence to support the termination. We affirm.

A.L. is the natural mother of W.W., born in 1979, and J.W., born in 1981. The boys have different fathers and neither man was substantially involved with them. A.L.'s first contact with the Iowa Department of Human Services occurred in January 1980, resulting from a neglect referral. There was some concern at that time that A.L. lacked the ability to care for W.W. regarding medical care and proper nutrition. For six months, contact by the department with A.L. occurred on a weekly basis, but was later reduced. The Visiting Nurses Association also began scheduled visits with A.L.

From April until June 1980, A.L. lived in an apartment in Council Bluffs. She then moved to Omaha to live with friends for several weeks and then moved back to Council Bluffs. In August 1980, A.L. moved back to her mother's home. The Visiting Nurses Association kept regular contact with A.L. until September 1980, when A.L.'s case was closed after six visits to her home revealed no one there.

In December 1980, at the request of A.L.'s family, the home in which A.L. lived was investigated by the Department of Public Health. The home was found to be dirty, cluttered, and in disrepair. The house was subsequently condemned. While in the process of moving, the Pottawattamie County Animal Welfare Society made a referral to the Department of Social Services, the report stating that there were a large number of dogs in the home and that animal feces covered the interior of the home in which W.W. was playing. The report was confirmed on January 16, 1981. According to the investigative report,

the home was unfit for human habitation. In front of the door a recently-killed dog was found laying in a pool of blood. The home was found to be littered with newspapers, covered with excrement from nine live dogs and two cats, and strewn with dirty diapers and sanitary napkins. The living room where W.W. slept was piled high with boxes, the kitchen was filthy, and food in the refrigerator was rotten.

On January 19, 1981, a CHINA petition was filed in behalf of W.W., and W.W. was placed in temporary foster care. While in foster care, W.W. was diagnosed as having guardia lambela, a parasitic worm that robs the body of nutrients. The CHINA adjudication took place on February 27, 1981, at which time it was determined that W.W. should remain in foster care in order to give A.L. time to improve her parenting skills. At this time A.L. began participating in parenting classes through RLDS Social Services.

At the time of the CHINA adjudication hearing, A.L. was living in her own apartment and was pregnant with J.W. In May 1981, A.L. moved to another apartment that was in some need of repair, but had sufficient room for A.L., her mother, W.W., and her expected second child. J.W. was born on June 25, 1981. Weekly unsupervised visits began in August 1981. At an October 26, 1981, hearing, it was determined that although A.L.'s parenting skills needed improvement, W.W. should be returned to A.L. provided that the already-involved agencies offering A.L. services keep close supervision.

In a report dated April 4, 1982, it was reported that A.L. had been caring for her children and had completed all that was requested of her. That report also indicated that tests revealed that J.W. was mentally retarded. In August of 1982, a child abuse report was filed indicating that J.W. was seen with bruises on his face and appeared very dirty. A.L. stated that J.W. received the bruises while falling off of his bed, which consisted of a mattress and boxsprings elevated

over a foot above the floor. Another substantiated abuse was filed, and on October 11, 1982, J.W. was adjudicated a child in need of assistance.

Between the court dates of April 21, 1982, and October 25, 1982, A.L. changed residences several times. The moves were apparently in A.L.'s desire to be with her boyfriends and/or her mother. Though on September 17, 1982, A.L. was ordered not to live with her many boyfriends, in October of 1982 A.L. was reportedly living with one of her boyfriends at that time. On October 27, 1982, the court ordered that a detailed case plan be implemented and that thirty-day progress reports be furnished to the court.

On December 6, 1982, A.L. married J.L. following his release from jail. At this time A.L. missed several days of prearranged work at a day care center and also missed a court-ordered psychological evaluation. In January 1983, the family moved to a new residence, but moved again in February 1983 without notifying the Department of Human Services. In a report to the court dated March 18, 1983, it was reported that J.L. was hitting W.W. on the head with a belt. The report also noted that the home was found to be cluttered with clothes and dirty dishes. There were also two dogs and a cat in the home, which violated a prior court order. No sheets were found on the beds, the bathroom was dirty, and the kitchen contained dirty dishes. The home was visited again in April and May 1983, at which time the home was found to be filthy and the children were wearing dirty clothes. At that time it was determined that despite the efforts of the Volunteer Nurses Association, Homemaker Services, Day Care, Parenting Classes, and supervision by the department, the L.'s home was disorderly and the children were dirty. On May 16, 1983, W.W. and J.W. were placed in the care, custody, and control of the Department of Human Services.

Between May 1983 and December 1983, the family moved six times. On December 12, 1983, the court ordered J.L. to maintain full employment, that

A.L. and J.L. maintain a stable residence and suitable housing for six months, and that they both become involved with the RLDS in-home treatment program. Despite these orders, J.L. was jailed for breaking and entering. A.L. for a time resided in Sioux City and then moved back and forth between Omaha and Council Bluffs. In all, A.L. changed addresses five times between June and November 1984. Following J.L.'s release from the Work Release Center, the family again moved in March 1985. In April 1985, the family moved four times. In May 1985, J.L. was again jailed, this time on burglary charges.

On July 9, 1985, a petition for termination of parental rights was filed against A.L. pursuant to Iowa Code section 232.116(5) and against the two fathers pursuant to section 232.116(2). Trial commenced on August 22, 1985, but was continued and resumed on September 24, 1985. A.L. appeared at the hearing, but no appearance was made by the natural fathers of W.W. and J.W. At the close of the State's case, A.L. moved to dismiss the petition on the ground that the State failed to sustain its burden of proof. The trial court reserved ruling and A.L. rested without presenting testimony or evidence. On August 5, 1986, the trial court entered and filed an order terminating the parental rights of A.L. and the two natural fathers of W.W. and J.W.

On appeal, we review parent-child terminations de novo, adjudicating rights anew. In Interest of K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

In the present case, W.W. was adjudicated a child in need of assistance pursuant to Iowa Code sections 232.2(5)(c)(2) and 232.2(5)(g) (1981) (now renumbered sections 232.2(6)(c)(2) and 232.2(6)(g) (1985)) on February 27, 1981, and J.W. was similarly found to be a child in need of assistance on October 14, 1982. In its petition, the State alleged that because both of these children had been

adjudicated as children in need of assistance pursuant to section 232.96 because custody of each child had been transferred from the children's placement for at least twelve of the last eighteen months and that because there was clear and convincing evidence that neither child could be safely returned to their parents, parental rights should be terminated pursuant to section 232.116(5). Generally, if any one of the grounds alleged by the State is supported by clear and convincing evidence, the termination will be upheld. K.L.C., 372 N.W.2d at 227. We find clear and convincing evidence exists requiring termination on the basis of Iowa Code section 232.116(5).

A termination of parental rights pursuant to section 232.116(5) necessitates reference to Iowa Code sections 232.96 and 232.102. Termination pursuant to these sections requires that the child has been adjudicated in need of assistance, has been placed out of the parent's custody for more than twelve months, and there is clear and convincing evidence that the child will suffer harm specified in section 232.2(5) if returned to the parents. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). A section 232.116(5) termination may only take place if the child cannot be returned to the parental home because definitional grounds of a child in need of assistance still exist. K.L.C., 372 N.W.2d at 227. A.L. concedes the first two elements. Thus, the remaining issue is whether the State has established by clear and convincing evidence that the children will suffer harm as specified in section 232.2(5) if returned to A.L.

Section 232.2(5) provides in pertinent part:

> 5. "child in need of assistance" means an unmarried child:
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> * * *
>
> (c) who has suffered or is imminently likely to suffer harmful effects as a result of:
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> * * *

> (2) The failure of the child's parent, guardian, or custodian to exercise a reasonable degree of care in supervising the child.
>
> * * *
>
> (g) whose parent, guardian or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter and refuses other means made available to provide such essentials.

Our lengthy review of the facts clearly indicates that A.L.'s parental rights should be terminated pursuant to section 232.116(5). The record reveals that despite years of efforts of a multitude of agencies and organizations, A.L.'s parenting abilities have not improved in the least. The record reveals that throughout the time periods in question A.L.'s home was found to be filthy and littered with excrement from numerous dogs and cats. W.W. and J.W. were always observed to be dirty and often were not fed adequately. During cold or rainy weather, both children were observed to be inadequately dressed. On several occasions social workers observed that no sheets were on the children's beds.

The record also reveals that A.L. is unable to provide a stable home in which to raise her children. From 1980 through 1985, A.L. moved dozens of times to different residences, often not residing in any one place for more than one or two weeks. Throughout most of this period, A.L. continued to have relationships with a number of different men, and one report noted that W.W. was becoming confused as a result of A.L.'s numerous relationships. Additionally, A.L.'s present husband, J.L., has twice been jailed for various offenses. A.L. has apparently exhibited a desire to remain married to J.L.

In short, A.L. has proved to be either unwilling or unable to accept and implement those services which have been provided. Though A.L. contends that no services were rendered to her after January 1984, given A.L.'s constant

state of moving from one residence to another, we find it would be virtually impossible to provide close supervision. Despite the court's approval of a comprehensive case plan on July 5, 1984 which required A.L. to maintain a stable and suitable residence, A.L. continued to live a transient life-style. In order for any in-home services to be effective, A.L. first had to establish a permanent residence.

We additionally note that W.W. and J.W. have special needs which are going to require responsible care. J.W. has been diagnosed as mentally retarded and has just recently begun showing the ability to develop communication skills. J.W. will definitely need assistance at home from a parent capable of providing the love and patience a child with such a disability desperately needs. W.W. has also exhibited anxiety and behavioral acting out as a result of his mother's visits. We do not believe that A.L. is able to provide the stable, responsible home life necessary for either of these children to progress adequately.

Because A.L. has shown no significant improvement in her parenting skills despite over five years of assistance, we hold that A.L.'s parental rights in her two children, W.W. and J.W., should be and are hereby terminated.

AFFIRMED.