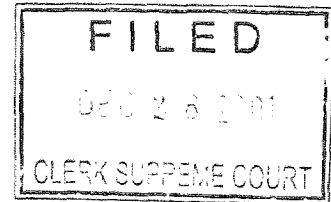


IN THE COURT OF APPEALS OF IOWA

No. 1-597 / 01-0209
Filed December 28, 2001



IN THE INTEREST OF W.B., W.B., and J.B., Minor Children,
C.B., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Karla Fultz, Juvenile Court Judge.

Mother appeals the juvenile court's order terminating her parental rights to her three children. **AFFIRMED.**

Bryan J. Tingle, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant Attorney General, John Sarcone, County Attorney, Jon Anderson and Tom Desio, Assistant County Attorneys, and Leslie C. Ayers, legal intern, for appellee-State.

Pamela Vandel, Des Moines, guardian ad litem for minor children.

Considered by Hayden, S.J., Habhab, S.J. and C. Peterson, S.J.*

*Senior judges assigned by order pursuant to Iowa Code section 602.9206 (2001).

HABHAB, S.J.

The children at issue in this appeal are twins, William and Wayne, age eleven, and Jewel, age thirteen. The parental rights of their mother and father were terminated. Only the mother, Catherine, appeals. We affirm.

Background Facts. Catherine has had ongoing services from the Department of Human Services (DHS) since 1993, but has been unsuccessful at maintaining the children in the home. She has a history of noncompliance including many missed appointments and a failure to follow through with court-ordered services. To assist the family with reunification, DHS offered Catherine family foster care, individual therapy for Catherine, therapy for the children, visits, and mental health services, but Catherine either refused or did not follow through with the services. The children have been in foster care since October 12, 1999.

On October 12, 1999, Catherine consented to temporary removal of the children to foster care subsequent to being placed in the Mental Health Institute. On January 27, 2000, a child in need of assistance hearing was held in Story County where the children were adjudicated to be children in need of assistance pursuant to Iowa Code section 232.2(6)(k) (1999). At the time of the hearing, Catherine was living at the Des Moines YWCA and was unable to parent the children. Subsequently, the case was referred to Polk County.

Five founded denials of critical care by the mother, Catherine, resulted in the children being placed in foster care in 1993, 1996, 1997, and early 1999. Additionally, Catherine has been hospitalized five times over the last eleven years for mental health issues. Catherine has a bipolar disorder and suffers from

depression and seizures. She has a history of suicidal thoughts and self-cutting of her wrists.

Catherine voluntarily contacted the worker for Lutheran Social Services and informed her she was "going to terminate her rights." On July 25, 2000, Catherine not only told the children that she was voluntarily terminating her parental rights because of her health concerns, but also that this would be her last visit with them.

However, several weeks later, Catherine changed her mind and expressed a desire to have her children back. Subsequently, a petition to terminate parental rights was filed and a termination hearing was held. The parental rights of Catherine and the fathers were terminated on January 9, 2001.

On appeal, Catherine contends the court erred by terminating her parental rights under section 232.116(1)(d)(e) and (j). As it relates to that section, it appears that she disputes only the third element of section 232.116(1)(d) (she contends that a failure to maintain "significant and meaningful contact" was not established by clear and convincing evidence), the fourth element of section 232.116(1)(e) (there was not clear and convincing evidence that the children could not be returned to her care at the time of the termination hearing), the second and third elements of section 232.116(1)(j) (she admits she has a history of mental illness but disputes that she presents a danger to herself or others and that the State failed to prove by clear and convincing evidence that her prognosis indicates that the children cannot be returned to her within a reasonable period of

time), and lastly she asserts that the court erred in finding it was in the children's best interest to terminate her parental rights.

Scope of Review. We review proceedings to terminate a parent-child relationship de novo. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998). Our primary concern is the best interests of the child. *Id.* We look at both the child's long-range and immediate interests in making this determination. *Id.* We necessarily consider what the future likely holds for the child if returned to his or her parent. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989). "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 that parent is capable of providing." *Id.* (citation omitted). The grounds for termination must be shown by clear and convincing evidence. *Id.*

Sufficiency of the Evidence. We find clear and convincing proof of each of the elements under the above referred to sections. Under section 232.116(1)(d), appellant admits that the children have been adjudicated children in need of assistance under section 232.96 and that the children have been removed from her physical care for a period of at least six months. These are the first two requirements of that section. She challenges only the third. As to that section, the evidence is clear and convincing that she has failed to maintain significant and meaningful contact with her children during the previous six consecutive months and that she made no reasonable effort to resume caring for her children despite being given the opportunity to do so.

Catherine has had ongoing services from the DHS but has been unsuccessful at maintaining a home for the children. In October of 1999, she consented to the temporary removal of the children to foster care subsequent to being in the Mental Health Institute. To assist the family with reunification, the DHS offered individual therapy for Catherine, therapy for the children, visits, and mental health services, but Catherine in many instances either refused or failed to follow through with the services.

It cannot go unnoticed that at one point in her life Catherine voluntarily chose not to resume care of her children. She contacted the worker for Lutheran Social Services and informed her that she was going to terminate her parental rights. She also told her children that she was going to do so and told them this was her last visit. The children were truly upset. Termination of Catherine's parental rights was proper under this section.

Turning next to termination under section 232.116(1)(e), Catherine admits that the first three elements of that section have been met, that is (1) each child is older than four years of age, (2) each child has been adjudicated a child in need of assistance, and (3) each child has been removed from her physical custody for at least twelve of the last eighteen months, or for the last twelve consecutive months and any time period at home has been less than thirty days. She contends that the fourth element that requires clear and convincing evidence that the children cannot be returned to her at the time of termination has not been met. We disagree and affirm on this issue.

At the time of the termination hearing Catherine lived in an efficiency apartment. She was noncompliant with regard to individual therapy and family therapy sessions and, although the DHS requested that she prepare an emergency medical plan as part of the unification plan, because of her mental health diagnosis that includes bipolar disorder and depression and her medical history included seizures and a history of self-cutting her wrists, she declined to do so. It would serve no useful purpose for this opinion to repeat our factual findings above and those which follow. We find from our de novo review of the record before us that there is clear and convincing evidence under this section that the children could not be returned to Catherine at the time of the termination hearing.

As it relates to termination under section 232.116(1)(j), we find clear and convincing evidence to terminate her parental rights. She admits she has a history of mental issues. Her only dispute is to the assertion that she presents a danger to herself and others. The record establishes otherwise. To detail those instances would do little to enhance the precedential value of this opinion. We affirm on this issue.

Lastly, she takes issue with the findings of the trial court that the termination of her parental rights was in the best interest of the children. As noted previously, the primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa Ct. App. 1995). To continue to keep children in temporary or even long-term foster homes is not in their best interests, especially when the children are adoptable. *In re C.K.*, 558

N.W.2d 170, 175 (Iowa 1997). These children have been in foster care since October 12, 1999. Previous placement in foster care occurred for periods of time in 1993, 1996, 1997, and 1999. Initially, the children showed significant emotional stress and acted out to various degrees. Diagnoses of the two boys included adjustment disorder with mixed disturbance of emotions and conduct, and diagnosis of Jewel includes post-traumatic stress disorder. Jewel had been in the psychiatric unit at Iowa Lutheran Hospital due to behaviors that included a suicidal threat.

There is testimony that the children have struggled through this traumatic situation but are presently doing very well. The children are now calmer and less stressed out. Jewel was in a separate foster home and she had not made any suicide attempts. The boys' acting out behaviors have decreased, and it appears they are slowly involving themselves in some extracurricular activities outside the home. The children only talk vaguely about their mother.

Catherine, to her credit, has recognized that the children's lives have been in turmoil. The children have bonded to their current foster homes and the foster parents have committed to allow these children to grow up there. The foster home of William and Wayne is a pre-adoptive home. The court properly determined that termination of Catherine's parental rights was in the best interest of her children.

Although it was not necessary for us to address in detail the arguments of the appellant under each section, we have done so because of the serious consequences of termination. We recognize that termination of parental rights is

an outcome of last resort. It should only occur when more harm is likely to befall the child by staying with the parents than by permanently separating from them. We think this is the case here. While the law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills," this patience has been built into the statutory scheme of chapter 232. *In re A.C.*, 415 N.W.2d 609, 613-14 (Iowa 1987). Children should not be forced to endlessly await the maturity of a natural parent. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). "At some point, the rights and needs of the child rise above the rights and needs of the parent." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997).

We affirm.

AFFIRMED.