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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-419 / 90-82

89

IN THE INTEREST OF J.C., A Child;

K.N., Mother,

Appellant.

Appeal from the Iowa District Court for Johnson County, John R. Sladek, District Associate Judge.

Appellant appeals from juvenile court order terminating her parental rights. **AFFIRMED.**

Mark C. Meyer, Iowa City, for appellant mother.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; and Judy Sheirbon, Assistant Attorney General, for appellee State.

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

HABHAB, J.

Appellant, K.N., appeals from juvenile court order terminating her parental rights to J.C. The sole issue on appeal is whether there is clear and convincing evidence that the child cannot be returned to K.N.'s custody, as provided in Iowa Code section 232.102.[1] We affirm.

On July 17, 1988, J.C., age seven, was placed in emergency foster care. Law enforcement personnel had received reports of a disturbance at K.N.'s apartment and, upon investigation, learned that K.N. had left J.C. in the care of a baby-sitter from Thursday through Sunday and that J.C. had been seen unattended in the bar located downstairs from the apartment. The baby-sitter informed the investigating officers that K.N. had failed to tell her how or where she could be reached or when she was to return. K.N. asserts she left food stamps and a Title XIX card. The apartment contained marginal foodstuffs and no electricity. Based on this set of facts, the law enforcement officers took emergency care of J.C. J.C. has been in foster care continually since that time.

K.N. has a history of alcohol and drug abuse. She was convicted in 1986 of false use of a financial instrument and has been on probation since that time. As a condition of her probation, K.N. is to abstain from alcohol and drug

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1. J.C.'s father has had no contact with his son. He did not appear at any of the juvenile court proceedings. He does not appeal the order terminating his parental rights.

use. On at least one occasion K.N. has violated her probation by imbibing alcoholic beverages, but her probation has never been revoked. K.N. has had trouble maintaining a stable residence and job. Two founded reports of denial of critical care exist. On each occasions, K.N. left J.C. either unsupervised or with improper supervision.

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.

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).

The only issue in dispute is whether there is clear and convincing evidence that J.C. cannot be returned to the parental home because of the existence of facts which would satisfy any definition of a child in need of assistance

found in Iowa Code section 232.2(6). See In re A.M.S., 419 N.W.2d 723, 725 (Iowa 1988).

We find there is clear and convincing evidence that if J.C. is returned to K.N. he would again be in imminent harm from either neglect or lack of reasonable supervision. During the pendency of J.C.'s foster care, K.N. has made little or no progress in straightening her life around. J.C. should not be placed in the position of having to continually await the possible onset of maturity in his mother. See In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983).

The temporary removal hearing was held July 20, 1988. All parties at that hearing agreed to continue J.C.'s foster care placement. The parties further agreed that this placement was in the best interest of J.C. for K.N. was presently unable to meet his needs. It was also stipulated at the removal hearing that J.C. was a child in need of assistance pursuant to Iowa Code section 232.2(6)(b) and (c).

On August 19, 1988, the dispositional hearing had to be continued as K.N. failed to appear nor did she contact her attorney as to her whereabouts. The department was unable to locate her. By that date K.N. had missed her last visitation with J.C.

The dispositional hearing was held on August 26, 1988, with the mother in attendance. The parties at that time agreed with the department's recommendation for continued foster care. The court ordered this placement as being the

least restrictive available and found specifically that such placement was in J.C.'s best interest until such time as K.N. stabilized her residence. The court encouraged maximum unsupervised visitation between J.C. and his mother.

A review hearing was held in February 1989. The department's progress report was received into evidence. The case permanency plan was approved and the court continued J.C.'s foster care placement. Another review hearing was held in August 1989. All parties again agreed to J.C.'s continued foster care placement as recommended in the department's progress report.

The termination petition was filed September 13, 1989, and a hearing was held December 18, 1989. Mary Hohl, J.C.'s primary caseworker, testified that from July 1988 through April 1989 unsupervised visits were allowed any weekend K.N. could arrange it with the foster parents. Mary Hohl testified that the visits were pretty irregular as K.N. would sometimes cancel or not show up at all. During this period K.N. was not able to hold a steady job or stabilize her living arrangements.

Mary Hohl further testified that the visits became supervised in April of 1989 because it was discovered through J.C.'s comments that he was at times left with a baby-sitter when his mother had weekend visits. In April of 1989 he spent a whole weekend with a baby-sitter because K.N. was having emotional problems with her boyfriend.

There was another visit in May immediately prior to K.N.'s involvement in a serious car accident. She suffered rib, leg, and skull fractures and her spleen was removed. She was hospitalized and then moved to the Domestic Violence Project (DVP). During her stay at the DVP, she would leave for long periods of time with friends, causing her to miss appointments and therapy sessions.

There was further testimony at the termination hearing that in August, K.N. moved into an apartment with a male friend. She made no contact with J.C. between the May visit before her accident and August. (The record reveals that she was hospitalized approximately three weeks prior to her move to the DVP.) K.N. was up and walking around by the middle of August. She made no effort to contact J.C. by phone or letter.

Mary Kay Townsend, the family therapist for K.N., testified that she supervised the next visit which occurred on August 16. The visit was held at the apartment K.N. was living in with a boyfriend. K.N.'s boyfriend was present and J.C. appeared afraid of him when he treated K.N. rudely.

K.N. requested a visit in October, and it was held October 30. An attempt was made to set up a schedule for K.N. to call J.C. K.N. missed some appointments. Ms. Townsend described a call during which K.N. told J.C. she was going to see Mary Hohl about scheduling a visit. K.N. talked to Mary Hohl at least three times without requesting

such a visit. Both Mary Hohl and Mary Townsend recommended termination of K.N.'s parental rights, testifying it was in J.C.'s best interest given his need for a stable home and that he had adjusted to being separated from K.N. Mary Hohl further testified that J.C. was a very adoptable boy.

Dr. John Hartsen is a pediatric psychologist who began seeing J.C. in February of 1989 at Mary Hohl's request. He worked with J.C. regarding his angry feelings towards his mother and her boyfriends. Dr. Hartsen testified that J.C. was now developing friendships in school and doing fairly well although he was assigned to a resource room for math and reading.

Dr. Hartsen, Mary Townsend, and K.N. had a meeting in March or April of 1989 to encourage K.N. to call and visit J.C. regularly. Dr. Hartsen indicated that K.N. did not follow through with the predictable calls or visits. J.C. is aware of the lack of contact with his mother, and part of Dr. Hartsen's responsibility is to help J.C. deal with the reasons and anger this has caused. Dr. Hartsen further testified that J.C. has adjusted well to his last foster placement and talks openly about being adopted. He did not believe continuing J.C.'s foster care was in his best interest.

Our primary concern is the child's long-term, as well as immediate, best interests. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). Insight for determining what the future holds for a child if returned to his or her parent

can be gained from evidence of the parent's past performance. Id. Our statutory termination provisions are preventive as well as remedial. Id. The decision of the juvenile court terminating K.N.'s parental rights is affirmed.

AFFIRMED.

Oxberger, C.J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent. I am not convinced that severing this young man's biological ties is in his best interest. I am also not convinced that reasonable efforts have been made to keep this family together.

On July 17, 1988, this young man, J.C., was removed from his mother's care and placed in foster care under the state's direction. By the time of the termination hearing in December 1989, he had been placed in four different foster homes and attended three different schools. While in foster care he suffered serious emotional problems and manifested a desire not to live any more. Over two years have now passed since the removal, and no final decision has yet been made about his future.

The child was removed from his mother's custody because she left him with a baby-sitter and had not left word where she could be located. The child, when removed, was healthy, of normal height and weight, and capable of expressing love for other people, particularly his mother. There is no charge that he was ever physically or sexually abused by his mother.

The primary reason the child was placed in foster care was because his mother had been evicted from her apartment. She was homeless. Her poverty made it difficult for her to find housing. Consequently, the mother and child were physically separated and their relationship began to deteriorate.

The mother's primary deficiency that led to removal was her failure to supervise. Her failures during the foster care periods are failures to utilize visitation periods. This mother clearly loves her son. She is a single parent. She should not have left her child with a baby-sitter without the sitter understanding when she would return and where she would be. Her history reflects there have been other situations where she has not been as careful as she should about providing for her child in her absence. I am very critical of her for this inattentiveness. I am also critical of her failure to make more contact with the child during the foster care period.

However, I also understand too well the intensive and continual responsibilities of parenthood, and the need a parent sometimes has to escape the demands of parenting. I recognize the difficulties a parent can experience in obtaining adequate child care. This mother is a poor, single parent with no available extended family. Obtaining adequate child care is obviously difficult for her.

The purpose of a child in need of assistance proceeding is to identify family problems and offer the proper services and support to help correct those problems. The agency must make a reasonable effort to prevent placement and reunify families as a required element for a state Title IV-E funding for individual foster care placement. 42 U.S.C. 671(a)(15) and 672(a)(2).

To utilize reasonable efforts requires looking at the family as a unit rather than as independent separate segments. The problems that formed the basis for the separation of this family unit were inadequate housing and the inavailability of adequate alternate child care.

Reasonable services to eliminate the need for removal would include:

1. Housing for the mother.
2. Help with procuring and paying responsible alternate child care providers.

These services were never offered.

The criticism of the mother while the child was in foster care was insufficient visitation and attention to the child. The agency contends the mother did not make sufficient effort to visit and contact the child. The mother contends the agency made visitation difficult, and the fact that the child lived in four different foster homes compounded the problem.

The mother's visits provided no danger to the child, he loved her deeply. He was positive about her visits and upset when she did not call. The problem was the mother's lack of assertiveness or inability to schedule visitation. Reasonable services would have included help in structuring and strongly encouraging visitation to provide maximum contact between mother and child. These services were never offered.

The child is now nine years old. He has significant biological and emotional ties to his mother that will not be severed by termination. We cannot guarantee him adoption. If adopted, we cannot guarantee a successful adoption.

This child professes great love for his mother. He has been frustrated by his separation from her. He does not understand why she is no longer a part of his life. I was touched in reading this record by the deep feeling and love this young boy has for his mother. While his early childhood may have been somewhat unconventional, it is clear he emerged from the years in his mother's care as a fairly well adjusted child with an ability to love and show affection. He has not fared that well in the State's care.

I would remand with an order that extensive services be utilized to reunite this family.