IN THE COURT OF APPEALS OF IOWA

No. 3-097 / 92-1523

FILED
MAR 30 1993
CLERK SUPREME COURT

217

IN THE INTEREST OF

T.O., D.J. and **V.J.**, Minor Children,

R.S., Natural Mother,

Appellant.

Appeal from the Iowa District Court for Scott County, James A. Weaver, District Associate Judge.

The mother appeals an order of the juvenile court which terminated her parental rights as to three of her children. **AFFIRMED.**

Michael T. Hines of McCarthy & Lammers, Davenport, for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Special Assistant Attorney General; Kathrine S. Miller-Todd, Assistant Attorney General; Mary Brown, Legal Intern; and Gerald Schutte, Assistant County Attorney, for appellee State.

Stephen W. Newport of Newport & Newport, Davenport, guardian ad litem, for the children.

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

DONIELSON, J.

R.S. appeals an order of the juvenile court which terminated her parental rights as to three of her children: T.O., D.J., and V.J.

R.S. is thirty-seven years old and has six children: F.M., born in 1975; J.O., born in 1976; T.J.O., born in 1979; T.O., born in 1985; D.J., born in 1986; and V.J., born in 1987. F.M. is no longer in the home. J.O. has quit school and lives with a friend. T.J.O. is in residential treatment. This appeal involves T.O., D.J., and V.J.

R.S. has been diagnosed as schizophrenic with psychotic episodes. She takes prescribed psychotropic drugs and her I.Q. has been tested at between 55 and 63. T.O., D.J., and V.J. all have special needs as children. T.O. has been characterized as a "special needs child who requires greater than average parenting skills to provide for her emotional needs." D.J. is on medication for asthma and requires round-the-clock monitoring and breathing treatments during serious attacks. V.J. has been diagnosed as having a behavioral disorder.

In April 1988, J.O., T.J.O., T.O., D.J., and V.J. were all adjudicated children in need of assistance (CINA) after an Iowa Department of Human Services (DHS) investigation revealed the children had been left alone without adult supervision in filthy conditions and the children had been physically abused. T.O., D.J., and V.J. were respectively

two years, one year, and six months of age at the time of this adjudication. T.O., D.J., and V.J. were initially placed into the custody of maternal aunts, but were later transferred into foster homes. They have lived in foster care ever since with periodic visitation by R.S.

In January 1990, the guardian ad litem filed a petition for the termination of R.S.'s parental rights as to T.J.O., T.O., D.J., and V.J. In May 1990, following a hearing, the court denied the petition and ordered continued services towards the goal of reunification. The State appealed the juvenile court's decision. Pending the appeal, the supreme court granted the State's application for stay which relieved the State of the requirement to return custody of the children to their mother or to develop an implementation for reunification. The juvenile court's refusal to terminate was affirmed by the court of appeals, and in May 1991 the supreme court affirmed the decision on further review. See In re T.O., 470 N.W.2d 8 (Iowa 1991).

In February 1991, a review hearing was held. The juvenile court continued the CINA adjudication, kept custody of the three children (T.O., D.J., and V.J.) with DHS, approved the present foster home placements, and ordered visitation to be at the discretion of DHS. At the August 1991 review hearing, the court essentially continued the status quo. At this time, visitation with the children was continued to two two-hour supervised visits per week. In September 1991, J.O. returned home to live with R.S. In

November 1991, the visits with T.O., D.J., and V.J. increased and were partially unsupervised. However, as the visitation increased and DHS supervision decreased, R.S. had more and more difficulties controlling the children during the visitation periods.

In January 1992, the overnight visitations were terminated and visitation was decreased due to safety concerns. The return of J.O. had failed as R.S. was unable to control her. Behavioral problems with the other three children, such as bed-wetting and acting out, also became increasingly evident. On February 21, 1992, a third review hearing was held at which the custody of the three children remained with DHS and the foster home placements were approved.

Just three days later, on February 24, 1992, the guardian ad litem filed a petition for the termination of R.S.'s parental rights as to T.O., D.J., and V.J. At the time of the petition at issue, T.O., D.J., and V.J. were respectively six, five, and four years old. In August 1992, following a hearing, the juvenile court terminated R.S.'s parental rights as to the three children pursuant to Iowa Code sections 232.116(c) and (e) (1991).

R.S. now appeals. She contends the juvenile court erred in terminating her parental rights. R.S. specifically argues it was in the best interests of the children to be returned to her care and that the children

would not suffer any type of adjudicatory harm if they were returned.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (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.

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

> We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. 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 the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing Dameron, 306 N.W.2d at 745).

In its order, the juvenile court found adequate factual support to terminate R.S.'s parental rights pursuant to Iowa Code sections 232.116(1)(c) and (e) (1991). On our review, we determine whether the juvenile court properly terminated R.S.'s parental rights under both sections.

I. Section 232.116(1)(c). Iowa Code section 232.116(1)(c) (1991) permits the juvenile court to

terminate the parent-child relationship if the court finds both the following have occurred:

> (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
>
> (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

It is undisputed that T.O., D.J., and V.J. have been previously adjudicated CINA after a finding of physical abuse. Therefore, the issue under section 232.116(1)(c) becomes whether, despite the receipt of services, the circumstance which led to the adjudication continues to exist.

Initially, we recognize the improvements R.S. has made in developing day-to-day survival skills. Mary Joanne Flaugh, a "family life specialist," testified R.S. has learned how to cook, keep house, obtain bus transportation, save money, and feel better about herself. Unfortunately, despite the progress she has made, R.S. has never demonstrated she has learned or applied even the most basic of parenting skills.

During the period leading up to the second termination, R.S. continued to demonstrate an abusive pattern of behavior when she was left alone with the children. D.J. reported to his foster parents that R.S. had hit V.J. on

the head. T.O. told her foster family that R.S. called V.J. a "fucker." At various drop-in visits made by DHS, the workers observed R.S. yell at the children, R.S. flick V.J. on the head, and R.S. take the children outside barefoot in thirty-two degree weather.

At this same time, D.J. continued to have serious health problems because of his asthma and because R.S. had been taking him outside in colder weather. As a result, R.S. and a DHS worker attended a basic first-aid class which was geared toward the mental ability of a ten-year-old. Throughout the one-day class, R.S. told the DHS worker she did not need to know first-aid skills. She failed the test twice, and then refused to try again. During this period, D.J. was removed from the reunification program. Because of D.J.'s severe asthma and R.S.'s refusal to complete the first-aid course, the unsupervised visits had become dangerous to D.J.'s health.

After almost four years of services, R.S. still has been unable to internalize the knowledge and abilities which deal with basic parenting skills. We find clear and convincing evidence that the circumstance which led to the original CINA adjudication, R.S.'s inability to provide for the minimum needs of her children, continues to exist. Therefore, the juvenile court properly terminated R.S.'s parental rights pursuant to section 232.116(1)(c).

II. Section 232.116(1)(e). Iowa Code section 232.116(1)(e) (1991) permits the juvenile court to

terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The child is four years of age or older.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

At the time of the petition, T.O., D.J., and V.J. were respectively six, five, and four years old. The children have all been placed outside R.S.'s home since the CINA adjudication in 1988. Therefore, the issue on appeal relates only to section 232.116(1)(e)(4).

The criteria for determining whether a child may be returned to the home is similar to the statutory criteria for determining whether a child should be removed from the home. In re M.W., 458 N.W.2d 847, 859 (Iowa 1990). Statutory criteria for determining whether a child shall be removed from the home include whether "the child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available." Id. (quoting Iowa Code § 232.101(4)(b)). If any of the grounds listed in Iowa Code section 232.2(6) (1991) can be established by clear and convincing evidence, there is a sufficient basis for the termination. Id.

225

In its order terminating R.S.'s parental rights, the juvenile court specifically recognized the progress R.S. had made in terms of her self-esteem and her basic skills such as housekeeping and cooking. However, the court also found R.S. had consistently been unable to implement with her children the parenting skills and techniques which she had been taught. As R.S. received increased responsibility for the supervision of her children, she remained incapable of providing a stable, safe environment for her children.

Reasonable efforts to reunite the parent and child are required prior to termination. See In re M.Z., 481 N.W.2d 532 (Iowa App. 1991). Since the 1988 CINA adjudication, over twenty-five different programs and services have been utilized in attempting to reunite R.S. with her children. Yet, little progress has been made. Following an unsuccessful visitation which occurred prior to the termination, one social worker observed:

> After I left [R.S.'s] apartment, I sat in my car a few minutes feeling totally overwhelmed by feelings of frustration. The children had very obviously been in control most of the afternoon. [R.S.'s] reactions to [V.J.] and [T.O.'s] behavior was repetitive and ineffective. I observed no growth in parenting skills inspite [sic] of the intensive efforts of the homemaker service, Family Resources and family reunification to teach [R.S.] parenting skills.

This observation is typical of those who have been attempting to reach a successful reunification between R.S. and her children since 1988.

R.S. contends she was rushed by the reunification plan which was implemented by DHS. R.S. argues she was

frustrated by the return of all the children at once, and she would have preferred the return of the children one by one. Dr. Steven Chang, a psychiatrist under whose care R.S. had been since 1988, recommended T.O. and V.J. be returned to R.S. one by one at three-month intervals. R.S. did not recommend the return of D.J. because of his serious health problems.

To return the children one by one at lengthy intervals may have been in R.S.'s interest, but to do so would not have benefited the children. These children should not be forced to endlessly await the maturity of their mother. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Termination must occur if twelve to eighteen months have elapsed since the child was removed from the home and the parent still cannot take care of the child. Id. Evidence of the parent's past performance may be indicative of the quality of future care R.S. is capable of providing. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

R.S.'s difficulty in learning and developing parenting skills may be attributed, in part, to R.S.'s mental disability. R.S. has a low I.Q., and she has been diagnosed as schizophrenic. We recognize mental disability is not a sufficient reason standing alone for the termination of the parent-child relationship. In re Wardle, 207 N.W.2d 554, 563 (Iowa 1973).

However, the issue before the court is whether there is clear and convincing evidence that at the present time the

children cannot be returned to the custody of R.S. as provided in section 232.102. Iowa Code § 232.116(1)(e)(4) (1991). A great deal of patience and effort has been expended in the attempted reunification between R.S. and these three children. Although R.S. has demonstrated some improvement in basic day-to-day skills such as cleaning and cooking, R.S. has not shown she is able to care for these children in a safe manner. It is highly unlikely she will be able to do so in the future. We find the juvenile court properly terminated R.S.'s parental rights as to T.O., D.J., and V.J. under section 232.116(1)(e).

The costs of this appeal are taxed to R.S.

For the reasons stated, we affirm the judgment of the juvenile court.

AFFIRMED.