IN THE COURT OF APPEALS OF IOWA

No. 5-194 / 94-1808

FILED
APR 28 1995
CLERK SUPREME COURT

IN THE INTEREST OF C.M., A Minor Child,

T.M.,

Appellant.

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

T.M., the mother, appeals from a termination of her rights to C.M. **AFFIRMED.**

Steven G. Klesner, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, Judy Sheirbon, Assistant Attorney General, and Deborah Farmer Minot, Assistant County Attorney, for appellee.

Constance Peschang Stannard of Harris & Stannard, Iowa City, guardian ad litem, for minor child.

Considered by Donielson, C.J., and Habhab and Cady, JJ.

CADY, J.

T.M., Tammy, appeals the juvenile court's order terminating her parental rights to her daughter C.M., Chasity. The juvenile court found Tammy abandoned Chasity and terminated her rights pursuant to Iowa Code section 232.116(1)(b) (1993). On our de novo review, we affirm.

Tammy is the mother of Chasity, born May 18, 1993. Immediately after Chasity's birth an emergency removal order was entered placing her in the Department of Human Services' (DHS) custody. The order was based on Tammy's lack of parenting skills with her first child, which had lead to a recent termination of parental rights, and concerns by hospital staff about Tammy's ability to care for her newborn.

Chasity was returned to Tammy in June 1993. By August, there was a founded report of denial of critical care by Tammy, lack of proper supervision, and failure to follow through with medical care. In September 1993, Chasity was admitted to the hospital due to her poor weight gain. While hospitalized, Chasity was diagnosed with an eating disorder which required a special feeding regimen. The hospital required Tammy to undergo a seventy-two hour education program to learn to feed Chasity. Tammy failed to cooperate with the training. Chasity was again placed in foster care, and was adjudicated a child in need of assistance in October 1993. The adjudication and placement were affirmed by this court.

In March 1994, Tammy married Wynn McPhereson, an Army infantryman, stationed in Fort Campbell, Kentucky. She subsequently moved to Kentucky.

In May 1994, the State filed a termination petition. It asserted Tammy had not visited Chasity since January, had not complied with the case plan, and had expressed a desire to terminate her parental rights.

In September 1994, the district court terminated Tammy's rights to Chasity. The court concluded Tammy had not visited or asked to visit Chasity since January 1994, and told the DHS she was not interested in Chasity. The court found there was clear and convincing evidence Tammy had abandoned her child pursuant to Iowa Code section 232.116(1)(b).

Tammy appeals. She contends her lack of visitation was due to an antagonistic attitude by the DHS. She also claims it was never her intention to abandon Chasity.

We review the termination of parental rights de novo. In re M.S., 519 N.W.2d 398, 399 (Iowa 1994). We are not bound by the trial court's findings of fact, but give those determinations some weight especially when considering the credibility of witnesses. In re M.L.O., 477 N.W.2d 393, 394 (Iowa 1991).

The primary consideration in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15). In assessing the best interest of the child, we look to the child's long-range and immediate interests. In

re K.F., 437 N.W.2d 559, 560 (Iowa 1989). We consider what the future holds for the child if returned to his or her parent's care. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). We gain insight into the child's prospects by reviewing evidence of the parent's past performance. In re M.S., 519 N.W.2d at 400. This performance may be indicative of the parents' future capabilities. Id.

In the case at bar, the State sought termination of Tammy's parental rights under Iowa Code section 232.116(1)(b). Under this section, a court may terminate parental rights if there is clear and convincing evidence the child was abandoned or deserted by the parent. Abandonment is defined as "the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship." Iowa Code § 232.2(1) (1993). There is no particular time period for the relinquishment or surrender. Id. Additionally, proof of abandonment must include both the intention to abandon and conduct evidencing the intention. Id.; In re D.M., 516 N.W.2d 888, 891 (Iowa 1994). Parental responsibilities include more than subjectively maintaining an interest in a child. In re D.M., 516 N.W.2d at 891 (quoting In re Goettsche, 311 N.W.2d 104, 106 (Iowa 1981)). The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances. Id.

Keeping these principles in mind, we examined the facts of this case and concluded there is clear and convincing evidence Tammy abandoned Chasity.

Tammy's past actions suggest she is not capable of nor interested in providing for her daughter's physical and emotional needs. Tammy was unwilling to spend the seventy-two hours necessary to learn how to care for Chasity when she was hospitalized with an eating disorder. Instead of remaining at the hospital, to feed her daughter at four hour intervals, Tammy chose to attend a party and was later jailed. Tammy's lack of interest apparently increased after Chasity was placed in foster care in November 1993. Tammy failed to schedule visits and her visitation was sporadic. By January 1994, Tammy ceased all contact with Chasity. The DHS repeatedly contacted Tammy from January to July reminding her to arrange visits. Tammy, however, made no attempt to visit Chasity. When Tammy did contact the DHS she did not inquire about Chasity. Moreover, in April Tammy asked the social worker to stop mentioning Chasity and to discontinue sending her reports about Chasity. Tammy declined several offers for visitation in July and missed the only visitation appointment she accepted. Tammy did not request to see Chasity until September 21, 1994, the day before the last phase of the termination hearing.

Tammy asserts she never intended to abandon Chasity. In her testimony, she explained her lack of visitation was

due to the DHS's alleged coercive attempt's to make her voluntarily terminate her rights and a need to get her own life back together. We, like the trial court, find Tammy's explanation unconvincing. The facts belie her claim that she never intended to abandon Chasity. Tammy has not visited Chasity since January 1994. She has not provided financial support or gifts for her. She has not shown any interest in Chasity's wellbeing. Tammy has clearly abdicated her parental responsibility to actively participate in Chasity life to the extent practicable under the circumstances. See In re Goettsche, 311, N.W.2d at 107.

Chasity is now almost two years old and has been in Tammy's care less than three months. She needs permanency and stability in her life. She should not be forced to endlessly await her mother's maturity or be bounced in and out of foster care. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). She is firmly bonded to her foster parents and according to testimony, highly adoptable.

After carefully reviewing all of the evidence, we find there is clear and convincing evidence Tammy abandoned Chasity and the termination of Tammy's parental rights is in Chasity's best interest. We affirm the juvenile court.

AFFIRMED.