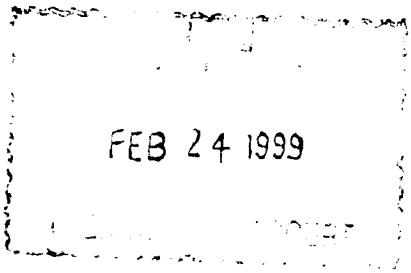
IN THE COURT OF APPEALS OF IOWA

No. 9-046 / 98-0986



IN THE INTEREST OF K.S., Minor Child,

M.S. and J.S., Parents,

Appellants.

Appeal from the Iowa District Court for Winnebago County, Gerald W. Magee, Associate Juvenile Judge.

Parents appeal order terminating their parental rights to their daughter. **AFFIRMED.**

Ronald D. Arispe, Clear Lake, for appellants.

Thomas J. Miller, Attorney General, and Chris Odell, Assistant Attorney General, for appellee-State.

Mark A. Newman, Forest City, guardian ad litem for minor child.

Considered by Sackett, C.J., and Streit and Vogel, JJ.

SACKETT, C.J.

Judy and Michael, the parents of Karen, born in September 1995, appeal from a juvenile court decision terminating their parental rights. They contend (1) the State failed to make reasonable efforts to reunite their family, and (2) the State failed to prove by clear and convincing evidence Karen could not be returned to their care. We affirm.

We review the termination de novo. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1984); *In re Miller Children*, 228 N.W.2d 60, 61 (Iowa 1975). However, we give weight to the juvenile court's findings of fact, especially the credibility of the witnesses. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *W.G.*, 349 N.W.2d at 491.

Judy had a troubled pregnancy, but Karen was determined to be within normal limits following her birth. Karen left the hospital with her mother after several days and was seen by a doctor at two weeks. At that time, the only problem noted was a diaper rash. Karen was to be brought back to the doctor in two months. However, by the time Karen was twenty-six days old, she was hospitalized for a fever of unknown origin.

Care providers noted concern about (1) the home where Karen lived with her parents and a number of extended family members; (2) adults smoking in the home; and (3) Judy and Michael's limited ability to understand caring for Karen and their failing to listen and understand instructions on her care. An occupational therapist in the hospital noted (1) the parents' environment was chaotic; (2) Judy reported depression and had threatened to commit suicide; and (3) Judy was on Prozac.

Karen was released to go home with her parents. However, in-home services were to be provided to the couple. A medical social worker visited the parents' home on a regular basis through the end of January 1996. During the course of these visits, the worker was instructed to provide the family education.

The worker reported the family dysfunctional and not interested in instruction on baby care. The worker also found the family, especially Michael, impatient with Karen. Karen continued to suffer respiratory problems, and though Judy and Michael had been told not to smoke cigarettes in her presence, the worker found ashtrays in the home filled with cigarette butts. The worker directed Karen's diaper be changed more often. Judy contended the cost of diapers was too high. The worker was frustrated by Judy's attention to the television rather than the care of her daughter.

At four months, Karen was again admitted to the hospital suffering labored breathing and a shortness of breath. There also were concerns at this time Karen was developmentally delayed. Besides the respiratory problems, Karen also had a "left metaphyseal fracture of the proximal tibia." With her parents' consent, Karen was sent to a foster home. Six days later, an ex parte order issued placing Karen in foster care.

A petition was filed to have Karen found to be a child in need of assistance. On June 11, 1996, the juvenile court found her a child in need of assistance and ordered she remain in foster care. There followed a review hearing. In February of 1998, the State filed a petition to terminate parental rights; and in May of 1998, the juvenile court terminated Judy and Michael's parental rights.

The parents first contend the State failed to make a reasonable attempt to reunite their family.

There is a requirement reasonable services be offered to preserve the family unit. *See In re A.L.*, 492 N.W.2d 198, 201 (Iowa App. 1992); *In re B.L.*, 491 N.W.2d 789, 791-93 (Iowa App. 1992) (Donielson, J., dissenting); *In re A.W.*, 464 N.W.2d 475, 478 (Iowa App. 1990) (Schlegel, P.J., concurring in part and dissenting in part); *In re M.H.*, 444 N.W.2d 110, 113 (Iowa App. 1989). A court is required to find reasonable efforts have been made to eliminate the need for removal before a removal is ordered. *See* Iowa Code § 232.102(4); *see also* 42 U.S.C. § 671(a)(15).

The original plans after Karen was removed from her parent's care was for Judy and Michael to have both supervised and unsupervised visitation. It was the intent during supervised visitation the parents, who both have mental limitations, could be instructed in the care of Karen. Later, the parents were given overnight unsupervised visitation. Ultimately, their visits were cut back and they were not allowed to visit with Karen in their home.

The State advances the parents missed a large number of visits. They also contend there was a time when (1) Karen was not returned to the foster home on time; (2) Karen was returned smelling of smoke; (3) Karen had to be treated for dehydration and ringworm after a visit; (4) Karen had sores in her diaper area after another visit; and (5) Karen, when returned to the foster home, was irritated. The State advances these are reasons for the visits being curtailed.

Karen and Michael make a valid point in advancing it is difficult for a family to reunite if visits with their child are curtailed. The State blames the parents for behaviors Karen exhibits after she is with them. Whether the behaviors are directly attributable to Judy and Michael's inappropriate behavior or whether they are attributable only to changing environments is not totally clear. We have not considered Karen's behaviors on her return to the foster home in making our decision.

The State introduced evidence Karen is more bonded to her foster parents than to her birth parents. But, Karen has spent substantially more time in their care than she has in the home of her birth parents. Karen's situation in the foster home is a factor to consider under Iowa Code section 232.116(2)(b) (1997). However, the job of a termination court is not to compare homes. To do so would result in only the most worthy being allowed to parent. Furthermore, while the foster family has considered adopting Karen, there is no evidence in the record they are committed to doing so.

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). While a parent has a constitutionally protected right in his or her child, the State has a responsibility to see the children within its borders receive adequate care and treatment. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Thus, the State must intervene when parents do not fulfill their responsibilities. *Id.* The court has often recognized there exists a parental interest in the integrity of the family unit;

nonetheless, we also are cognizant this interest may be forfeited by certain parental conduct. *Id.* In particular, the State may interfere to prevent possible harm as well as intervene as a remedial measure. *Id.*

The State offered numerous services in addition to visitation. Despite the delivery of those services, Judy and Michael made few lifestyle changes. They put their needs above those of Karen. Both parents continue to have problems with depression and aggressive behavior. Judy's ability to care for Karen is limited by her own abilities. While this does not demand termination, it is a factor we consider.

Efforts were made to help the parents in their own home prior to the decision to put Karen in foster care. A review of the record shows the efforts were not working.

The juvenile court made careful and extensive findings before determining the State had proven grounds for termination by clear and convincing evidence. Like the juvenile court, we find the State has proven its case.

At the time of the termination hearing, Karen had been out of her parents' home for twenty-five months. Judy and Michael had made little progress. The parental rights of Judy and Michael were properly terminated under section 232.116(1)(g). We affirm the decision of the juvenile court terminating the parental rights of Judy and Michael.

AFFIRMED.