IN THE COURT OF APPEALS OF IOWA

No. 4-039 / 93-1196

IN THE INTEREST OF D.M., M.M. and C.M., Minor Children,

R.M. FATHER,

Appellant,

C.M., Mother,

Appellant.

FILED
MAR 24 1994
CLERK SUPREME COURT

Appeal from the Iowa District Court for Buena Vista County, Mary L. McCollum, Judge.

Natural mother and father appeal the termination of their parental rights. **AFFIRMED.**

Douglas R. Hansen, Alta, for appellant-mother.

James A. Schall, Storm Lake, for appellant-father of D.M. and M.M.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Judy Sheirbon, Assistant Attorney General, and Ted Brown, County Attorney, for appellee-State.

Gregory J. Schiller of Mack, Hansen, Gadd, Armstrong & Schiller, P.C., guardian ad litem for minor children.

Heard by Donielson, C.J., Sackett, J., and Critelli, S.J.*

*Senior judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

CRITELLI, S.J.

Coretta and Roger are the natural parents of DeWayne, born March 3, 1986, and Matthew, born September 9, 1987. Coretta and Roger's marriage was dissolved in 1988. During the dissolution proceedings, Roger left the State of Iowa and did not inform anyone of his whereabouts. Coretta was awarded sole custody of DeWayne and Matthew. Coretta is also the natural mother of Carissa, born May 30, 1990. Rod is the natural father of Carissa.

In January 1989 the Department of Human Services (DHS) issued a founded report of denial of critical care of the children by Coretta. The report noted there was a lack of food for the children, filthy housekeeping conditions, and the children's lack of developmental growth. Coretta moved the family to North Dakota before they began to receive services in Iowa, but she received some homemaker services in North Dakota.

Coretta later moved back to Iowa. The family came to the attention of DHS again in August 1990, when three-year-old Matthew was seen wandering on a busy thoroughfare approximately four blocks from home. The police took charge of Matthew until Coretta called looking for him. After an investigation, DHS issued a second founded report of denial of critical care. The report found Coretta did not properly supervise the children and that she failed to provide adequate shelter for them because she had been evicted from her apartment due to her

filthy housekeeping habits. The apartment had been infested with lice. Also, Carissa had a rash all over her body.

A petition alleging the children should be determined children in need of assistance (CINA) was filed on October 9, 1990. The juvenile court determined the children were CINA pursuant to Iowa Code section 232.2(5). The court ordered the children to be placed in foster care. Coretta was allowed supervised visitation. The court ordered parent skill training and intense homemaker health training for her. Coretta was ordered to have a psychiatric evaluation. The evaluation revealed she suffered from cyclothymia, which causes alternating moods of elation and dejection. The evaluation recommended that Coretta have individual psychotherapy sessions to allow her to deal with her history of sexual abuse as a child by her father.

Carissa was returned to Coretta on November 30, 1990. Family preservation staff arranged for adequate fuel and worked on housekeeping issues and personal hygiene. However, a crisis arose on January 4, 1991, when Coretta ran out of fuel and baby formula and reported that she had no money to buy any more. Carissa was again placed in foster care. She was found to be suffering from an ear infection which Coretta had not properly treated.

Coretta made some progress in early 1991. She obtained a job and seemed to be receptive to services. In June 1991 DeWayne and Matthew were returned to her care. During this

time Coretta received Family Centered Services in her home. The children attended day care while she was at work. DeWayne also received play therapy for his behavior problems. Coretta received budget assistance from DHS due to her history of financial problems.

In August 1991 Carissa was returned to Coretta's care. In-home services to Coretta were discontinued because she had missed six scheduled appointments with her caseworker. Coretta later revealed this was because she had become romantically attached to a carnival worker and had traveled around Iowa with the children in order to be with him.

During the summer of 1991, while the children were in Coretta's care, Roger contacted DHS and asked about the status of his children, DeWayne and Matthew. He was informed they were in Coretta's care at that time. This is the first contact Roger made regarding the children since he left Iowa in 1988. Roger stated he lived in Oklahoma, but did not leave a telephone number or address.

The children were removed from Coretta's care on December 18, 1991. A medical examination of DeWayne revealed rectal fissures. DHS filed a founded report of sexual abuse, perpetrator unknown. Coretta admitted that even though she had been sexually abused by her father she had allowed him to babysit the children. DHS also filed a founded report of denial of critical care against Coretta for her failure to give Matthew his medication. Matthew has a seizure disorder and needs medication three times each day.

Roger again contacted DHS in February 1992. He was informed DeWayne and Matthew were in foster care and he asked to have custody. He stated he was living in Midwest City, Oklahoma. A home evaluation was requested before DHS would consider transferring the children to him. Oklahoma officials did not recommend placement with Roger. He had an unstable home environment in that he was unemployed and relied on a female roommate, Barbara, for living expenses, however, he was then dating another woman. Roger admitted he had never paid child support and had no contact with the children since 1988.

DHS issued a case permanency plan in November 1992. The plan identified specific goals for Roger: (1) begin contact with the children by cards and letters; (2) find his own place to live; (3) find a job; (4) begin paying child support; and (5) enroll in a parenting class.

On January 6, 1993, the guardian at litem filed a petition to terminate the parental rights of Coretta, Roger, and Rod pursuant to sections 232.116(1)(d), (e), and (g). All of the parents were present at the termination hearing in March 1993. Rod consented to the termination of his parental rights as to Carissa.

At the hearing, Roger testified he would like custody of DeWayne and Matthew. He stated he had married his roommate Barbara and had found a job. Roger had mailed two or three letters to his children. He had still not paid any child support or enrolled in a parenting class. He

admitted it would be some time before he could maintain custody of his children.

Coretta testified that she had six different residences since the commencement of the CINA proceedings. She also had several different jobs and at least four boyfriends. Coretta stated she planned on filing for bankruptcy in order to settle her financial obligations. She quit attending counseling in February 1993, but stated she would like to start again. Coretta stated she would like custody of her children.

The juvenile court terminated Coretta's parental rights to DeWayne, Matthew, and Carissa, Roger's parental rights to DeWayne and Matthew, and Rod's parental rights to Carissa. The court found that although numerous services had been provided to Coretta, she had not improved her parenting or homemaking skills. The court noted there had been several instances where Coretta had not provided adequate medical care for the children. Also, the prior effort at reunification had been unsuccessful, and Coretta could show no change in her circumstances since that time. The court concluded the children could not be returned to Coretta's care.

Concerning Roger, the court found that he had provided no financial or emotion support for his children from 1988 until 1992. Furthermore, although he had contacted DHS about obtaining custody, he had had only mailed two or three letters to the children, and therefore, not

established a meaningful relationship with them. The court noted that although Roger had not been notified of the CINA proceedings, he nevertheless knew of the proceedings and had been given an opportunity to obtain custody of the children, and thus, he had not been denied his due process rights due to lack of notice. The court concluded DeWayne and Matthew could not be placed in Roger's care at the present time, and they should not be required "to linger in limbo while Roger move[s] along at a snail's pace to effectuate their return."

The court found termination of the parents' rights was in the children's best interests. This was due to the fact that the children's developmental delays had been corrected while in foster care. The DHS caseworker for the case testified the children were adoptable as a family unit.

Coretta and Roger have appealed.

I. SCOPE OF REVIEW

We review termination hearings de novo. In re T.A.L., 505 N.W.2d 480, 482 (Iowa 1993). Accordingly, we review both the facts and the law, and we adjudicate rights anew. Id. We give weight to the findings of the juvenile court, especially with respect to the credibility of witnesses, but are not bound by them. In re D.A., 506 N.W.2d 478, 479 (Iowa App. 1993). Our primary concern is the long-term best interests of the children. Id.

II. CORETTA

A. Coretta contends that her parental rights should not have been terminated pursuant to section 232.116(d) because she was given limited visitation and no opportunity to resume care of the children within the six-month period prior to the termination. She claims DHS should have given her another chance at reunification after the children were removed from her care on December 18, 1991. She states that DHS did not provide her with adequate services to resume care of her children.

Section 232.116(d)(3) provides:

> There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so.

We find there is clear and convincing evidence to terminate Coretta's parental rights under this section. Although Coretta took advantage of all available visitation with the children, her parents were usually present and Coretta would give up a portion of her visitation time to allow her parents time alone with the children. This was despite the fact that Coretta had been sexually abused by her father. Coretta's interaction with the children during visits was described as superficial. Thus, there is sufficient evidence to find her contact with the children in the six months prior to termination was neither significant nor meaningful.

Also, there was clear and convincing evidence Coretta had made no reasonable efforts to resume care of the children in the six months prior to termination, despite being given the opportunity to do so. There was no evidence Coretta had made any changes to her life since the unsuccessful attempt at reunification. Coretta's caseworker testified that Coretta had received all services which were available to her. DHS had even invented some services specifically for Coretta, such as budget planning, in an effort to help her resume care of the children. However, Coretta failed to improve her parenting or housekeeping skills.

B. Coretta claims her parental rights should not have been terminated pursuant to sections 232.116(e) and 232.116(g) because the juvenile court failed a make a specific finding that the children could not be returned to her care. She also claims the State failed to introduce sufficient evidence to show the children could not be returned to her care.

We find it is clear from the juvenile court's decision that the children cannot be returned to Coretta's care. Furthermore, from our de novo review of the record, we determine the children cannot be returned to her care. As noted above, Coretta has made no improvement to her parenting or housekeeping skills. Coretta is unable to budget her money, which meant the children were sometimes without food or shelter. Coretta has repeatedly failed to

provide medical care for the children, which has caused them physical harm. Additionally, Coretta remains dependent on her relationship with her parents. She has not dealt with the issues arising from the fact she was sexually abused by her father or the danger he presents for similar abuse to her own children.

We affirm the decision of the district court terminating Coretta's parental rights to DeWayne, Matthew, and Carissa.

III. ROGER

A. Roger contends the juvenile court improperly terminated his parental rights on the ground that he had abandoned his children, when the petition did not list abandonment under section 232.116(b) as a ground for termination.

The juvenile court decision does not specifically find Roger abandoned the children. The decision does make many findings to the effect that Roger has had almost no contact with the children. However, these findings support termination pursuant to section 232.116(d), which was one of the sections cited in the petition. This section requires findings that the parent has not maintained significant and meaningful contact with the child during the previous six months and has made no reasonable efforts to resume care of the child. We conclude the district court did not improperly terminate Roger's parental rights on the ground of abandonment.

Additionally, we conclude there is clear and convincing evidence to support termination of Roger's parental rights under section 232.116(d). Prior to the termination Roger had only sent two or three letters to the children, missing one child's birthday and Christmas for all of the children. We find this is not significant and meaningful contact. Also, Roger failed to make reasonable efforts to assume the care of the children. While Roger had made some improvements within the last six months, he admitted he could not care for the children at the present time. Not only had he failed to establish any meaningful contact with the children, he had not begun to pay child support and had not enrolled in parenting classes.

B. In regard to the termination of Roger's parental rights pursuant to sections 232.116(e) and 232.116(g), Roger admits the children cannot be placed in his custody at the present time. He believes he should be given more time and that the termination of his parental rights was premature. In particular Roger states that he did not receive a case permanency plan until sometime in November 1992, and the petition to terminate his parental rights was filed on January 6, 1993. Roger claims that he was not given sufficient time to comply with the provisions of the case permanency plan.

We note that although the petition to terminate was filed on January 6, 1993, the first day of hearing was held on March 31, 1993, and the second day of hearing was held

on May 6, 1993. Thus, even if we assume Roger had no obligation to take some positive steps prior to receiving the case permanency plan, he had somewhat more than five months after he received the case permanency plan to show he could assume care of the children. Although Roger made some initial steps by marrying Barbara and getting a job, he failed to take any additional steps to place himself in a position to assume the care of the children.

Furthermore, the fact that Roger was not involved in the case at an earlier date was due to his own actions of disappearing from Iowa and then failing to contact the children for many years. The evidence shows Roger knew in the summer of 1991 that the children had been placed in foster care. He took no action at that time and did not even leave an address or telephone number where he could be reached. He let the matter rest until February 1992 when he called DHS and asked for custody of the children.

We agree with the juvenile court that Roger has progressed at a snail's pace in his effort to assume care of the children. We find it is not in the children's best interests to suffer any longer in a parentless limbo.

C. In the proceedings before the juvenile court, Roger argued that he was denied his due process rights because he was not given notice of the CINA proceedings. We note that Roger had actual notice of the proceedings at least by the summer of 1991, that he was given an opportunity to participate in the case before the petition to terminate

his parental rights was filed, and that there was clear and convincing evidence to terminate his parental rights. See In re M.L.M., 464 N.W.2d 688, 690 (Iowa App. 1990). We also note that Roger has not raised this issue on appeal.

We affirm the decision of the juvenile court terminating Roger's parental rights to DeWayne and Matthew.

Costs of this appeal are assessed one-half to Coretta and one-half to Roger.

AFFIRMED.