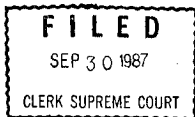


IN THE COURT OF APPEALS OF IOWA



IN THE INTEREST OF
W.J.W.C.,

Minor Child,

R.C. and R.C., Natural Parents,

Appellants.

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Filed September 30, 1987
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7-223
86-1219

Appeal from the Iowa District Court for Scott County (No. Juv. J(T) 4300-0186), John A. Nahra, District Associate Judge.

Parents appeal the termination of their parental rights alleging that certain actions of the Department of Human Services deprived them of their due process rights in maintaining the integrity of the family unit; the admission of allegations of sexual abuse violated Iowa Rules of Evidence 402 and 403; and the evidence that the child could not be returned home under Iowa Code sections 232.116(5)(c) and 232.102(3) did not rise to the level of clear and convincing evidence.

AFFIRMED.

Thomas H. Preacher of Alexander & Preacher, Davenport, for natural parents-appellants.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; and Elaine C. Kopf, Assistant County Attorney, for the State.

David Millage of Wells & Gallagher, P.C., Bettendorf, for the child.

Considered by Oxberger, C.J., and Snell and Hayden, JJ.

PER CURIAM

On October 28, 1983, W.J.W.C. was adjudicated a child in need of assistance by the Juvenile Court for Scott County. As a result of this adjudication, custody of W.J.W.C. was placed in the Scott County Department of Human Services. W.J.W.C. remained in the foster care situation in which he had been placed pursuant to an earlier temporary removal order. On January 16, 1986, a petition to terminate parental rights was filed. Hearing was had on the petition and, on July 23, 1986, the juvenile court entered findings, conclusions, order and decree terminating the parental rights of appellants. This appeal followed. Our review is de novo. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

I.

Appellants contend the Scott County Department of Human Services violated their due process rights to maintain the integrity of the family unit. See Alsager v. District Court of Polk County, Iowa, 406 F. Supp. 1022 (S.D. Iowa 1975); In Interest of M.H., 367 N.W.2d 275, 280 (Iowa App. 1985); U.S. Const. amends. V, XIV; Iowa Const. art. I, §§ 9, 10. These violations occurred, according to appellants, when the department changed the family's provider of services and ignored a request by the initial provider for a review hearing to reevaluate the family's status.

Consistent with its duty under Iowa Code section 232.102(5) to "make every effort to return the child to the child's home as soon as possible," the department initially hired Bethany Home, Inc., a private agency, to provide certain parental counseling services to the parents of W.J.W.C. Early in 1985, however, the department terminated its contract with Bethany Home and replaced it with another private agency. Appellants argue this change "had the effect of sabotaging the progress made by the family to that point." Appellants suggest

this effect was intentional and consistent with an alleged commitment by the department to the goal of terminating appellants' parental rights.

We find nothing inappropriate with the department's decision to change its provider of services. The record reflects the department's concern both with the lengthy maintenance of W.J.W.C. in a foster care situation and with Bethany Home's case plan, which called for the continuation of that status. This concern is consistent both with the department's obligation to return the child to his or her home as soon as possible and with our case law which emphasizes that "children should not be made to suffer indefinitely in a parentless limbo." Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977). We find no merit in appellants' argument on this ground.

Appellants' constitutional claim is also premised on the allegation that the department ignored a request by the initial provider for a review hearing. We note the record does appear to demonstrate that no review hearing occurred from September 1984 until August 1985. Our governing statute, of course, mandates such a hearing be held every six months. Iowa Code § 232.102(6) (1985). We have criticized such procedural omissions in the past, In re Interest of J.F., 386 N.W.2d 149, 153 (Iowa App. 1986), and reaffirm that criticism today. However, we also note the record is silent with respect to any attempt by appellants to bring about such a hearing. Although such a hearing should have been held without appellants forcing the State's hand, appellants had the authority to do so, Iowa Code § 232.103(1), (2)(b) 1985, and did not. In similar cases, we have held such silence to constitute a waiver of procedural error. In Interest of J.F., 386 N.W.2d at 152; see also In Interest of L.P., 370 N.W.2d 839, 841 (Iowa App. 1985). Given the facts of this case, we believe that to be the correct outcome here also. Appellants' claims of constitutional error are without merit.

II.

At the hearing on the termination petition, the State introduced evidence of appellants' extensive sexual contact with W.J.W.C. and his three siblings. Appellants maintain the admission of such evidence was error. They contend the evidence was irrelevant because the original child-in-need-of-assistance adjudication was not based on sexual abuse allegations. Even if relevant, the evidence, according to appellants, was more prejudicial than probative and should have been excluded from evidence accordingly. See Iowa R. Evid. 403.

Appellants' argument here is specious. In order to terminate appellants' parental rights, the court was required to find, inter alia, that "the child cannot be returned to the custody of the child's parents as provided in section 232.102." Iowa Code § 232.116(5)(c) (1985). Iowa Code section 232.102, in turn, provides that the child can be returned to the custody of his or her parents only if the court finds that "the child will not suffer harm in the manner specified in section 232.2, subsection 6." This last-quoted subsection defines "child in need of assistance." Accordingly, evidence is relevant to the purposes of the termination hearing if it tends to prove or disprove the existence of any of the grounds which would support the adjudication of a child as in need of assistance. The ambit of relevant evidence at a termination hearing is not defined, as appellants contend, by the earlier child in need of assistance petition. This conclusion is consistent with the statutory mandate that the welfare of the child be the "paramount consideration" in termination proceedings. Iowa Code § 600A.1 (1985).

When seen in light of this statutory mandate, appellants contention that evidence of their sexual improprieties with their children, including W.J.W.C., is more prejudicial than probative is revealed as singularly unpersuasive. Appellants' evidentiary arguments are without merit.

III.

Finally, appellants maintain insufficient evidence was adduced in support of the termination order. The juvenile court terminated the parent-child relationship pursuant to Iowa Code section 232.116(5). A termination pursuant to this subsection requires that the child be previously adjudicated in need of assistance, be placed out of the parents' custody for at least twelve of the last eighteen months, and that there be clear and convincing evidence that the child cannot be returned to the parental home because definitional grounds of a "child in need of assistance" still exist. In Interest of K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). Appellants do not dispute the establishment of the first two of these criteria. Appellants contend, however, that the State has failed to show by clear and convincing evidence that, if returned to them, W.J.W.C. will suffer any of the harms specified in section 232.2(6), which defines a "child in need of assistance."

The record demonstrates that W.J.W.C. was removed from the parental home in March 1983 when approximately six months old. W.J.W.C. has never been returned to the parental home. The interaction of the department of human services with the parental home, however, predates significantly the life of W.J.W.C. We think this evidence relevant to the extent it bears on what the future probably holds for a child who is returned to that parent. See In Interest of C.W., 342 N.W.2d 885, 887 (Iowa App. 1983). We look to such evidence of a parent's past performance in recognition of the preventative nature of termination proceedings, which does not require us to wait until harm occurs. In Interest of Dameron, 306 N.W.2d 743, 745 (1981). This evidence, which extends back at least to 1979, includes numerous reports of parental abuse and the receipt of on-going services from the department since 1981. The siblings of W.J.W.C. have been the subject of several removal orders during those years.

The record demonstrates that, notwithstanding the lengthy involvement of the department of human services, problems with inadequate nutrition, hygiene, stability, parental supervision, and care remain. The record is clear that these parents possess neither the interest nor the emotional and psychological capital to care for W.J.W.C. A decision involving a child's permanent home cannot be postponed indefinitely. In Interest of Welcher, 243 N.W.2d 841, 845 (Iowa 1976). Appellants have been provided the opportunity to mend their ways and demonstrate minimal competency to parent. They either have failed to appreciate that opportunity or have shown, by their indolence, their inability to benefit from it. The decision of the juvenile court is amply supported by the record and, accordingly, is affirmed.

AFFIRMED.