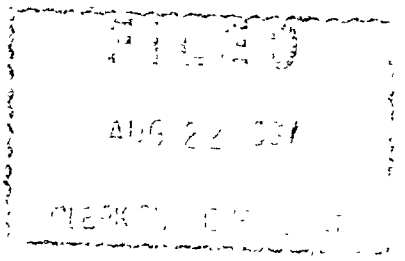
IN THE COURT OF APPEALS OF IOWA

No. 7-437 / 97-0066

000053



IN THE INTEREST OF
J.C., Jr., S.C., R.C, and J.C., Minor Children,

J.C., Sr., Father,
Appellant,

E.C., Paternal Grandmother,
Appellant.

Appeal from the Iowa District Court for Linn County, Jane F. Spande, District Associate Judge.

Father and paternal grandmother appeal the juvenile court's order terminating parental rights over his minor children. **AFFIRMED.**

James H. Carter of Terpstra, Terpstra & Epping, Cedar Rapids, for appellant-father.

Christine L. Crilley, Cedar Rapids, for appellant-grandmother.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Rebecca Belcher, Assistant County Attorney, for appellee-State.

Casey Jones, Cedar Rapids, guardian ad litem for minor children.

Considered by Habhab, C.J., and Sackett and Huitink, J.

HUITINK, J.

James appeal the termination of his parental rights. James's mother, Evelyn, has intervened in this case seeking custody of the children. She also appeals.

Wendy and James are the parents of Jim, born in September 1986; Summer, born in December 1987; Rufus, born in March 1989; and John, born in July 1993. Wendy and James have never been married. Wendy is a member of the Sac and Fox Tribe (also known as the Mesquakie Tribe). James and the children are members of the Ho-Chunk Nation (formerly known as the Winnebago Tribe).

Wendy and James both have problems with alcohol abuse. They have each been to several treatment programs, and have been unsuccessful in maintaining sobriety. There were also problems with domestic abuse in the home.

Jim suffers from fetal alcohol syndrome. He has some developmental delays and an eating disorder. The other children suffer from fetal alcohol exposure. They have some tendencies toward aggression. The children are considered to be special needs children.

The Department of Human Services (DHS) became involved with the family in 1987 due to allegations of denial of critical care of Jim. Jim and Summer were determined to be children in need of assistance on May 12, 1988. The family received family centered services.

In 1990, the parents voluntarily placed the children with James's sister. However, James came to visit the children while intoxicated and assaulted his sister's boyfriend. This resulted in an emergency removal order on March 9, 1990, placing the children in foster care. Rufus was also then adjudicated a child in need of assistance. The court determined James could have only supervised visitation with the children.

Jim, Summer, and Rufus remained in foster care until October 28, 1993, when they were placed in the care of a paternal aunt and uncle in Oklahoma. This placement was unsuccessful because the aunt and uncle were unable to control the children's behavior. John, who was born in July 1993, was determined to be a child in need of assistance on March 10, 1994. He was placed in the care of an uncle. However, due to the uncle's use of alcohol, he was placed in foster care. By December 1994, all of the children were in foster care.

Summer and John were reunited with Wendy in the fall of 1995. On one occasion, Wendy brought the children to Evelyn's home and James was present. Evelyn allowed James to remain and have contact with the children even though she knew he was only to have supervised visitation. The children were removed from Wendy's care in April 1996.

James completed in-patient treatment in June 1996. He has not attended recommended individual and family counseling, or anger management classes. James

is now married to Cheryl, who is a stabilizing influence. James has consistently visited the children since June 1996. On October 10, 1996, James relapsed from sobriety.

Evelyn has consistently participated in visitation with the children. On April 25, 1996, she filed an application to intervene, and asked to receive custody of the children. Evelyn would like to teach the children Native American ways, values, and culture. A home study did not recommend placing the children with Evelyn due to concerns Evelyn's passive parenting style would not meet the children's special needs. There were also concerns Evelyn would allow the parents to have contact with the children.

On July 22, 1996, the State filed a petition to terminate the parental rights of James and Wendy. The parental rights of the parents were terminated under the Indian Child Welfare Act, 25 U.S.C. section 1912(f). James's rights were terminated based on the grounds found in Iowa Code section 232.116(1)(e) and (k). The court determined placing the children with Evelyn was not in their best interests because it was unlikely Evelyn would be able to protect the children from continuing contact with their parents. The court directed DHS to actively search out a Native American home for the children. James and Evelyn appeal.

I. The Iowa statutory and case law are modified in this termination proceeding by the provisions of the Indian Child Welfare Act. *See In re J.W.*, 498

N.W.2d 417, 419 (Iowa App. 1993). The Act has two objectives: (1) to protect the best interests of Indian children, and (2) to promote the stability and security of Native American tribes and families. 25 U.S.C. §1902; *In re B.M.,* 532 N.W.2d 504, 506 (Iowa App. 1995). The Act imposes strict procedural standards for the removal of Native American children from their families and their placement in foster and adoptive homes. *Id.; In re J.W.,* 528 N.W.2d 657, 662 (Iowa App. 1995). Under section 1912(f), the grounds for termination must be supported by evidence beyond a reasonable doubt. *In re R.L.F.,* 437 N.W.2d 599, 601 (Iowa App. 1989).

II. Section 1912(f) requires the juvenile court to consider the testimony of a qualified expert witness prior to termination of the parental rights of the child's parent or Indian custodian. Section 1912(f) provides:

> No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

The testimony of a qualified expert witness is to provide the court with knowledge of the social and cultural aspects of Native American life to diminish the risk of any cultural bias. *In re L.N.W.,* 457 N.W.2d 17, 18 (Iowa App. 1990).

James and Evelyn contend the juvenile court erred in certifying Mary Tope as an expert witness.[1] They suggest she was not sufficiently familiar with Native American culture or with the parties in this particular case. They also believe she was biased because she was an employee of DHS.

The juvenile court found Tope was a qualified expert witness based on her education, her cultural sensitivity and training, and her extensive experience working with Native American families. We review the juvenile court's decision on this issue for an abuse of discretion. *In re S.M.*, 508 N.W.2d 732, 734 (Iowa App. 1993); *L.N.W.*, 457 N.W.2d at 18.

In our de novo review of the record, we find no abuse of discretion in the juvenile court's determination that Tope was a qualified expert witness. Tope has a bachelor's decree in social work. She has attended various workshops and seminars dealing with minority issues. She has attended cultural sensitivity training with regard to Native Americans. She has worked with many Native American families. Tope was qualified as a expert witness in a previous appellate case. *S.M.*, 508 N.W.2d at 734. She has been considered a qualified expert witness in about fifteen other cases here and in South Dakota.

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[1] The Ho-Chunk Nation joins in this argument as an amicus curiae.

III. James claims there was insufficient evidence to show the children could not be returned to his care. He states he has been sober since June 1996 and has not been proven guilty of any assaultive behavior since May 1995. James points out that his new wife would be able to help care for the children.

We find there is evidence to prove beyond a reasonable doubt that the children could not be returned to James's care at the present time. A police report investigating an incident of domestic abuse assault indicated James was intoxicated on October 10, 1996. James's past history shows he has been unable to maintain any extended periods of sobriety. James has not participated in individual or family counseling to help him deal with issues of anger management and aggression.

IV. Evelyn claims DHS did not engage in sufficient efforts to place the children with her. Under section 1912(d), the State must show active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of an Indian family. Evelyn believes this duty includes extended family members.

The children were first adjudicated as children in need of assistance in 1988. Evelyn did not intervene to seek custody of the children until April 1996. This case had been pending for a very long time before Evelyn showed a real interest in having the children placed with her. There is no evidence to show Evelyn requested services, other than visitation, prior to her petition to intervene. DHS obtained a home study

in June 1996. The home study gave a negative recommendation. The petition to terminate parental rights was filed in July 1996. Under the specific facts of this case, we determine DHS engaged in sufficient efforts in regard to the Evelyn.

V. James and Evelyn contend termination is not in the best interests of the children because it will separate them from their Native American heritage. James and Evelyn have been the children's primary source in learning about Native American culture. As noted above, one of the purposes of the Indian Child Welfare Act is to promote the stability and security of Indian tribes and families. *B.M.,* 532 N.W.2d at 506.

In our de novo review, we find termination of parental rights is in the best interests of the children. The children have been in foster care for a long period of time, and need stability in their lives. We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for children. *In re A.Y.H.,* 508 N.W.2d 92, 96 (Iowa App. 1994). A child should not be forced to endlessly suffer the parentless limbo of foster care. *In re J.P.,* 499 N.W.2d 334, 339 (Iowa App. 1993).

We note the State has made extensive efforts to place the children with a relative or Native American family. The children were unsuccessfully placed with various relatives. DHS sought the assistance of the Ho-Chunk Nation's social services department in seeking a placement for the children. These efforts shall

continue in seeking an adoptive home for the children. We specifically affirm the juvenile court's directive that DHS shall assure the children's Native American heritage is protected within any foster home or preadoptive placement, and directing DHS to actively seek out a Native American home for the children.

We affirm the decision of the juvenile court terminating James's parental rights to Jim, Summer, Rufus and John. We also affirm the court's decision that the children should not be placed with Evelyn.

AFFIRMED.