IN THE COURT OF APPEALS OF IOWA

No. 1999-425 (9-678) / 99-1016
Filed January 12, 2000

FILED
JAN 1 2 2000
CLERK SUPREME COURT

IN THE INTEREST OF J.O.,
Minor Child,

D.O., Mother,
Appellant.

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

Mother appeals from the juvenile court order terminating her parental rights to her minor child. **AFFIRMED.**

Ronald D. Arispe, Clear Lake, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Paul Martin, County Attorney, for appellee-State.

Mark Young of the Young Law Office, Mason City, guardian ad litem for minor child.

Considered by Streit, P.J., and Vogel, J., and Peterson, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

PETERSON, S.J.

A mother appeals the decision of the juvenile court which terminated her parental rights to her minor child. She claims the State failed to make reasonable efforts to reunite her with the child, there is not sufficient evidence to support termination of her parental rights, and termination is not in the child's best interests. We affirm on appeal.

Donna and Richard are the parents of Jonah, who was born in March 1989. Donna and Richard's parental rights to two older children were previously terminated. In October 1993, the Department of Human Services (DHS) issued a founded report Donna had physically abused Jonah. In June 1997, DHS issued a founded report against Donna and Richard for denial of critical care to Jonah.

The parents were friends with Jonathan, who had previously been convicted of lascivious acts with a child. Jonathan engaged in many activities with the family and sometimes went on vacation with them. In August 1997, DHS issued a founded report of denial of critical care against the parents because they were allowing Jonathan to sleep on the floor in Jonah's room. Jonah was adjudicated to be a child in need of assistance under Iowa Code section 232.2(c)(2) (1997) (child has suffered harmful effects as a result of failure of parent to exercise care in supervising child). The parents were ordered not to allow Jonah to have any contact with Jonathan.

Jonah was removed from the parents' care in November 1997 because they had continued to allow Jonathan to have contact with the child. Donna attended a group

for parents of sexually abused children, but did not participate. She told social workers she believed Jonathan would never hurt Jonah.

In December 1997, while in therapy, Jonah revealed he had been sexually abused by Jonathan. DHS issued a founded report of denial of critical care against the parents for failing to properly supervise the child to prevent such abuse. While the investigation was proceeding, there were concerns Jonathan was stalking Jonah. Jonathan was arrested and charged with second-degree sexual abuse. He was released prior to his trial and then apparently left the State for a period of time.

Donna has limited intellectual functioning. A psychological evaluation revealed she suffered from depression. The evaluation found she had a low potential for meaningful behavior and personality change. Donna received family-centered services, including therapy and skill development. She also participated in individual and group therapy. Donna's progress was slow. She had a difficult time retaining and utilizing the skills she acquired from services. She struggled with decision-making and assertiveness. Donna attended supervised visitation with Jonah.

Donna and Richard separated in November 1998. Jonathan was arrested again in February 1999 and placed in jail. Donna posted Jonathan's bond, allowing him to be released from jail. DHS received information Donna had entered into a personal relationship with Jonathan.

Jonah has done well in foster care. He has borderline intellectual functioning and suffers from an adjustment disorder. When Jonah was removed from the home he

was aggressive and engaged in inappropriate sexual activity. While in foster care his behavior greatly improved. He had outbursts of anger following supervised visits. When Jonah learned Jonathan was no longer in jail, he expressed fear Jonathan would injure other children. Jonah's behavior regressed due to his extreme fear of Jonathan.

In February 1998, the State filed a petition to terminate the parental rights of Donna and Richard. The juvenile court terminated Donna's parental rights pursuant to section 232.116(1)(e) (child four or older, child CINA, removed from parent's custody twelve of last eighteen months, and cannot be returned to parent). Richard's parental rights were also terminated. The court found additional time or services would not permit Jonah to be safely returned to the care of either parent within the foreseeable future. Donna appealed.

I. The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997). The grounds for termination msut be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Donna contends the State did not engage in reasonable efforts to reunite her with Jonah. She asserts DHS improperly suspended her visitation in March 1999 after she bailed Jonathan out of jail. She claims supervised visitation should have continued.

Reasonable efforts to reunite parent and child are required prior to the termination of parental rights. *In re M.B.*, 595 N.W.2d 815, 818 (Iowa App. 1999). The reasonable efforts concept would broadly include a visitation arrangement designed to facilitate reunification while protecting the child from the harm responsible for the removal. *In re M.B.*, 553 N.W.2d 343, 345 (Iowa App. 1996). The nature and extent of visitation is controlled by the best interests of the child. *Id.*

We find suspension of Donna's visitation was in Jonah's best interests. Jonah was aware his mother had paid the bond allowing his sexual abuser to be released from jail. Jonah was extremely afraid of Jonathan. After Jonathan was released from jail Jonah was afraid to walk from his house to a detached garage. Jonah's behavior regressed after Jonathan was released. Furthermore, even before Jonathan was released from jail, Jonah had outbursts of anger following supervised visits.

III. Donna claims the State did not present sufficient evidence to support termination of her parental rights. In particular, she claims the State failed to show Jonah could not be returned to her care. She asserts she had made progress in therapy and is becoming more independent and assertive.

A good prediction of the future conduct of a parent is to look at the past conduct. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa App. 1998). The parent's past performance may indicate the quality of care the parent is capable of providing in the future. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

Jonah could not be safely returned to Donna's care at the present time. Donna did not believe Jonah had been sexually abused by Jonathan. Therefore, she would not be able to protect Jonah from future abuse. Donna's decision to pay Jonathan's bond showed she was placing her own interests before those of Jonah. We determine there was sufficient evidence to support termination of Donna's parental rights.

IV. Donna contends termination of her parental rights is not in Jonah's best interests. She states they have a strong bond and Jonah would like to move home.

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the best interests of a child, a court looks to the child's long-range and immediate interests. *C.K.*, 558 N.W.2d at 172. The court must consider the physical, mental, and emotional condition and needs of the child in deciding whether to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996).

We conclude termination of Donna's parental rights is in Jonah's best interests. As noted above, Donna has put her own needs before those of Jonah. Jonah needs a permanent, safe home. We do not believe Donna can meet Jonah's needs.

We affirm the decision of the juvenile court which terminated Donna's parental rights to Jonah.

AFFIRMED.