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IN THE COURT OF APPEALS OF IOWA

No. 6-749 / 96-1013

FILED
FEB 26 1997
CLERK SUPREME COURT

IN THE INTEREST OF A.A., J.K., and K.K., Minor Children,

V.K., Mother,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen, Associate Juvenile Court Judge.

A mother appeals from the termination of her parental rights pursuant to Iowa Code sections 232.116(1)(c), (e), and (g) (1995), and section 232.116(1)(h) (1995 Supp.). **AFFIRMED.**

William A. Price, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Emily McConkey, Assistant County Attorney, for appellee State.

George Arvidson, Des Moines, for minor children.

Heard by Habhab, C.J., and Streit and Vogel, JJ.

HABHAB, C.J.

Virginia is the mother of three children, Anthony, born September 4, 1987; Kyle, born January 13, 1992; and Jem, born April 8, 1994. Joe is the father of Anthony. Edgar is the father of Kyle and Jem. The family had been receiving Iowa Department of Human Services (the Department) child protective treatment services since September 1993. The three children were removed from Virginia and Edgar's home on May 20, 1994, due to a founded child abuse report of physical abuse and denial of critical care in which Edgar and Virginia were named as perpetrators. The children were subsequently adjudicated children in need of assistance (CINA) and have remained in foster care since removal.

A petition to terminate the parental rights of Virginia, Edgar, and Joe was filed October 16, 1995. An order terminating their parental rights was filed May 1, 1996. The termination of Joe's and Edgar's parental rights are not at issue on appeal. The court found Virginia had not been cooperative with services and was dependent upon and unable to leave Edgar despite his infliction of domestic abuse. The court concluded Virginia lacked insight into the abuse she and her children had endured and would not be able to protect the children if they were returned to her care. Virginia's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(c);[1]

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[1] Children adjudicated CINA due to the physical abuse or neglect resulting from an act or omission of the parent; the parent was offered services to correct the circumstances which led to the adjudication; and the circumstances continued to exist despite the offer of services.

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232.116(1)(e);[2] 232.116(1)(g);[3] and 232.116(1)(h).[4]

On appeal, Virginia argues the State did not prove by clear and convincing evidence that her parental rights should be terminated. She contends she ~~completed~~ substantially all of the Department recommendations for the return of her children. She asserts the reports of Sue Alleman, the individual who supervised her visits with her children, were incomplete and inaccurate. Virginia also argues the juvenile court abused its discretion in admitting Alleman's opinion testimony that the children would be subjected to physical and emotional abuse if returned to Virginia's care. Virginia argues this testimony was inadmissible under Iowa Rules of Evidence 701, 702, and 703. She further argues the testimony was based upon inadmissible hearsay.

In response, the State argues Alleman's testimony was based upon her personal knowledge and observations as an individual who had supervised the children's visitation with Virginia. The State contends the testimony was cumulative of other

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[2] Child four years of age or older, adjudicated CINA, removed from the physical custody of the parent for at least twelve of the last eighteen months or for the last twelve consecutive months and any trial period at home was less than thirty days, and the child cannot be returned to the parent at the present time.

[3] Children three years of age or younger, adjudicated CINA, removed from the physical custody of the parent for at least six of the last twelve months or for the last six consecutive months and any trial period at home was less than thirty days, and the children cannot be returned to the parent at this time.

[4] Children meet the definition of CINA based on a finding of physical abuse or neglect resulting from an act or omission of parent; the abuse or neglect posed a significant risk to the lives of the children or constituted imminent danger to the children; and the offer or receipt of services would not correct conditions which led to the abuse or neglect within a reasonable period of time.

evidence (a quarterly review and court progress summary) admitted without objection.

I. Standard of Review. Our review of termination proceedings is de novo. *In re T.M.P.*, 528 N.W.2d 671, 673 (Iowa App. 1995). We give weight to the findings of fact made by the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re R.K.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interest of the children which include both their long-range and immediate interests. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1994). In making this determination:

> We consider what the future holds for the child if returned to his or her parents. Insight for his determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re T.J.O., 527 N.W.2d 417, 420 (Iowa App. 1994)(citing *In re R.M.*, 431 N.W.2d 196, 199 (Iowa App. 1988); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)).

II. Clear and Convincing Evidence. Virginia maintains there is not clear and convincing evidence within the record to support the juvenile court's determination that termination was in the best interests of the children. We reject Virginia's contentions. The record reflects Edgar has a long history of abusing Virginia. His violent behavior toward her has been witnessed by the children on numerous occasions. Additionally, Edgar has pointed a loaded gun at a child and at Virginia.

Edgar's parental rights were terminated by the juvenile court and are not before us on appeal.[5] However, the record reveals Virginia still resides with Edgar and refuses to leave him to regain custody of the children. At trial, a family therapist testified that Virginia remained loyal to Edgar despite his abusiveness toward her and the children. She would not admit he had been abusive toward her.

In our de novo review of the record, we find there is clear and convincing evidence establishing the best interests of the children mandate termination of Virginia's parental rights. Virginia's recognition of past domestic abuse is necessary to prevent further abusiveness in the future. *See In re T.J.O.*, 527 N.W.2d 417, 421 (Iowa App. 1994)(essential for parent to recognize abuse before meaningful change can occur which is necessary to meet child's needs). Virginia has failed to adequately address the issue of domestic violence in her life to her own detriment and the detriment of her children. Her continued denial of and unwillingness to address the issue of the effects of domestic violence on the children jeopardizes their safety and well-being as she refuses to provide a safe environment for them.

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[5] In terminating Edgar's parental rights the juvenile court found.

> Edgar . . . has poor impulse control and displays anti-social behavior. The children would not be safe with [him] until he has successfully completed long-term therapy, and then only if he could demonstrate ability to control his anger Throughout the course of years of treatment, Edgar never displayed the ability to control his anger. Dangerous physical abuse of the children and domestic abuse of Virginia continue to be a concern at the present time. There is serious risk that Edgar would continue to be violent if the children were returned home.

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 the children. *A.Y.H.*, 508 N.W.2d at 96. "Iowa case law clearly holds we do not allow children 'to suffer indefinitely in parentless limbo.'" *In re R.C.*, 523 N.W.2d 757, 760 (Iowa App. 1994)(citing *In re T.A.L.*, 505 N.W.2d 480, 485 (Iowa 1993); *Long v. Long*, 255 N.W.2d 146, 149 (Iowa 1977)).

These children need a safe, stable home and a nurturing environment which Virginia has been unwilling to provide in the past and shows no willingness to provide in the future. We simply will not return the children to a dangerous and abusive home. We agree with the juvenile court's finding that Virginia lacks insight into the seriousness of the abuse of herself and the children. She has had more than ample time to make the necessary changes in her life to assume the care of the children but has failed to do so. We affirm the juvenile court's termination of her parental rights.

III. Testimony of Sue Alleman. Virginia argues the opinion testimony offered by Generations' employee, Sue Alleman, was improperly admitted by the juvenile court. Iowa Code section 232.96(3) provides, "Only evidence which is admissible under the rules of evidence applicable to the trial of civil cases shall be admitted, except as otherwise provided by this section."[6]

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[6] Writings, audio and video tapes made by the department, a juvenile court officer, a peace officer or a hospital relating to a child are excepted under Iowa Code section 232.96(6) notwithstanding a hearsay objection.

The juvenile court admitted this testimony pursuant to Iowa Rules of Evidence 701, 702, and 703. The court noted:

> The credentials of the witness are well outlined in the testimony. Under Iowa Rule of Evidence 701, the opinion testimony of even a lay witness is admitted in the form of opinions or inferences where limited to those opinions or inferences which are rationally based on the perception of the witness and helpful to a clear understanding of the testimony or determination of a fact in issue.
>
> I'm going to allow the testimony subject to the objection based upon this witness's experience and contact with this case as well as Rule 701 and 702 and 703.

Our review of Alleman's testimony reveals that at the time of trial she had eight and one-half years of experience supervising visitation. She had worked with the family before the children were removed and supervised visits between both of the parents and the children after the removal. On one occasion she witnessed Edgar become so angry he threatened her in the presence of the children. She witnessed the children's reaction to this violent behavior. At trial Alleman testified she believed the children would be subjected to physical and emotional abuse if returned to their parents based on her observation of the effect of Edgar's behavior upon the children.

Iowa Rule of Evidence 701 provides lay witnesses may give opinion testimony rationally based on their perceptions which are helpful to the determination of a fact at issue. *See* Iowa R. Evid. 701. In our de novo review of the record, we find Alleman's opinion testimony was properly admitted under rule 701 as it may have assisted the court in determining the appropriateness of the termination of Virginia's

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parental rights.[7]

Virginia further contends the juvenile court erred in admitting the opinion testimony from Alleman because the testimony was based on hearsay. Alleman testified her opinion that the children would be subject to both physical and emotional abuse if returned to the home was based on her conversations with Anthony. The State argues this evidence had already been admitted by the juvenile court without objection in State's exhibit 31 and, thus, Virginia has waived this issue for review.

We find the objectionable testimony of Alleman merely reiterated evidence already admitted to the court without objection. Therefore, we find it was not prejudicial as it was substantially similar to evidence already admitted but not objected to. *See State v. Rice*, 543 N.W.2d 884, 887 (Iowa 1996). Even assuming arguendo that this testimony was improperly admitted, on our de novo review of the record, we find there is clear and convincing evidence within the record to support termination of Virginia's parental rights.

AFFIRMED.

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[7] As we find this testimony properly admitted under rule 701, we need not address its admissibility under rules 702 and 703.