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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF N.M. AND R.M., Children;

S.M., Natural Mother,

Appellant.

Filed September 24, 1985

5-339
84-1508

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Appeal from the Iowa District Court for Lee County - Joel J. Kamp, Judge.

S.M. appeals the ruling of the juvenile court to terminate her parental rights in her two natural children. **AFFIRMED.**

Gregory A. Johnson of Johnson, Phelan & Skewes, Fort Madison, Iowa, for appellant.

David U. Sallen, Fort Madison, Iowa, and Gary R. Noneman, Keokuk, Iowa, for the children.

Thomas J. Miller, Attorney General of Iowa, and Charles K. Phillips, Assistant Attorney General, for appellee.

Considered by Donielson, P.J., Schlegel, and Sackett, JJ.

SCHLEGEL, J.

S.M. appeals the ruling of the juvenile court to terminate her parental rights in her two natural children, R.M. and N.M., pursuant to Iowa Code section 232.116(5) (1983). She contends the juvenile court improperly admitted evidence that she had previously signed a release of custody for N.M. and R.M. Petitioner S M. alleges that the release was not knowingly and voluntarily made. She also alleges that the releases were subsequently revoked and therefore irrelevant and immaterial because they did not constitute the actual grounds for termination asserted by the county, or the grounds upon which the court based its decision. Additionally, S.M. alleges that there was not clear and convincing evidence that her parental rights should be terminated under Iowa Code section 232.116(5) (1983). We affirm the trial court.

On November 5, 1982, an ex parte removal order was issued, removing M.M., R.M., and N.M. from the home of the natural mother due to the physical abuse of her sometimes live-in boyfriend. All three children were found to be in need of assistance under section 232.2(5)(b). The juvenile court transferred custody of N.M. and R.M. to the Iowa Department of Social Services (hereinafter referred to as the department), but allowed M.M., the oldest child, to return to his natural mother. On September 26, 1984, the juvenile court ruled that S.M.'s parental rights in N.M. and R.M. should be terminated. The court found that S.M.'s personality disorders, lack of parenting skills, and lack of interest in the children provided clear and convincing evidence that the children could not be returned to their natural mother's care without suffering harm.

I. Scope of Review. Principles of appellate review of proceedings to terminate a parent-child relationship are well known. Our review is de novo; thus, we review the facts as well as the law and adjudicate rights anew on those propositions preserved and presented to us. In Interest of C.W., 342 N.W.2d

885, 886 (Iowa App. 1983); In the Interest of T.D.C., 336 N.W.2d 738, 740-41 (Iowa 1983); In the Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). See Iowa R. App. P. 14(f)(7).

II. Admission of Evidence. S.M. claims juvenile court erred in admitting evidence of her releases of custody of N.M. and R.M. in that they are irrelevant to the termination proceedings under section 232.116(5) of the Iowa Code. In State v. Knox, 236 Iowa 499, 514, 515, 18 N.W.2d 716, 723 (1945), the supreme court said, "By relevancy is meant the logical relation between the proposed evidence and a fact to be established. All facts are admissible in evidence which afford reasonable inferences or throw any light upon the matter contested." It is well established that the trial court has discretion to keep out of the record what it believes to be irrelevant and immaterial. Carter v. Wiese Corp., 360 N.W.2d 122, 130, 131 (Iowa App. 1984). The trial court's discretion will not be disturbed "unless there is a clear and prejudicial abuse of discretion." Carter, at 131; E.I. du Pont de Nemours v. Berkle & Co., 620 F.2d 1247, 1272 (8th Cir. 1980).

It is undisputed that initially S.M. signed the forms for the release of custody of N.M. and R.M., only to later change her mind and desire them to be returned to her. Evidence of this indecision is relevant to the department's proof that S.M. is suffering from personality disorders that prevent her from taking charge of her own life. We find no abuse of discretion in admitting evidence of the releases and therefore affirm the trial court.

III. Termination of Rights under Iowa Code Section 232.116(5). Iowa Code section 232.116 (1983) provides, in pertinent part:

> [T]he court may order the termination of both the parental rights with respect to a child and the relationship between the parents and the child on any of the following grounds:
>
> * * *

2 The court finds that there is clear and convincing evidence that the child has been abandoned.

* * *

5 The court finds that:

a The child has been adjudicated a child in need of assistance pursuant to section 232.96; and

b The custody of the child has been transferred from his or her parents for placement pursuant to section 232.102 for at least twelve months; and

c There is clear and convincing evidence that the child cannot be returned to the custody of his or her parents as provided in section 232.102.

Section 232 116(5) requires reference to section 232.102, which provides, in part:

6 The duration of any placement made after an order pursuant to this section shall be for an initial period of six months. At the expiration of that period, the court shall hold a hearing and review the placement in order to determine whether the child should be returned home, an extension of the placement should be made, or a termination of the parent-child relationship proceeding should be instituted. The placement should be terminated and the child returned to his or her home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, *subsection* 5 . . . .

Section 232 2(5) provides, insofar as relevant to the facts of this case:

"Child in need of assistance" means an unmarried child:

* * *

b. Whose parent . . . has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of:

(1) Conditions created by the child's parent . . . or

(2) The failure of the child's parent . . . to exercise a reasonable degree of care in supervising the child.

Sections 232.116(5)(a) and (b) are not at issue in the case at bar. S.M. alleges, however, that there was not clear and convincing evidence to support the ruling of the juvenile court that N.M. and R.M. would be imminently likely to suffer harm as a result of abuse or neglect if they were to be returned to the custody of their natural mother.

Before a termination of parental rights can occur under section 232.116(5), there must be clear and convincing proof that the child will suffer harm in the manner specified in section 232.2(5). In Interest of Chad, 318 N.W.2d 213, 219 (Iowa 1982). In our de novo review, therefore, we examine the record and note the evidence as it relates to S.M.'s personality disorders, lack of parenting skills, and lack of interest in the children. Insight for determination of what the future likely holds for a child if returned to his or her parent can be gained from evidence of the parent's past performance. In Interest of C.W., 342 N.W.2d 885, 887 (Iowa App. 1983); In the Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

A. Personality Disorder. The department provided expert testimony that S.M. suffers from a "dependent personality disorder" and "passive/agressive disorder." The record contains clear and convincing evidence that because of S.M.'s personality disorder, there is a statistical probability that S.M. would not only seek out a male-dominant relationship, but also that she would behave in the future just as she had in the past and fail to protect her children should they be abused in any way. Additional evidence showed that S.M. not only failed to take personal blame for her children's removal, but had in fact placed the blame on her oldest son, M.M. Finally, it is clear from the testimony and letters of a clinical psychologist that S.M. was not making progress in understanding her problem or rehabilitating herself. We are clearly convinced that S.M.'s

personality disorder would create a harmful or abusive environment for the children should they be returned to her custody.

B. Lack of Parenting Skills. The department provided the juvenile court with numerous instances where S.M. should have been more concerned about the children's safety, but failed to demonstrate any worry about their welfare. On this issue, S.M. was able merely to demonstrate that the department's allegations may have been slightly tainted against her. However, it is very obvious from the record that there is little if any evidence that S.M. ever took the initiative to structure the children's time during visitation or attempt to explain potential safety hazards of activities as dangerous as playing on a raft in a marina, or as seemingly harmless as going down a slide at a park. It is particularly disturbing to this court that S.M. waited an entire month before scheduling a doctor's appointment for M.M., even though the medical problem was severe enough to keep M.M. out of school. The record, as it pertains to the parenting skills, clearly shows either an unwillingness or inability on the part of S.M. to care for her two youngest children should they be returned to her.

III. Lack of Interest in the Childen. Evidence on this issue overlaps on to the issue previously discussed to a great extent. However, the most significant evidence as to S.M.'s lack of interest in the two youngest children is that the oldest child, M.M., has begun to look after and generally take charge of the children while they were visiting M.M. and S.M. While S.M. attempted to explain this as simply a "natural tendency," we are convinced that this type of behavior by M.M., coupled with S.M.'s passive/aggressive personality disorder, would only tend to confuse the younger children as to who to look to for authority and safety.

We have reviewed the record before us and we are convinced that the juvenile court properly admitted evidence of the releases and that the parental rights of S M should be terminated in the children, N M and R.M. The juvenile court is therefore affirmed

AFFIRMED.