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CLERK SUPREME COURT

175

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF F.J. & T.J.,	)	
Children,	)	
J.J.,	)	8-411 / 87-1559
Mother-Appellant.		

Appeal from the Iowa District Court for Clinton County (4-87-1), Arlen Van Zee, District Associate Judge.

The parents of two children have appealed separately from the juvenile court order terminating their parental rights. **AFFIRMED.**

Robert J. McGee, McGee & Schoenauer, Clinton, for appellant-mother.

Gary Rolfes and Thomas Lonergan, Mayer, Mayer, Lonergan & Rolfes, Clinton, for appellant-father.

Thomas J. Miller, Attorney General of Iowa, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee State.

David Sivright, Shaff & Farwell, Clinton, guardian ad litem for the children.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

176

The parents of two children appeal separately from a juvenile court order terminating their parental rights. Both parents challenge the sufficiency of the evidence to establish the children cannot safely be returned to the parents' custody. We affirm the order of the juvenile court.

I.

The children at issue here are girls, F.J. and T.J., born in October 1978 and August 1982, respectively. The children lived with both parents until the parents' separation in 1985. The Iowa Department of Human Services (DHS) has offered the family services since 1982. In March 1985, the children were removed from the home on an emergency basis after the older child reported possible sexual abuse by the father's cousin, a frequent visitor in the family home. Later medical examination confirmed the child had suffered sexual abuse. As a result, the children were adjudicated to be children in need of assistance. The children were placed again in the mother's physical custody in August of 1985, subject to supervision by the DHS. However, because of numerous financial problems, housing problems, and an unstable relationship between the parents, the children were once again removed from the mother's home and placed in foster care in March of 1986, where they currently reside.

In April of 1987 the State filed a petition to terminate the parental rights of both parents. Citing the history of sexual abuse, the mother's failure to provide adequate nutrition and shelter, her failure to maintain a permanent residence, her inability to manager her welfare money, her failure to supervise the children, her use of inappropriate caretakers for the children, and her relationships with various men. The State was also concerned with information the father was a substance abuser, had a volatile temper, and that he had had numerous dealings with the law, including an arrest for burglary.

After a five and one-half day hearing, the juvenile court terminated the parental rights of both parents with respect to both children. The juvenile court relied on the ground for termination stated in former Iowa Code section 232.116(55), now section 232.116(1)(e). It is from this order which the parents now appeal.

II.

Both parents challenge the sufficiency of the evidence to establish the children cannot safely return to the parents' custody.

In addition, the mother contends she was denied effective assistance of counsel during a March of 1986 dispositional hearing which resulted in the children's final removal from her home.

On appeal, we review parent-child terminations de novo. In Interest of D.T., 418 N.W.2d 355 (Iowa App. 1987). We give weight to the factfindings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

III.

A. Clear and Convincing Evidence. We first address the issue of whether the juvenile court's determination the children cannot be returned to their parents was supported by clear and convincing evidence.

As always, central to our determination of this matter is the best interests of the child. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). The State has the duty to see that every child receives minimally adequate care and treatment and will intercede when parents abdicate their responsibility. Id. The State may evoke the rights of parents if the allegations are proven by clear and convincing evidence. Iowa Code § 232.116(1)(e) (Supp. 1987). In making this determination, not only may the court look at the past behavior of the parent, but it is an important factor. In Interest of M.H., 367 N.W.2d 275, 276 (Iowa App. 1985). We look at the children's long-range and immediate interests and consider what the future could hold for the child if returned to the parent. Id. We may obtain insight for this determination from evidence of the

parents' past performance, for that behavior may be indicative to the quality of the future care the parent is capable of providing. Interest of Dameron, 306 N.W.2d at 745. Iowa statutory termination provisions have been construed as preventative as well as remedial and thus, require action to prevent possible harm to a child before harm may occur. Dameron, 306 N.W.2d at 745.

Our close scrutiny of the record convinces us the State has shown by clear and convincing evidence the best interests of the children, both at the present time and in the future, will be better served if the parents' rights are terminated. In short, we determine the juvenile court had sufficient evidence in this record to terminate the parental rights of both the mother and father in this case.

The record is replete with evidence showing neither the father nor mother have made satisfactory progress in becoming suitable parents. Evidence shows little cooperation with the services offered by DHS was given by either parent. It appears both parents need to change their lifestyles in order to become better parents and, unfortunately, they have failed to do so.

The record indicates a pattern of instability in housing. After the mother and father had separated, the mother was forced to move three times during the brief period she had the children. Further, it appears the mother has had great difficulty in landing and securing employment since

the juvenile court's intervention into this matter. The mother has been employed only for brief periods of time. In addition, she has been involved in a number of police-related offenses, including shoplifting. She has also had other altercations which included hiding a weapon from police, aiding and tampering with a power meter, problems with landlords as to evictions, forging checks, using part of heat-assistance money for herself, and returning clothing and baby formula for cash. Evidence also revealed even after being made aware of improper sexual advances on their daughter, the parents did not keep their daughter away from the alleged perpetrator of these improper advances prior to the child's removal from the home.

The State introduced a report by a child psychologist which concluded if the children were returned home, there was imminent danger of denial of critical care, high risk of sexual abuse, and an increased risk of physical abuse. These conclusions were based on the needs of the children. The child development clinic identified the needs of the children as follows:

> (1) F.J. is a special needs child with mild mental retardation. She also has neurofibromatosis. Because of these large needs, she requires above-average parenting for optimal development.
>
> (2) F.J. is more vulnerable to sexual abuse because of her mental abilities and her prior history of sexual abuse.
>
> (3) Both children need an environment of nurturance, safety, stimulation and stability to achieve optimal development.

The record reveals after F.J. was placed in the foster care, she has shown considerable developmental improvement. F.J. will continue to have special developmental needs, which require above-average parenting skills. F.J.'s custodial parents will need to understand child development. The appellants here have not displayed these requisite qualities or even the potential for obtaining such skills. Clearly, if the parents here acknowledged no problems and see no reason to change their lifestyles, we see little hope these parents will be able to obtain the skills necessary to deal with a child of F.J.'s special needs.

Our decision in this case is not an easy one and we do not make it lightly. It is obvious from the record, given the appellant's attitudes regarding change, any prognosis for positive change is very poor. Clear and convincing evidence supports the conclusion the child cannot be returned to either parent's custody without being subjected to the potential neglect our statutes are designed to protect against.

B. Ineffective Assistance of Counsel. The mother contends she was denied effective assistance of counsel, complaining her attorney effectively consented to the children's removal and did not require the State to prove by clear and convincing evidence the grounds for removal during a 1986 dispositional hearing. The Iowa Supreme

Court has recently dealt with the question of ineffective assistance of counsel in a juvenile setting. The court articulated its general rule as:

> A juvenile claiming ineffective assistance of counsel in a civil proceeding must prove both prongs of the Strickland test, i.e., deficiency in counsel's performance and actual prejudice. Because of the unique nature of juvenile proceedings, we are unwilling to presume prejudice even if under ordinary criminal standards a substantial possibility of conflict would be shown. To the extent that In re D.W. suggested that we would always apply the "same standards adopted for counsel appointed in criminal proceeding," 385 N.W.2d at 579, that opinion is hereby modified.

In Interest of J.P.B., 419 N.W.2d 387, 391 (Iowa 1988). Although the court's decision in J.P.B. applies specifically to juveniles, we believe the court intended the rule apply to all parties involved in these hearings. With this rule in mind, we are not persuaded the mother's counsel was deficient in his representation during the 1986 dispositional hearing. We find no actual prejudice can be shown by the mother because any deficiencies during the earlier review hearing could have been easily expunged during subsequent review hearings or during the termination hearing which she currently appeals from. Thus, the claims of ineffective assistance of counsel do not discredit the overwhelming evidence supporting termination in this case.

We also find no merit in the appellant-mother's claim she was denied due process of law. We agree with the State's assertion a juvenile proceeding deals with the best

interests of the child and is not an arena for dealing with innocence or guilt. In re J.P.B., 419 N.W.2d at 391. We do not find in this record a denial of a waiver of substantial rights. The appellant-mother has had opportunity to testify and present evidence of her own in a termination proceeding at which clear and convincing evidence was found supporting the State's assertion that her parental rights should be terminated. We therefore find no due process rights have been violated.

AFFIRMED.