FILED
DEC 21 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-635 / 89-1197

IN THE INTEREST OF R.K., B.K., AND K.K.,
Minor Children,
S.K. and K.K., Natural Parents,
Appellants.

209

Appeal from the Iowa District Court for Polk County, Michael J. Streit, Judge.

The natural parents of three boys appeal from the juvenile court order terminating their parental rights. **AFFIRMED.**

Jacqueline Jorgensen, Des Moines, for appellants.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, and Judy Sheirbon, Assistant Attorney General, for appellee, the State of Iowa.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

OXBERGER, C.J.

The natural parents of three boys appeal from the juvenile court order terminating their parental rights. They contend the juvenile court erred in: (1) finding clear and convincing evidence to support termination of parental rights, (2) denying their motion to strike witness testimony, and (3) sustaining the State's motions objecting to counsel's question regarding opinion testimony of a health aide and a caseworker. We affirm.

Our review of termination proceedings is de novo. In Interest of D.T., 418 N.W.2d 355, 355-56 (Iowa App. 1987). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses the court has heard and observed firsthand, but we are not bound by them. Iowa R. App. P. 14(f)(7).

The mother, S.K., and the father, K.K., are the natural parents of three boys: R.K., born in February 1984, B.K., born in March 1986, and K.K. Jr., born in January 1988. R.K. was adjudicated a child in need of assistance in October 1984. B.K. was adjudicated a child in need of assistance in February 1987. The boys were adjudicated children in need of assistance due to a history of abuse and ongoing neglect. Both boys remained in the home with the provision that S.K. and K.K. cooperate with services offered them.

In July 1987, R.K. and B.K. were placed in foster care due to a founded report of physical abuse and a denial of critical care. The boys were subjected to a history of neglect and abuse consisting of dangerous situations and exposure to unsanitary living conditions. There were six founded child abuse reports for multiple reasons. A Child Abuse Report dated June 1, 1987, noted numerous hazardous and unsanitary conditions consisting of: a cardboard kitty litter box filled with kitty litter and feces that appeared to be disintegrating on the bathroom floor; bathtub half full of water that appeared to have been sitting for some time; entire apartment very dirty with dirty clothes scattered throughout because of an inability to do laundry - S.K. and K.K. were unable to account for the $26.00 given them for food and laundry; toilet in danger of falling through the floor; food, debris and dirty dishes scattered throughout the apartment; both children extremely dirty and evidence of physical abuse to R.K. The children have remained in foster care since. On January 7, 1988, K.K., Jr. was adjudicated a child in need of assistance; he was placed in foster care and has remained there since.

In March 1989, a petition for termination of the parental rights of Sue and Kent was filed. Trial was held in May and June 1989. The juvenile court terminated the parental rights of both parents. The parents appeal.

The parents contend the juvenile court erred in: finding clear and convincing evidence to support termination of their parental rights. Central to a determination of this nature are the long-term as well as immediate best interests of the children. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

We consider what the future holds for the children if returned to their parents. Id. Essential to the evaluation of a child's best interests is an examination of the parents' past performance, from which valuable insight may be gleaned as to the future quality of care the parents are able to provide. In Interest of O'Neal, 303 N.W.2d 414, 423 (Iowa 1981). The past behavior of the parent is an important factor to be considered by the court. In Interest of M.H., 367 N.W.2d 275, 278 (Iowa App. 1985). Iowa statutory termination provisions are preventative as well as remedial. Interest of Dameron, 306 N.W.2d at 745. They are designed to prevent probable harm to a child. Id.

The State must prove by clear and convincing evidence the allegations contained in the termination petition. See In Interest of C.M.T., 433 N.W.2d 55, 56 (Iowa App. 1988); Santosky v. Kramer, 455 U.S. 745, 770, 102 S. Ct. 1388, 1402, 71 L. Ed. 599, 617 (1982). Termination may occur under Iowa Code section 232.116(1)(e) if the juvenile court finds: (1) the child has been adjudicated a

child in need of assistance pursuant to section 232.96; (2) the custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months; and (3) there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102. In Interest of A.C., 415 N.W.2d 609, 612 (Iowa 1987). S.K. and K.K. contend the third requirement was not met in this case.

The third requirement of section 232.116(1)(e) is met when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance, Iowa Code section 232.2(6), exist. In Interest of A.M.S., 419 N.W.2d 723, 725 (Iowa 1988).

The record reveals S.K. and K.K.'s past behavior in failing to provide adequate food and shelter and the denial of critical care will create harm in returning R.K., B.K. and K.K., Jr. to their custody. The family received extensive services prior to the removal of the three boys but the services did not improve the situation. The same types of safety and sanitation problems that were present at the time of the removal of R.K. and B.K. continue despite S.K.'s and K.K.'s involvement in parenting classes and homemaker's services. The Case Permanency Plan of January 6, 1989, noted that homemakers assigned to the family expressed

"frustration[ ] in seeing limited improvement or follow through" by S.K. and K.K. Social worker Mike Bandstra testified on cross-examination as follows:

> Q. Wouldn't it be safe to say then that continued services could allow further improvement as far as S.K.'s parenting skills?
> A. Could, yeah, they could. And could Sue be a protective caretaker? Maybe at some point down the line. I would have to say, first of all, that would be a long time down the line. I'd have to say, secondly, that I'm skeptical based on the history of this case. We had a review hearing in July of 1988. Following this review hearing, this case collapsed for the most part. Couldn't have visits in the home; we had a founded CPI [Child Protection Investigation]. And I don't have a lot of reason to believe, based on this small improvement, that it's going to be sustained. And even if it was, I think as Mr. Daumueller has stated, and I would certainly vouch for, improvement comes extremely slowly. And I can document problems that are ongoing to this very date which are very disconcerting to me.

Upon our review of the record we find little if any improvement in S.K.'s and K.K.'s parenting abilities.

S.K.'s and K.K.'s abilities to provide for the needs of the boys is also evidenced by how they exercise their visitation rights. Although S.K. and K.K. exercised weekly supervised visitation, they never progress sufficiently to be allowed unsupervised visits. In fact, R.K. was physically abused at a supervised visit by K.K. Furthermore, visits were changed to the offices of the Department of Human Services because of the unsanitary condition of the family's home.

The record also includes evidence regarding S.K. and K.K.'s intellectual limitations, their marital problems, their financial difficulties, their dangerous and unsanitary home, their constant moves, the physical abuse of R.K., and their allowing a known sexual offender to have access to the home. Additionally, K.K., Jr. has special medical needs. He has been diagnosed with serious delayed growth problems which doctors feel may be a genetic syndrome of some sort. Based on the record, we are not confident these parents could adequately care for such special needs.

The Iowa Supreme Court has held a child should not be forced to endlessly suffer the parentless limbo of foster care. In Interest of A.C., 415 N.W.2d 609, 613 (Iowa 1987). Accordingly, we do not believe R.K., B.K. and K.K., Jr. should be forced to suffer indefinitely in parentless limbo. Upon our review of the record, we find clear and convincing evidence R.K., B.K. and K.K., Jr. cannot safely be returned to S.K.'s and K.K.'s custody.

Next, S.K. and K.K. contend that the trial court erred in denying their motion to strike the testimony of Richard Daumueller. At trial, Richard Daumueller, a social worker in private therapy practice who provided marital counseling to S.K. and K.K., testified for the State regarding the couple's marital problems and how the problems could affect their ability to parent. During

cross-examination by counsel for S.K., Daumueller admitted that he had never talked with the boys or done an in-home evaluation of the family and was thus not qualified to give an opinion as to S.K.'s and K.K.'s parenting abilities. At the end of the cross-examination, counsel for Sue moved to strike Daumueller's testimony as irrelevant. The juvenile court overruled the objection.

S.K. and K.K. assert that Daumueller's testimony was not relevant to their abilities to parent their children. We disagree. We believe that the parties' marital problems have a direct affect on their ability to parent. The record reveals that these marital problems continue. In the past these problems resulted in police intervention. Mr. Daumueller's testimony related to how S.K.'s and K.K.'s marital problems affect their ability to parent. He testified as follows:

> Q. Specifically what area -- problem areas could you identify that would affect their ability to parent?
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> A. The first area I would see of primary concern is their decision-making processes. The couple are highly argumentative with one another about day-to-day decisions in their relationship, about issues of work, employment, housekeeping. I guess it was my impression that my work with them had produced really very little progress in their ability to resolve decisions in their relationship. And I see that as creating a large problem in their ability to make decisions around parenting.

The record reveals that S.K. has a low frustration level, and that during S.K.'s and K.K.'s visits with the

boys the couple openly yell and argue. Protective homemaker, Deborah Plasencia, stated in her January, 7, 1988 report that S.K. quickly becomes distraught with the children. During one of the foster care visits, S.K. was rough with B.K. and frequently yelled at him to sit still while she changed his diapers. Additionally, the report notes S.K. "frequently downgrades K.K., calling him 'stupid' or 'damn lazy' in front of the children. [K.K.] states he'll leave the family if S.K. tries to control the money. Both parents need continued practice in appropriate age related activities and knowledge of expectations."

We find Mr. Daumueller's testimony concerning S.K.'s and K.K.'s marital problems to be relevant in the present case. There was no abuse of the juvenile court's discretion in overruling the parents' motion to strike Mr. Daumueller's testimony. Therefore, we find no error by the juvenile court.

Finally, S.K. and K.K. contend the juvenile court erred in sustaining the State's motions objecting to counsel's questions regarding opinion of witnesses as to grounds for a parental termination.

Social workers Sue Alleman and Mike Bandstra were each asked by counsel for S.K. whether they were aware that marital instability is not a ground for termination of parental rights. The State objected each time that the

question called for a legal conclusion. The juvenile court sustained the objections. Sue Alleman was also asked by counsel for S.K. what, in her opinion, were the grounds for a termination of parental rights. The State again objected that the question called for a legal conclusion. The juvenile court sustained the objection.

The parents' complaint seems to center on a claim of error by the juvenile court in relying on economic factors and mental retardation as grounds for terminating their parental rights. We do not read the juvenile court's findings of fact and conclusions of law, and its order so narrowly.

A review of the order clearly identifies the grounds by which the court relied on in terminating S.K.'s and K.K.'s parental rights. The juvenile court specifically found that if the children were returned they would likely suffer abuse or neglect and would likely suffer harmful effects as a result of the parents' inability to provide adequate supervision, food, shelter, or clothing. We find the parents' contention without merit.

Additionally, upon our review of the testimony, we agree with the State that the questions of the two social workers required them to make legal conclusions regarding an ultimate issue before the court. We find there was no abuse of discretion by the juvenile court. Consequently,

we find no error by the juvenile court in sustaining the States objections. We affirm the decision of the juvenile court in all respects.

AFFIRMED.