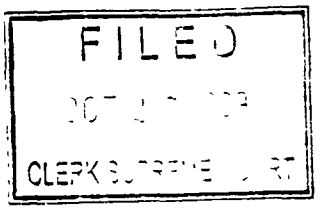
IN THE COURT OF APPEALS OF IOWA

No. 1999-227 (9-451) / 99-49
Filed October 27, 1999



IN THE INTEREST OF A.B., Minor Child,

L.B., Mother,
Appellant,

D.C., Father,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko, Associate Juvenile Judge.

The parents of two minor children appeal a district court order terminating their parental rights. **AFFIRMED.**

Elizabeth A. Rosenbaum, Sioux City, for appellant mother.

Lester J. Gurdin, Sioux City, for appellant father.

Thomas J. Miller, Attorney General, Janet L. Hoffman and Chris C. Odell, Assistant Attorneys General, and Marleen J. Loftus, Assistant County Attorney, for appellee State.

Lesley D. Rynell, Sioux City, guardian ad litem for minor children.

Heard by Huitink, P.J., and Mahan and Hecht, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

In this appeal L.B., the mother, and D.C., the father, appeal from a juvenile court decree terminating their parental rights to their daughter, A.B. A.B. was born August 17, 1997. She was removed from her parents' custody August 28, 1997, based on allegations L.B. was mentally ill and unable to provide adequate postnatal care for A.B. A.B. was subsequently adjudicated a child in need of assistance based on findings of parental neglect, failure to exercise a reasonable degree of care in A.B.'s supervision, and mental condition resulting in A.B.'s failure to receive adequate care. *See* Iowa Code §§ 232.6(b), (c)(2) and (n). The juvenile court's dispositional order provided for extended foster care placement, L.B.'s psychiatric evaluation, parenting skills training, and weekly supervised visitation.

In its termination of parental rights petition filed September 28, 1997, the State alleged that despite the offer and provision of services to A.B.'s parents, the circumstances necessitating to her adjudication continued to exist. The State also cited the parents' failure to maintain significant and meaningful contact with A.B. while in foster care, their failure to make reasonable efforts to resume A.B.'s care, and clear and convincing evidence A.B. could not be returned to parental custody as additional grounds supporting termination. *See* Iowa Code §§ 232.116(1)(c)(d) and (g).

The juvenile court's order terminating L.B.'s and D.C.'s parental rights includes the following:

> The court's main concern was that [L.B.] and [D.C.] were provided services in an effort to reunify them with [A.B.] in a manner that would afford them the greatest opportunity for success. The court is convinced that [the social worker] did attempt to provide services in a manner that would take into account the shortcomings of [L.B.] and [D.C.]. He testified that he chose providers that were best able to work with mentally ill and lower functioning persons. [The social worker] also testified that service providers worked around [D.C.] and [L.B.'s] schedule in order to provide them with services. He testified that he specifically chose Joyce Klimeck to do the psychosocial evaluation because of her ability to work with individuals like [L.B.] and [D.C.]. He also chose Peg Miller to work with [D.C.] and [L.B.] because she had worked with lower functioning and mentally ill parents before.
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> . . . .
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> The court is satisfied that the Department of Human Services went out of its way to attempt to accommodate the special needs of [L.B.] and [D.C.]. [L.B.] and [D.C.'s] guardian ad litem also indicated she was satisfied that services were provided to the parents of [A.B.] in a manner that would be most conducive to success. Unfortunately, [D.C.] and [L.B.] were unable to place themselves in a position to have [A.B.] returned to their care full-time.

L.B. filed her notice of appeal on January 6, 1999. D.C. filed a notice of appeal on January 25, 1999. On February 18, 1999, the State's motion to dismiss D.C.'s appeal as untimely was denied, and the parties were directed to brief and argue the issue of the court's authority to entertain a delayed appeal in a termination of parental rights case generally and in this case in particular.

L.B. and D.C. contend the State failed to prove by clear and convincing evidence that A.B. cannot be returned to their custody. They also contend they were denied adequate time to address and correct the defects in their parenting skills.

II. Scope of Review.

We review termination proceedings de novo--we review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re L.L.* 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995); Iowa R. App. P. 14(f)(7).

III. Delayed Appeals.

Appeals to the Iowa Supreme Court must be taken by filing a notice of appeal within and not after thirty days from entry of the relevant judgment, order, or decree. Iowa R. App. P. 5(a), 6(a). Ordinarily, failure to timely file notice of appeal deprives the supreme court of appellate jurisdiction, and we are duty bound to dismiss an untimely taken appeal. *Robco Transp., Inc. v. Ritter*, 356 N.W.2d 497, 498 (Iowa 1984); *Jensen v. State*, 312 N.W.2d 581, 582 (Iowa 1981); *Cleesen v. State*, 258 N.W.2d 330, 332 (Iowa 1977). The supreme court has, however, recognized its inherent authority to grant delayed appeals in "those instances where a valid due process argument might be advanced should the right of appeal be denied." *Swanson v. State*, 406 N.W.2d 792, 793 (Iowa 1987). Although such relief has only been offered in criminal cases, the court has noted:

> We are reluctant to opt at this time for a rule limiting the granting of delayed appeals to criminal cases. The same federal constitutional considerations which have forced us to recognize delayed appeals in

> criminal cases are potentially applicable in some civil settings. We need not determine this issue in the present case.

Swanson, 406 N.W.2d at 792 n.1. Relief in criminal cases has been granted when counsel's procedural errors have denied a defendant's clearly expressed intention and good faith effort to appeal. *State v. Horsey*, 180 N.W.2d 459, 460 (Iowa 1970); *State v. Wetzel*, 192 N.W.2d 762, 764 (Iowa 1971); *Blanchard v. Brewer*, 429 F.2d 89, 90-91 (8th Cir. 1970); *State v. Anderson*, 308 N.W.2d 42, 46 (Iowa 1981).

D.C. had the right to legal representation at trial and on appeal. Iowa Code § 232.113. Due process requires counsel appointed or retained for such purpose to provide effective assistance. *Blanchard*, 429 F.2d at 90; *In re J.P.B.*, 419 N.W.2d 387, 390 (Iowa 1988); *In re D.W.*, 385 N.W.2d 570, 579 (Iowa 1986). In *Blanchard* the court stated:

> Under certain circumstances failure to perfect an appeal is denial of effective counsel. Indeed, failure by appointed or retained counsel to commence the simple steps for appeal is a blatant denial of due process. Distinctions between gross or simple negligence on the part of counsel, or between retained or appointed counsel, or between active or passive negligence on the part of the state are immaterial. Whether counsel's conduct is classified as gross or excusable negligence or whether the state's activity is classified as passive or active is irrelevant, since in either case appellee has been denied effective and complete appellate review through no fault of his own.

Blanchard, 429 F.2d at 90 (citations omitted).

We are convinced that the due process considerations implicated by counsel's failure to perfect an appeal in a criminal case apply with equal force in termination

of parental rights cases. We accordingly hold the court's inherent power to grant a delayed appeal extends to termination of parental rights cases.

D.C.'s failure to timely file notice of appeal is undisputed. His request for delayed appeal attributes this failure to appellate counsel retained for this purpose prior to the expiration of the time for filing notice of appeal. Counsel's professional statements confirm that this situation is not of D.C.'s making. Denial of D.C.'s right to appeal under these circumstances violates his right to due process of law. D.C.'s request for a delayed appeal is granted.

IV. The Merits.

D.C. and L.B. argue the State failed to show by clear and convincing evidence that A.B. cannot be returned to their care. They maintain they were neither provided adequate services or afforded appropriate time by the State to correct their parenting deficiencies. They also contend the State failed to provide adequate family services or parenting classes to aid them in reunification by the date the termination petition was filed. We disagree.

Termination of parental rights is appropriate when a disabled parent lacks the capacity to meet the children's future needs. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989). Both parents in this case are intellectually low functioning. L.B. has a history of mental illness. We note the concurrence of all of the social work and mental health professionals who worked on this case that neither parent has the parenting skills necessary to care for A.B. This circumstance remains unchanged despite the

provision of a variety of services tailored to the parents' needs. A.B. has been in foster care since August 17, 1997. Because of the time elapsed, we are required to view her case with a sense of urgency. *In re L.L.*, 459 N.W.2d 489 at 495. The parents have been allowed sufficient time and services to address the deficiencies resulting in A.B.'s adjudication. Further efforts would be futile and unavailing. We hold the State has met its burden to show by clear and convincing evidence A.B. cannot be safely returned to her parents' custody. Because all of the elements of section 232.116(1)(g) have been established, the juvenile court's decree terminating D.C.'s and L.B.'s parental rights is affirmed. Our decision to affirm on this ground eliminates the need to consider the parents' challenge to the other grounds on which the district court relied. *See In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996) (holding when the juvenile court terminates parental rights on more than one statutory ground, this Court can affirm by upholding only one ground cited by the juvenile court.)

AFFIRMED.