IN THE COURT OF APPEALS OF IOWA

No. 6-502 / 96-256

FILED
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CLERK SUPREME COURT

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

T.B., Mother,
Appellant,

J.B., Father,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Associate Juvenile Judge.

The mother and father appeal the juvenile court's order terminating their parental rights. **AFFIRMED.**

R. Allen Corzine of Pieters, Pieters & Corzine, Waterloo, for appellant-mother.

David R. Zellhoefer, Waterloo, for appellant-father.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Maureen McGuire, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Daniel L. Block, Assistant County Attorney, for appellee.

Sharon Briner, Waterloo, for minor child.

Considered by Sackett, C.J., and Cady and Vogel, JJ.

VOGEL, J.

The mother, Tracey, and father, James, appeal the juvenile court's order terminating their parental rights. We affirm.

D.B. was born on September 24, 1993, and is the son of Tracey and James, who were never married. D.B. lived with Tracey until December 10, 1993, when he was removed from his mother's care and placed in foster care. D.B. was removed because Tracey's mental health was unstable and she made suicidal and homicidal threats. James had very little contact with D.B. and has been incarcerated for most of D.B.'s life.

D.B. was adjudicated a child in need of assistance pursuant to Iowa Code section 232.2(6)(n) (1993), on April 6, 1994, by stipulation of the parties. On June 15, 1994, the district court granted the Department of Human Services (DHS) custody of D.B. Tracey attended family therapy and mental health counseling. She consistently visited D.B., and in September 1994 unsupervised visitation was initiated. On December 21, 1994, the district court granted Tracey custody of D.B. based upon recommendations that Tracey was able to provide appropriate care and that her mental condition had stabilized. On January 8, 1995, D.B. was removed from Tracey's care after she threatened to kill herself and D.B. Tracey was hospitalized in a mental health unit. On January 13, 1995, DHS resumed custody of D.B.

On January 22, 1996, the district court ordered the termination of Tracy's parental rights pursuant to Iowa Code Section 232.116(1)(g) (1995). The court

determined Tracey's long history of mental disorders inhibited her ability to properly care for D.B. The court also considered recommendations by mental health professionals that Tracey was unable to provide full-time care to D.B.

Regarding James, the district court terminated his parental rights pursuant to Iowa Code sections 232.116(1)(d) and (g) (1995). The court determined he had minimal contact with D.B. and made no significant steps towards accepting his parental responsibilities. The court also noted James was serving a term of imprisonment not to exceed ten years.

James and Tracey appeal.

I. ***Scope of Review.*** In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re N.M.W.*, 461 N.W.2d 478 (Iowa App. 1990). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. ***Tracey's Appeal.*** Tracey contends the district court erred in terminating her parental rights pursuant to Iowa Code section 232.116(1)(g). Under section 232.116(1)(g), parental rights may be terminated if all of the following can be found to have occurred:

1) The child is three years of age or younger.
2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

> 3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
> 4) 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 at the present time.

Iowa Code § 232.116(1)(g). Tracey presents two arguments supporting her contention her parental rights should not have been terminated pursuant to section 232.116(1)(g).

First, Tracey contends the district court erred in terminating her parental rights because termination was not in the best interests of the child. Specifically, Tracey argues she has developed a strong bond with the D.B. which should not be broken. A child's rights and needs are paramount concerns in a termination hearing. *In re S.A.*, 502 N.W.2d 23, 25 (Iowa App. 1993). While the child's bonding to the mother is a consideration in determining the child's best interests, it is not the only issue to consider. At the time of the termination hearing, D.B. was over two years of age, yet D.B. had only been in Tracey's care for approximately four months of D.B.'s life. As a result, D.B. has had no stability and no permanency. In addition, the record shows Tracey's mental illness interferes with her ability to parent D.B. on a full-time basis. We conclude D.B.'s need for stability outweighs the bond Tracey claims exists between her and D.B.

Second, Tracey argues there was insufficient evidence to find D.B. could not be returned to her custody. The main thrust of Tracey's argument is that the evidence

only supports a possibility D.B. could be harmed if returned to Tracey's care, and a possibility is not enough to justify the termination of her parental rights.

Insight for the determination of whether a child can be returned to the parent is to be gained from evidence of the parent's past performance, for it is that performance which may be indicative of the quality of future care that parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re C.C.*, 538 N.W.2d 664, 666 (Iowa App. 1995). "Children cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d at 495. A child should not be forced to endlessly suffer the parentless limbo of foster care. *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990). Long-term foster care is not preferred to termination of parental rights. *In re R.L.*, 541 N.W.2d 900, 903 (Iowa App. 1995). We must not gamble on the child's future by awaiting the mother's maturity. *Id.*

Tracey has a long history of mental health problems and these problems have impaired her ability to parent. Tracey also has a history of responding to periods of stress by expressing thoughts of suicide. While mental illness alone is not sufficient reason to terminate parental rights, it is a factor to consider when it contributes to the person's inability to parent. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989). Tracey has a history of poorly following through with appointments and therapeutic recommendations. We conclude the district court did not err in finding D.B. could not be returned to Tracey's custody as there was clear and convincing evidence to

support the district court's finding. We affirm the termination of Tracey's parental rights.

III. ***James's Appeal.*** James contends the district court erred in terminating his parental rights. James argues Tracey's parental rights should not be terminated; thus, "it would be imprudent for the Court to terminate the parental rights of one parent (James) and not the other (Tracey) without sufficient reason." James provides us with no argument as to why his parental rights should not be terminated, nor does he provide us with any evidence of his relationship with D.B. While James states he would like to reenter D.B.'s life after his incarceration, James provides us with no argument concerning why he has failed during his incarceration to be a part of D.B.'s life. Incarceration cannot be used as a justification for the lack of a relationship between a parent and a child. *In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993). We find James's argument to be without merit and we affirm the termination of his parental rights.

We affirm the district court's ruling terminating the parental rights of both Tracey and James.

AFFIRMED.