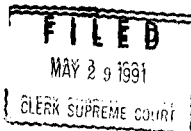


IN THE COURT OF APPEALS OF IOWA

No. 1-154 / 90-1878



IN THE INTEREST OF M.H., C.H., C.H., and J.H.,
Minor Children.

115

M.H., Father, and S.H., Mother,

Appellants.

Appeal from the Iowa District Court for Tama County,
Michael J. Newmeister, District Associate Judge.

The parents of four children have appealed the
termination of their parental rights. **AFFIRMED.**

Stephen A. Kenkel, Toledo, for appellant mother.

Patrick L. Wilson, Marshalltown, for appellant father.

Bonnie J. Campbell, Attorney General, Katherine S.
Miller-Todd and John M. Parmeter, Assistant Attorneys
General, for appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J.

The biological mother, S.H., appeals the termination of the parental relationship with her children, M.H. III, C.S.H., C.H., and A.J.H., pursuant to Iowa Code sections 232.116(1)(d) and 232.116(1)(e). The biological father, M.H., appeals the termination of the parental relationship with his children, C.H., C.H., and A.H., pursuant to Iowa Code sections 232.116(1)(b), 232.116(1)(d), and 232.116(1)(e). The putative father, D.C., has not appeared to challenge the termination of any parental relationship he may have with M.H. The guardian ad litem joins the State in resisting the appeal. Having determined that there is clear and convincing evidence to support the terminations under the code sections cited, we affirm the order of the juvenile court.

I. This appeal is the culmination for these parents of a nearly eleven-year trek through the system. We have twice affirmed trial court orders finding these children to be in need of assistance. In re M.H., 444 N.W.2d 110, 111 (Iowa App. 1989); In re C.S.H., No. 3-344/69597, slip op. at 2 (Iowa App. Nov. 30, 1983).

The children, a boy and three girls, were born in 1980, 1981, 1983, and 1986. The parents' first encounter with the Department of Human Services (DHS) was nine days after the first child's birth and involved a denial of critical care. In May and September of 1982 DHS found that the first two children were not receiving proper nutrition,

were living in squalid conditions, and had not received proper medical treatment. The children lived in foster care from December 1982 to February 1984. In affirming the CINA adjudication in In re C.S.H., we cited numerous inadequacies of shelter, nutrition, and medical care. Nevertheless, we reversed the order continuing placement of the two children in foster care because we felt that the parents "have voiced an honest desire to keep their children and do what is necessary to provide for their care." Slip op. 4. DHS determined on at least two more occasions in 1985 and 1986 that the children suffered from a lack of supervision (such as one child setting another child's hair on fire) and filthy home conditions. The proceedings were eventually closed in November 1986.

In January 1988, some fourteen months later, DHS received two reports that S.H. had been taking her children outside during sub-zero temperatures for extended periods of time without adequate protection. In May 1988 DHS received a report that the third child, who was then four years of age, had a severe ear infection. School officials sent notes home with the child, and despite their eligibility for Title XIX benefits, the parents allowed the infection to go untreated for two months. The DHS investigation also revealed that the family lived in squalor. The parents did not supervise the children such that they were allowed to enter neighboring homes without permission and to steal. School officials reported that

the children's clothes often smelled of urine, that their clothes and footwear were often inappropriate, and that the children had poor hygiene.

In a June 8, 1988, ruling the juvenile court found clear and convincing evidence that the children were in need of assistance and ordered DHS to take custody. Upon removal, the parents provided two garbage bags full of clothes which were unusable because they were covered with feces and smelled of urine. The children also had head lice and were filthy. In September 1988, after receiving various reports, the juvenile court ordered that the foster care should continue and that the parents should undergo psychological evaluation. The children have remained in foster care since their removal.

The parents separated after the children were removed and reunited in December 1988. The juvenile court noted that these dates roughly coincided with the end of S.H.'s eligibility for ADC benefits and the beginning of her eligibility for Supplemental Security Income. Sometime in mid 1989, however, the parents separated permanently, and as of the oral hearing in this court, the mother had remarried.

We affirmed the CINA adjudication in May 1989. We found that the lack of supervision and medical treatment, along with the mother's difficulty in organizing and carrying out necessary care, was sufficient evidence showing need of assistance. In re M.H., 444 N.W.2d at

111. Nevertheless, we identified several needs which this family had and several shortfalls in DHS's efforts to provide services to reunite the family. Id. at 113. Finding that the issue had not been addressed adequately, we remanded the case to the juvenile court for further proceedings consistent with Iowa Code section 232.102(4) (Supp. 1987), which provides, among other things, that the court must find "that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home." Id.; see also 42 U.S.C. § 671(a)(15).

At a July 3, 1989, hearing after remand the parties stipulated that the State had made reasonable efforts to eliminate the need for foster placement until such time as the parents completed the court-ordered psychological evaluations. Throughout the proceedings, the father had been, as the juvenile court indicated, "a profane and belligerent person." He also was threatening and uncooperative, and now he refused to submit to an evaluation. On the few occasions he visited his children, he spent no quality time with the children nor attempted to learn new skills; rather, he ranted about DHS interference. We concur with the district court's conclusion that M.H. Sr.'s interest lies not in cooperating with service providers to provide a safe, nurturing environment for the children, but in denial and self-vindication.

Since her separation from M.H. Sr., S.H. has made some effort at improving her skills and did submit to the psychological evaluation. Though not retarded, S.H. has borderline intellectual abilities. She has been unable to accept responsibility for the problems leading to the CINA proceedings. She also attended some of the parenting classes offered, but she lacked understanding and could not apply the concepts. Further, she could not provide minimum care for C.H., the third child, who also has borderline intellectual ability.

The parents have now received extensive services and benefits in order to assist them in keeping the family intact. These include: Aid to Dependent Children; Women, Infants, and Children benefits; food stamps; fuel assistance; in-home family therapy, including parenting skills; homemaker-health aide instruction in budgeting, meal preparation, infant and child care, hygiene, and housekeeping skills; Substance Abuse Treatment Unit of Central Iowa services; Area Education Agency evaluations and education; public health nurse services; Title XIX; Medically Needy Assistance; Domestic Violence Alternatives; Mid-Iowa Workshops; protective supervision; and clinical screening for the children.

The juvenile court ordered that the parent-child relationships be terminated. The court noted that in spite of the extraordinary lengths to which DHS had gone to reunite the family, the children would be at risk of

suffering further neglect or abuse if returned to the custody of the parents. In its November 1990 order the juvenile court terminated both parents' relationships pursuant to Iowa Code sections 232.116(1)(d) (custody transferred from parents for six months and parent has not maintained contact) and 232.116(1)(e) (custody of child over four years transferred from parents for twelve months and cannot be returned). The court also cited Iowa Code section 232.116(1)(b) (abandonment) in terminating M.H.'s rights. Each parent has appealed.

II. Our scope of review in cases in which the parent-child relationship has been terminated is de novo. Iowa R. App. P. 4. We give weight to the juvenile court's findings of fact, especially when dependent upon the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). As always, when the custody of children is at stake, our first and governing consideration is the best interests of the children. Iowa R. App. P. 14(f)(15).

In their separate briefs, the parents each argue that the juvenile court erred in finding that there was clear and convincing evidence that the children could not be returned to the parents. The father urges that the mother would provide adequate care.

Section 232.102 governs the transfer of custody and placement of children. Subsection (4)(b) requires the court to find by clear and convincing evidence that the

child cannot be returned to parental custody because the child would be exposed to "some harm which would justify the adjudication of the child as a child in need of assistance" and that "reasonable efforts have been made to prevent or eliminate" the harm. It is a fundamental policy in this State to provide rehabilitative services and to keep the family intact if possible. Iowa Code § 232.67. If custody is transferred to foster care authorities, subsection (6) requires "every effort" be made "to return the child to the child's home as quickly as possible consistent with the best interest of the child." The juvenile court found all of the foregoing conditions existed and terminated the rights of the parents under section 232.117.

The father essentially argues that reasonable efforts have not been made and cites the inadequacy of visitation. We think his arguments are unsupported in the record. He has been uncooperative and petulant in the extreme. Although DHS demands and public services, which often are quite intrusive, may engender obvious resentments, the parent must make some basic reciprocal effort so that the harm that caused the initiation of legal proceedings is removed. If such efforts are not undertaken and the harm persists, logically, the family cannot be reunited consistent with chapter 232.

While it is evident that the parents love their children, they simply lack the maturity and understanding

to control their lives and put the care of their children in its proper perspective. See In re M.L.W., 461 N.W.2d 609, 613-14 (Iowa App. 1990) (Sackett, J., concurring). After our de novo review of the record, we conclude that the evidence presented does show by clear and convincing evidence that the children again would be exposed to the neglect, lack of supervision, and lack of medical care which would require CINA proceedings. We conclude, like the juvenile court, that not only reasonable efforts, but extraordinary efforts, were made to educate and assist the parents in preventing or eliminating the harm and to return the children. Although there is evidence of the mother's marginal progress over the course of eleven years, neither parent has overcome the State's clear and convincing evidence that the harms would recur. The children have been in foster care for twelve of the last eighteen months and cannot be returned to their parents as provided in section 232.102. These findings are sufficient under Iowa Code section 232.116(1)(e) to terminate the parent-child relationship. We need not address the allegations of abandonment and failure to maintain meaningful contact.

III. We hold that the State has shown by clear and convincing evidence that all of the elements listed in Iowa Code section 232.116(1)(e) exist. We therefore affirm the order of the juvenile court terminating the parent-child relationships pursuant to Iowa Code section 232.117.

AFFIRMED.