IN THE COURT OF APPEALS OF IOWA

No. 5-454 / 95-691

IN THE INTEREST OF J.N., J.N., AND J.N., Minor Children,

S.N., Father,

Appellant.

K.M., Mother,

Appellant.

FILED
OCT 31 1995
CLERK SUPREME COURT

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

Both parents appeal from the order terminating their parental rights to their three children pursuant to Iowa Code sections 232.116(1)(c), 232.116(1)(g), 232.116(1)(h), and with regard to mother only, pursuant to section 232.116(1)(k) (1995). **AFFIRMED.**

R. Allen Corzine of Pieters, Pieters & Corzine, Waterloo, for appellant father.

Eric W. Johnson of Beecher, Rathert, Roberts, Field, Walker & Morris, P.C., Waterloo, for appellant mother.

Thomas J. Miller, Attorney General, and Charles K. Phillips, Assistant Attorney General, for appellee State.

Sharon B. Briner, Public Defender, Waterloo, for minor children.

Heard by Sackett, P.J., and Habhab and Huitink, JJ.

SACKETT, P.J.

Steve and Kathy, parents of Justin, born in September 1991, and Jason, born in April 1993, and James, born in May 1994, appeal the order of the court terminating their parental rights. Kathy and Steve contend (1) there is not clear and convincing evidence supporting all the elements necessary for termination, (2) they were not offered reasonable services to correct their parenting deficiencies, and (3) termination is not in the best interest of their children. We affirm.

We review de novo. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The burden is on the State to prove the allegations of the petition to terminate parental rights by clear and convincing evidence. *In re S.O.*, 483 N.W.2d 602, 603 (Iowa 1992).

Kathy and Steve met when Kathy was seventeen. Kathy started dating Steve and dated no one else. Kathy and Steve have never married. Steve has slapped Kathy, pulled her hair, and hit her with his fists. Once Kathy obtained a no contact order, but shortly thereafter she had it rescinded.

Kathy, who started using marijuana, cocaine, and crack when she was twenty, continues to have serious problems with the abuse of drugs. Since the birth of her oldest son in 1991, Kathy has been involved in at least eight different programs for substance abuse as well as extensive counseling. Kathy's problems had not been resolved at the time of the termination hearing.

Steve was born in Waterloo, Iowa, in 1959, the fourth of seven children; his mother married four times. Steve said he started using alcohol at age eleven and drugs shortly thereafter. Problems from alcohol and drug abuse have followed him. In 1990, Steve was incarcerated for two years for assault with intent to do great bodily injury and later spent six months in jail and six months in a halfway house after an arrest for driving under the influence. While Steve was in prison on the assault charge, the two older children were taken from Kathy because of her failure to pick them up from a child care provider.

Neither Steve nor Kathy have physically or sexually abused their children. The record is not entirely clear, but, apparently, there have been times when the children in their care were dirty and had diaper rash.

Kathy contends her parental rights should not have been terminated. The two older children were taken from her when Steve was in prison and she agreed the children be found children in need of assistance and she agreed to seek help for her substance abuse problem.

Six weeks after James was born, he was found to be a child in need of assistance and he was removed from Kathy's home and placed in foster care. Again, Kathy agreed to seek help with her substance abuse problem.

Kathy admits she has a problem with substance abuse and has used marijuana, cocaine, and crack, and it is this problem which led to the removal of her children from her care.

Kathy has many attributes of a good parent. Kathy loves her children, has a good way with them, and they are bonded to her and she to them. An evaluation made before the termination indicated she has a natural ability for handling the children, she understands their moods, and she has an appropriate way of responding to them. Kathy exhibited common sense regarding discipline of the children and nurturing them.

However, Kathy is troubled, has significant psychological disorders, suffers from depression, and has not handled her substance abuse problem.

Kathy contends she was not offered reasonable services. She admits, and we recognize, she had the opportunity to be involved in a number of substance abuse programs and spent over five months in various inpatient substance abuse treatment programs. Kathy advances, however, this was not sufficient and efforts should have been made to identify her psycho-social problems and, when they were once identified, to treat them.

The State is directed to offer services to a parent prior to terminating parental rights to seek to prevent the termination. *See In re T.C.*, 522 N.W.2d 106, 108 (Iowa App 1994); *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994).

Kathy has been offered services. The services did not correct her problem. Would other services have been more satisfactory? Why did the services not help Kathy? Was it her fault or were the services offered not tailored to her specific needs? Was Kathy put in programs which had low success rates and were not

directed to her specific problems? The record provides no answers to these questions other than the services offered failed to correct Kathy's parenting deficiencies. Kathy's challenge to the type of services offered comes too late. *See In re J.A.H.*, 502 N.W.2d 120, 125 (S.D. 1993).

Kathy next contends the bonding she has with the children negates against termination of her parental rights. Even if there are grounds to terminate parental rights, the rights need not be terminated. One of these exceptions is the clear and convincing evidence the parent-child relationship is so close it would be detrimental to the children to terminate the relationship. *See* Iowa Code § 232.116(3)(c) (1993). The record does not support a finding the parent-child relationship is so close it would be detrimental to terminate Kathy's parental rights.

Kathy last contends there is not clear and convincing evidence the children will suffer harm if returned to her care. She admits to having a serious problem with substance abuse. This is evidence the children are in danger in her care. There is clear and convincing evidence the children will suffer harm if returned to her care. We affirm the termination of her parental rights.

Steve contends there is not clear and convincing evidence supporting the termination of his parental rights. Steve admits prior indiscretions but contends the record shows in the four months prior to the termination hearing he has done what the Department of Human Services asked him to do.

Steve also contends the State failed to offer reasonable services. Steve points to evidence in the record that reunification with him was not provided because there was not sufficient time and there were waiting lists, no consideration with placing the children with him was ever given, and his psycho-social evaluation required by court order was never used to identify services needed for reunification.

Steve recognized the difficult task the State has in protecting children and reunifying families and delegating the task to the Department of Human Services and workers who are overworked and under-budgeted. Steve contends the State's awesome power must be tempered with mercy and parents must be given the opportunity to become not great parents, but adequate parents.

The State concedes in the four months prior to the termination hearing, Steve did what the Department of Human Services asked him to do. The trial court also found evidence Steve interacts well with the children and seems to be a loving father. In terminating Steve's parental rights, the court relied on his past behavior and the concern of his parole officer that Steve would suffer stress if he took the children. The parole officer said while Steve's recent compliance with the Department's directives was significant, based on his history, she did not feel there would be continued compliance on Steve's part.

The question can legitimately be asked why this particular program was offered to Steve if the State was going to argue, which it has, even if he succeeded in the program, which he has, success in the offered program would still mean

termination of his parental rights. There is a certain hopelessness inherent in this case. It is discouraging when money is spent on services that do not correct problems. *See In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). Steve was going to lose his children no matter what he did. Preserving families is the underlying principle behind these proceedings. *Id.* Giving weight to the decision of the juvenile court, we affirm.

The guardian ad litem has not filed a brief. The guardian ad litem is the children's advocate. *In re J.V.* 464 N.W.2d 887, 893 (Iowa App. 1990). There is no evidence in the record as to the children's adoptability. Termination of parental rights carries with it no guarantee the children will find satisfactory adoptive homes. *See In re B.H.*, 517 N.W.2d 715, 717 (Iowa App. 1994). The State and guardian ad litem, in arguing for termination, have the additional responsibility of assuring these children better homes than they would have had with their parents. *See In re S.J.*, 451 N.W.2d 827, 832 (Iowa 1990). Termination of parental rights must only occur where more harm is likely to befall the child staying with his or her parents than being permanently separated from them. *Alsager v. District Court*, 406 F. Supp. 10, 24 (S.D. Iowa 1975).

AFFIRMED.