

IN THE COURT OF APPEALS OF IOWA

No. 0-538 / 90-896

FILED

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CLERK SUPREME COURT

IN THE INTEREST OF J.B., J.R.B., and J.B., Children.

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J.B. and R.B., Parents,

Appellants.

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

The parents of three children appeal a juvenile court order terminating their parental rights. **AFFIRMED.**

Scott Lemke of Pieters, Pieters & Lemke, Waterloo, for appellants.

Thomas J. Miller, Attorney General, Gordon E. Allen, Assistant Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

SCHLEGEL, P.J.

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Appellants J.B. (James Sr.) and R.B. (Ruth), natural parents of three minor children, appeal a decree terminating their parental rights. They contend the juvenile court erred in denying a motion to continue the termination hearing. Appellants also challenge the sufficiency of the evidence. We affirm.

Appellants have a long history of difficulty raising children. Ruth has been the subject of concern to the Iowa Department of Human Services (DHS) since 1983, and together Ruth and James Sr. have been a concern since 1986. Their problems have ranged from maintaining a dirty household to lack of basic parenting skills to sexual and physical abuse. DHS has provided them with various daily and weekly services throughout this time in an attempt to help them keep their family intact.

Ruth's first encounter with the state was in 1983 when DHS began providing various in-home services to help her with D.A., her first child. Four abuse reports in 1984 and 1985 charged her with physical and sexual abuse of and denial of critical care to D.A. Ruth was incarcerated in 1986 for sexually abusing D.A. Ruth agreed to termination of her parental rights with respect to D.A., and both parents agreed to termination proceedings for another child, R.J.B. (born 1985).

Shortly after J.B. II (Jimmy) was born in 1986, a juvenile court determined he was a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2)(2), that is, a child "[w]ho has suffered or is imminently likely to suffer harmful effects as a result of . . . [t]he failure of the child's parent . . . to exercise a reasonable degree of care in supervising the child." The petition included allegations of nonhygienic conditions in the house and an inability to care for Jimmy despite daily homemaker services and counseling. Reports showed he was regularly strapped in a car seat with a propped up bottle in spite of the home health care nurse's instructions to the contrary; the father indicated this was to teach the infant independence. Appellants had also failed to provide care for numerous health problems and developmental delays or prescription medication for the child's eyes. The court granted custody to the parents provided they participate in numerous services and counseling.

J.R.B. (Jamie) was born in 1987, and in 1988 she likewise was adjudicated CINA. The juvenile court found Jamie to be a child "[w]hose parent . . . has physically abused or neglected [her], or is imminently likely to abuse or neglect [her]." Iowa Code § 232.2(6)(b) (1987). The CINA petition alleged chronically unsanitary conditions in the home, including the presence of hazardous objects either on the floor or within reach of both infants.

Reports indicated Jimmy could walk and Jamie could crawl, but despite continued homemaker services and counseling the home was persistently in a squalid condition. In particular, dirty clothes and empty bottles were left in the already soiled playpen; ashtrays were overflowing, and butts were strewn about every room of the house; diapers soiled with urine and fecal matter littered the living room and bedroom floors; all sorts of dried and decaying food was scattered about sinks, counters, tables, and floors; two syringes were on the kitchen floor; and there was an exposed electrical outlet near the playpen. Although they did not recommend removal, DHS and the various groups providing services believed "that without intensive services and frequent contact the health and well-being of the children would surely be jeopardized."

After emergency removal of both children, the court allowed appellants to retain custody under stipulation that they participate in various services and counseling, undergo psychiatric evaluations, and maintain a safe home. Both parents failed to attend court-ordered group meetings, and James Sr. became increasingly hostile toward service providers, threatening both life and limb. In a September 1988 ruling the juvenile court stated, "Notwithstanding the intensive services provided to this family, the conditions of the home have not improved, and the children are daily placed in jeopardy." For the foregoing reasons, the court again removed the children from the home. Jimmy and Jamie have remained in foster care since August 1988.

J.B. (Jericho) was born in February 1989. The household conditions not having improved, within days of his birth DHS petitioned the juvenile court to find Jericho a child in need of assistance under sections 232.2(6)(b) and (c)(2). The juvenile court found the child imminently likely to suffer harm. The court relied on reports of James Sr. threatening social service professionals and the parents' general resistance to services and counseling. The court also looked to several psychological and medical evaluations on the parents, one of which related James Sr.'s "partial complex seizure disorder." The disorder apparently is a result of slight permanent brain damage. That report indicated that persons with that disorder are prone to be vocally and physically abusive, and it related the physician's opinion that small children might be in jeopardy.

Appellants are both recovering substance abusers. Neither is employed, but they collect various benefits. Psychological evaluations of the parents indicate they will not accept responsibility for their lives or actions, and neither will accept authority. James Sr. is also schizophrenic and paranoic, and health care professionals are unanimous in their concern that he is a danger to children because of the likelihood he will act on his hostility.

In October 1989 appellants moved to California, and DHS filed a termination petition in November 1989. Both parents filed motions for continuance because James Sr. apparently was undergoing medical tests, and Ruth apparently was medically unable to travel. The juvenile court sought to have the parties present by telephone and left the record open with an expressed willingness to receive additional reports or other relevant information, but neither took advantage of this. Each parent was represented throughout by an attorney.

In February 1990 the juvenile court terminated appellants' parental rights in Jimmy, Jamie, and Jericho under Iowa Code section 232.116(1)(f)-(h) (Supp. 1989). The court concluded there was clear and convincing evidence services had failed to correct circumstances leading to CINA adjudications. It also determined appellants had exhibited an inability or unwillingness to respond to services and an additional rehabilitative period would not correct the situation. The court also believed the children would be imminently likely to suffer abuse or neglect if returned to their parents.

Appellants argue the juvenile court erred in failing to grant Ruth's motion for continuance. They contend this denied her the opportunity to confront and cross-examine witnesses personally and that denied her due process.

Ruling on a motion for continuance rests in the sound discretion of the trial court. Countryman v. McMains, 381 N.W.2d 638, 640 (Iowa 1986). We will not disturb the trial court's ruling unless the complaining party shows the trial court's action was unreasonable under the attendant circumstances. Michael v. Harrison County Rural Elec. Coop., 292 N.W.2d 417, 419 (Iowa 1980) (citing State v. Cott 283 N.W.2d 324, 329 (Iowa 1979)). The complainant has a heavy burden to overcome presumptions of correctness and regularity. Id. (citing State v. Gartin, 271 N.W.2d 902, 910-11 (Iowa 1978)).

First we note this was not a criminal proceeding, and Ruth's confrontation and cross-examination challenges are misplaced. Both parents had ample opportunity to participate. The record also contains evidence that it was never Ruth's intention to return for the proceedings.

Ruth also argues her due process rights were violated. The relationship between parent and child is constitutionally protected under the fourteenth amendment. Quilloin v. Walcott, 434 U.S. 246, 255 (1978). This creates in the mother a significant private interest. We believe the multiple procedural safeguards employed in this case assured there was little risk of erroneous deprivation of that interest. In re K.L.C., 372 N.W.2d 223, 226 (Iowa 1985); see Mathews v. Eldridge, 424 U.S. 319, 335 (1976). Both parents had notice, were in contact with their attorneys, and were represented in all proceedings.

Appellants also had ample opportunity to support and verify their motions and to make a record, even after the hearing. The record clearly shows appellants received extraordinary process rather than suffered from a deprivation of process. Ruth's claimed violation of her fourteenth amendment rights is without merit.

The juvenile court carefully considered the evidence and the circumstances, and the record supports its rulings. Michael, 292 N.W.2d at 419 (citing Rath v. Sholty, 199 N.W.2d 333, 336 (Iowa 1972)). We hold, therefore, that the juvenile court did not abuse its discretion in failing to continue the proceedings.

Appellate review of termination proceedings is de novo. Iowa R. App. P. 4; see In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222 (1985). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. W.G., 349 N.W.2d at 491-92; In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988). The primary concern is the best interests of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). Our statutory provisions are preventative as well as remedial. Dameron, 306 N.W.2d at 745. Evidence of the parents' past performance may be indicative of the quality of future care they are capable of providing. Id.

Petitioner contends there was no clear and convincing evidence that an additional period of rehabilitation would not correct the situation. Our de novo review of the facts leads us to the conclusion that there is clear and convincing evidence these three children were properly removed from harm's way, see Iowa Code § 232.2(6)(b) (Supp. 1989) (past or imminent abuse or neglect); id. § 232.2(6)(c)(2) (past or imminent failure to provide reasonable care), and the parents' rights were properly terminated, see id. § 232.116(1)(f) (prior termination and inability or unwillingness to correct situation); id. § 232.116(1)(g) (child under three out of home six months and cannot be returned under § 232.102); id. § 232.116(1)(h) (abused or neglected child and circumstances indicate imminent danger despite receipt of services).

We have set out in detail above this family's long history of neglect, abuse and other social and psychological problems, and we need not repeat that entire litany here. We pause, however, to note the juvenile court and DHS clearly went out of their collective way to provide services and opportunities to these parents, and it is equally clear the appellants made not the slightest effort to help themselves, or more important, their children. Given appellants' past performance, see Dameron, 306 N.W.2d at 745, and in particular their open hostility toward service providers, we are highly skeptical the situation

would ever improve. The children should not be forced to wait endlessly for the maturity of their parents. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983).

For the foregoing reasons, we affirm the decisions of the juvenile court and the district court.

AFFIRMED.