IN THE COURT OF APPEALS OF IOWA

No. 1-398 / 01-0225
Filed July 18, 2001

FILED
JUL 18 2001
CLERK SUPREME COURT

IN THE INTEREST OF
T.B., A.W., C.L.S., and A.H., Minor Children,

E.B., Mother,
Appellant,

T.B., Father of T.B.,
Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty, District Associate Judge.

Mother of four children and father of one of them appeal from an order terminating their parental rights to the children. **AFFIRMED.**

Barbara H. Liesveld of Thinnes & Liesveld, Cedar Rapids, for appellant-Mother.

John D. Hedgecoth of Terpstra & Epping, Cedar Rapids, for appellant-Father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Susan Conn, Assistant County Attorney, for appellee-State.

Mary Chicchelly, Marion, guardian ad litem for minor children.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

PER CURIAM

Eva, the mother of five children, and Terry, the father of two of them, appeal the order terminating their parental rights to all but their youngest child. Eva claims the court erred in: (1) finding the children could not be returned to her custody at the time of termination; (2) concluding the State made reasonable efforts to reunite her and the children; (3) finding termination was in the children's best interests; and (4) terminating rather than entering a permanency order placing the children with their maternal grandparents. Terry claims: (1) the State failed to make reasonable efforts to reunite Terrance with him; (2) he was illegally denied his attempts to maintain contact with Terrance; (3) the court erred in concluding he had a substance abuse problem; and (4) the State failed to prove termination was a necessity. We affirm both terminations.

Background facts

Eva is the mother of Ashley, born in June 1989, Crystal, born in December 1990, Adrienona, born in October 1995, Terrance, born in January 1997, and Terry, Jr., born in September 1998. Terry, Jr. is not involved in this CINA proceeding and remains in Eva's custody. Terry is the father of Terrance and Terry, Jr. The three oldest children all have different fathers. On July 14, 1998, Eva and Terry were arrested on drug charges following the execution of a search warrant at their home. DHS removed the four children and placed them with Eva's parents. The parties stipulated and the court adjudicated the children as being in need of assistance under Iowa Code section 232.2(6)(c)(2) (1997) on August 4, 1998.

The maternal grandparents were unable to continue caring for the four children and requested that they be placed in foster care. The court ordered the children placed in foster care on September 3, 1998. After an adjudication/disposition hearing in December, the court continued the children in foster placement, finding it the least restrictive alternative, given that three of their parents were either in police custody or facing federal criminal charges.

Eva was acquitted on the drug charges and a theft charge. She received family preservation services, family centered services, mental health and substance abuse evaluation and counseling, parenting classes, and services related to abuse, co-dependency, behavior management techniques, and parenting skills. She cooperated fully only with the mental health and substance abuse evaluations. During the pendency of the case, Eva had at least five different addresses. At the time of the termination she was living in an apartment with her brother, sister, and brother-in-law, whose criminal histories include substance abuse and domestic violence issues. Eva had not maintained stable employment in order to provide for the children.

The three girls reported incidents of abuse which occurred prior to their removal. Investigations led to a founded report of sexual abuse of Adrienona and Terrance and physical abuse and undue confinement of Ashley and Crystal by Terry, Sr. The children reported that Eva was present during many of the abusive incidents but took no action to protect them.

Termination proceedings

In November 1999, the State petitioned to terminate the parental rights of Eva and all four fathers under Iowa Code sections 232.116(1)(b), (c), (d), (e), (g),

(i), and (k). The termination hearings occurred in late April 2000. At the time of the hearings, Terry was incarcerated in Minnesota on the federal drug charges. In June 2000, the Eighth Circuit Court of Appeals reversed his conviction, determining he was entrapped. On August 19, 2000 Eva applied to reopen the record. After a hearing, the court granted the application on November 21, 2000 and received a certified copy of the decision reversing Terry's conviction.

On February 1, 2001, the court filed its order terminating the parental rights of all the parents. It terminated Eva's rights to Ashley, Crystal, and Adrienona under Iowa Code sections 232.116(1)(c) and (e) and to Terrance under sections 232.116(1)(c) and (g). The court found the services provided to Eva resulted in no measurable improvement in her parenting ability. It also found she would not have adequate shelter for the children.

The court terminated Terry's parental rights to Terrance under Iowa Code sections 232.116(1)(c), (d), (g), and (k). It noted the abusive nature of his relationship with Eva and the children and that the children were afraid of him. The court found Terry had a twenty-year history of cocaine and heroin use and a criminal history in both Iowa and Illinois. It found he had not maintained contact with DHS or made any measurable progress toward being able to resume care of Terrance.

Claims on appeal

Both Eva and Terry appeal the terminations. Eva claims the court erred in: (1) finding the children could not be returned to her custody at the time of termination; (2) concluding the State made reasonable efforts to reunite her and the children; (3) finding termination was in the children's best interests; and (4)

terminating rather than entering a permanency order placing the children with their maternal grandparents.

Terry claims: (1) the State failed to make reasonable efforts to reunite Terrance with him; (2) he was illegally denied his attempts to maintain contact with Terrance; (3) the court erred in concluding he had a substance abuse problem; and (4) the State failed to prove termination was necessary.

Discussion

Eva

Iowa Code sections 232.116(1)(e) and (g). The time periods for removal have passed. The only issue is whether or not the children could be safely returned to Eva's care. At the time of the termination hearing, Eva was unemployed and living with relatives in an apartment not suitable for her five children. Eva argues she has made significant changes in her life and benefited from the services provided. She also claims she will be able to parent her children effectively, given more time and adequate opportunity. The record is clear Eva is not ready to have all five children in her custody and care.

The language of the statute refers to returning the child "to the custody of the child's parents as provided in section 232.102." Iowa Code §§ 232.116(1)(e)(4) and (g)(4) (1999). Based on the relative placement language of section 232.102(7), Eva argues termination should not occur if the children could be returned to the care of a relative, in this case, her parents. The legislature could have included other relatives in the language of sections 232.116(1)(e)(4) and (g)(4). It did not. Instead, it gave the court discretion to place a child with a relative or long-term foster care in certain circumstances, even if grounds for

termination exist. Iowa Code § 232.116(3). In this case, the children could not be returned to Eva's custody and care. The State need not prove the children could not be returned to relative placement. We affirm the termination of Eva's parental rights to Ashley, Crystal, and Adrienona under Iowa Code section 232.116(1)(e) and to Terrance under section 232.116(1)(g).

Eva cites Iowa Code section 232.116(1)(c) in her argument concerning return of the children to her custody, arguing this section "assumes a requirement that a parent acknowledge and recognize that abuse occurred before any meaningful change may occur." She has consistently considered the children to be lying about the physical and sexual abuse allegations which resulted in founded reports. Nothing in section 232.116(1)(c) requires a finding the children could not be returned to Eva's care. Her argument is without merit.

Reasonable efforts. Eva argues she cooperated with the services offered and benefited from them. Now, she claims she was not provided with "reasonable services to address her own personal abuse issues, in particular, her dependency on men." Because this claim was first raised in the termination hearing, the State claims Eva failed to preserve this issue. *See In re M.B.*, 595 N.W.2d 815, 818 (Iowa Ct. App. 1999). Our courts have repeatedly emphasized the importance of objecting to services early in the process so appropriate changes can be made. *See, e.g., In re B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993); *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). Therefore our focus is on the services provided by the state and Eva's response, not on services she now claims DHS failed to provide. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000).

Eva received a variety of services, including visitation, family preservation, family-centered services, parenting education from at least three sources, substance abuse evaluation and counseling, mental health evaluation, individual counseling, and domestic violence intervention. The only services she completed fully and successfully were the mental health and substance abuse evaluations. The problem was not with the services, but with Eva's response to them. *See Id.* at 495. We find the state fulfilled its duty to make reasonable efforts to reunite Eva with her children.

Best interests. Eva next claims termination was not in the best interests of the children. She argues the bond between her and her children "is so strong it would be detrimental to them to terminate the relationship." Although the record reflects bonds exist between Eva and the children, they are not healthy bonds, but rather, trauma bonds. The children still have anger toward Eva because she did not protect them from abuse. They fear the same lack of protection if returned to her care because Eva seems to prefer maintaining her relationship with Terry, Sr. even though he abused the children. Termination of Eva's parental rights was in the children's best interests.

Relative placement. Finally, Eva claims the court should have placed the children in long-term relative care with her parents. She argues her mother is a daycare provider and could parent her children. She asserts the only reason the children were removed from her parents' care was so a previously planned vacation could occur. The State claims Eva did not preserve error on this claim because it was not addressed in the termination order or by a Rule 179(b) motion. The court found the best interests of the children required "permanent

families" and "adoptive placement." We agree. The record reveals the vacation was only one factor in the children's removal from their grandparents' care. The grandparents also were unable to handle the children's behavior and repeatedly requested that they be removed. The court correctly ordered termination of Eva's parental rights instead of placing the children with their grandparents.

Terry

Reasonable efforts. Terry argues DHS made no efforts to reunite him with his children during his incarceration. The State responds Terry did not preserve error. There is no evidence he objected to the case permanency plans. The requirement for reasonable efforts is not a strict substantive requirement of termination. *In re C.B.*, 611 N.W.2d at 493. The efforts by DHS to reunify parent and child after removal affects the burden of proving those elements of termination which require reasonable reunification efforts. *Id.* We have said,

> The services required to be supplied an incarcerated parent, as with any other parent, are only those that are reasonable under the circumstances. In determining what services are reasonable under the circumstances, the department may wish to consider some or all of the following factors, among others, if applicable: the age of the children, the bonding the children have or don't have with their parent, including any existing clinical or other recommendations concerning visitation, the nature of parenting deficiencies, the physical location of the child and the parent, the limitations of the place of confinement, the services available in the prison setting, the nature of the offense, and the length of the parent's sentence.

In re S.J., 620 N.W.2d 522, 525 (Iowa Ct. App. 2000). At the time of Terry's arrest, Terrance was eighteen months old. Except for requesting visitation while in jail, Terry did not request additional services either while in prison or after his release. Terry was in federal prison in Minnesota. The parenting deficiencies revealed by his stepdaughters include physical and emotional abuse. His

incarceration was related to his long-standing substance abuse problem. Before his conviction was overturned, Terry was sentenced to be incarcerated until 2003 or 2004 and would have had no relationship with Terrance for five to six years. Under the provisions of the case permanency plan, Terry was to maintain regular contact with DHS concerning Terrance. We do not find evidence Terry complied with the case permanency plan. Under the circumstances of this case, we find DHS made reasonable efforts to reunite Terry with Terrance.

Iowa Code section 232.116(1)(d). Terry claims he was illegally denied the opportunity to maintain significant and meaningful contact with Terrance. He argues that illegal government action prevented him from having a relationship with Terrance, so he cannot be faulted for his lack of relationship. The record shows Terry requested supervised visitation while in jail in Cedar Rapids. He sent a couple of letters to Terrance through DHS while in federal prison in Minnesota. He wrote to Eva a few times. He did not maintain contact with DHS concerning Terrance. Between September 1999 and the termination hearing in April 2000, there is no evidence Terry was interested in a relationship with Terrance. Between his release in June 2000 and the termination order in February 2001, there is no evidence Terry was interested in Terrance. When the termination proceeding record was reopened in November 2000, Terry did not take that opportunity to express his interest in Terrance. His claim that government action prevented him from having a relationship with Terrance rings hollow. We find termination was proper on this statutory ground and affirm.

Iowa Code section 232.116(1)(k). Terry claims the State did not prove he has a substance abuse problem or offer any evidence of a prognosis of any kind.

He argues the only evidence of substance abuse is from before the beginning of this CINA case. Therefore, he argues, the State did not prove the elements of section 232.116(1)(k)(2).

Terry is a self-described addict. He has been using cocaine and heroin for more than twenty years. He returned to his addiction after previous incarcerations. He testified he was in a substance abuse program scheduled to be completed in September 2000. He expected to enter a halfway house. There is clear and convincing evidence to support termination on this statutory ground and we affirm.

Necessity of termination. Finally, Terry claims the State did not prove the termination was necessary. He argues termination is not the least restrictive disposition appropriate. *See* Iowa Code § 232.99(4). He cites the fundamental interest parents have in raising their children and the presumption a child's best interests are served by placing the child with its parents. Like Eva, he also argues the court has discretion not to terminate, even if statutory grounds exist. Finally, he argues the CINA process failed both father and son because of the federal government's error in incarcerating him and the resulting disruption of the parent-child relationship.

Although Terry's conviction was overturned on appeal, it does not change his character or the actions which contributed to his arrest. In addition, there is clear evidence in the founded abuse reports and Terrance's psychological and emotional condition when he entered foster care to support termination as being in Terrance's best interest. The court properly chose to terminate Terry's parental rights to Terrance.

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Conclusion

We find the state fulfilled its duty to make reasonable efforts to reunite Eva with her children. Termination of Eva's parental rights was in the children's best interests. The court correctly ordered termination of Eva's parental rights instead of placing the children with their grandparents. We affirm the termination of Eva's parental rights to Ashley, Crystal, and Adrienona under Iowa Code section 232.116(1)(e) and to Terrance under section 232.116(1)(g).

Under the circumstances of this case, we find DHS made reasonable efforts to reunite Terry with Terrance. We find termination of Terry's parental rights to Terrance to be in Terrance's best interest. We affirm the termination of Terry's parental rights under Iowa Code sections 232.116(1)(d) and (k).

AFFIRMED.

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