

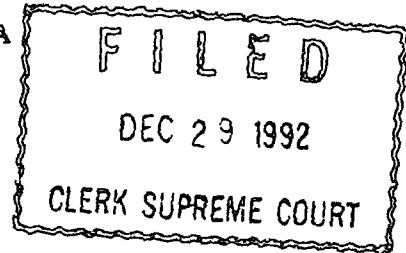
IN THE COURT OF APPEALS OF IOWA

No. 2-462 / 92-700

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

P.K., Mother,

Appellant.



Appeal from the Iowa District Court for Poweshiek County, Michael S. Stewart, Juvenile Associate Judge.

Mother appeals from the termination of her parental rights as to B.K.K. **REVERSED.**

C. Jean Pendleton of Charnetski, Olson, Lacina & Pendleton, Grinnell, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee State.

Donald L. Schild of the Schild Law Office, Grinnell, attorney and guardian ad litem for B.K.K.

Theodore R. Hoglan and Marie A. Condon of Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessey, Marshalltown, attorneys for grandparents.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

Schlegel, J., takes no part.

OXBERGER, C.J.

The appellant, P.K., is the natural mother of B.K.K. B.K.K. was born on July 17, 1985. B.K.K.'s father died on September 27, 1991.

In July 1989 P.K. took B.K.K. to the hospital. P.K. reported that a babysitter had placed her fingers in B.K.K.'s vagina the previous evening. B.K.K. easily allowed the examination, which is indicative of prior sexual abuse.

Some days later, a physician at the child protection center examined B.K.K. and confirmed that she had suffered an acute injury as the result of vaginal penetration. The physician also determined that B.K.K. had been sexually abused on more than two prior occasions.

Thereafter, the juvenile court adjudicated B.K.K. to be a child in need of assistance. The court concluded B.K.K. sustained an acute vaginal injury while in the sole care of the mother.

A dispositional order, entered in December 1989, placed B.K.K. with her paternal grandparents. The parents (B.K.K.'s father was alive at the time) were to receive supervised visitation. The court ordered P.K. to receive sexual abuse therapy and parenting skills classes.

In April 1990, a no-contact order was entered against P.K., with her consent, when she was told it was in the child's best interests. The basis of the no-contact order

was the child's therapist's concern that P.K. may have been involved in the sexual abuse of B.K.K. However, P.K. was never identified as the perpetrator of the sexual abuse.

On two occasions, P.K. violated the no-contact order. On one occasion she saw the child while on an outing, approached her and told her she loved her. On the other occasion, P.K. admitted following the child's school bus and leaving a May basket with the bus driver for the child. Due to P.K.'s resistance to the order, the court found her to be in contempt. However, it withheld punishment.

During the period of time between adjudication and the filing of the termination petition, P.K. successfully completed a Nurturing Parent Program, and received individual counseling from two therapists. She also participated in a nonoffending parent group but attended only eight out of fourteen sessions. Thereafter, P.K. quit the group.

At a permanency hearing, the court determined B.K.K. could not be returned home. The court continued to allow P.K. to have supervised visitation with B.K.K. However, after a failed meeting between P.K. and B.K.K. visitation was again stopped. P.K. continued therapy.

Subsequently, the State filed a petition for termination of P.K.'s parental rights as to B.K.K. pursuant to Iowa Code section 232.116(1)(e). The matter proceeded

to a hearing and P.K.'s parental rights were terminated.

P.K. appeals.

Scope of Review

Our review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

Discussion

P.K. contends the juvenile court erred in finding clear and convincing evidence requiring termination. She also contends the State did not provide adequate support prior to termination. Finally, she argues termination is not required because the child is in the care of relatives.

P.K.'s parental rights were pursuant to Iowa Code § 232.116(1)(e) (1991), which provides for termination if all of the following are met:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months. . . .
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

P.K. concedes the first three grounds for termination have been satisfied. B.K.K. is seven years old, was adjudicated a child in need of assistance pursuant to section 232.96 in August 1989 and has not resided in her mother's care since that time.

Thus, we turn to the question of whether the State has proven, by clear and convincing evidence, that at the present time B.K.K. cannot be returned to her mother's care. A key factor we consider in determining whether the State has met its burden is the extent of the services provided by the Department of Human Services and related agencies to assist the reunification of P.K. and B.K.K.

We have long recognized the existence of parental interest in the integrity of the family unit. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). This is not an absolute interest and may be forfeited by certain parental conduct. Id. The State, as parens patriae, has the duty to assure that every child within its borders receives proper care and treatment and must intercede when a parent abdicates that responsibility. Id. (citations omitted). However, reasonable efforts to reunite the parent and child are generally required prior to termination. See In re M.L.O., 477 N.W.2d 393 (Iowa 1991); In re M.Z., 481 N.W.2d 532 (Iowa App. 1991). The law demands a full measure of patience with a troubled parent who attempts to remedy a lack of parenting skills. In re A.C., 415 N.W.2d 609, 613 (Iowa 1987).

P.K. has participated in ongoing individual therapy and has been cooperative. Her therapist reported an overall very positive response from P.K. The therapist also reported P.K. was exercising proper judgment on looking for information about her daughter's appropriate development and was able to provide "good answers" to questions regarding appropriate behavior management and bonding techniques. The therapist did note P.K.'s "concreteness" and ongoing lack of contact with her daughter made it difficult to focus on her parenting skills during therapy. We note that throughout this time the contact between P.K. and B.K.K. was minimal to nonexistent due to the no-contact order and one supervised visit in April 1991 in which P.K. behaved inappropriately.

In addition, an expert called by P.K. testified the mother's borderline I.Q. and ongoing lack of contact with B.K.K. contributed to P.K.'s parenting problems. She further testified that several of the services provided to P.K. were above her skill level. She testified the Nurturing Parent Program, successfully completed by P.K., was primarily geared to supervised interactions between parents and children, and thus difficult for P.K. to learn from. P.K. requested B.K.K. attend the sessions with her but her request was denied. B.K.K.'s therapist also declined to directly assist P.K. in developing her parenting skills. Although she testified she observed P.K.

not playing with the child, she did not encourage or instruct P.K. to improve her interaction.

P.K. does not request B.K.K. be returned to her full care and custody at this time. She recognizes the strong bond between B.K.K. and her grandparents. She also acknowledged at the time of the hearing she and her daughter had been together once in the previous year. Due to these factors, P.K. requests visitation at the present time. P.K. expresses a willingness to continue in therapy with the eventual goal of reunification.

The court is not required to terminate the relationship between the parent and the child if a relative has legal custody of the child. Iowa Code § 232.116(3)(a) (1991); In re Interest of D.E.D., 476 N.W.2d 737, 738 (Iowa App. 1991). In this case, termination need not occur even if the grounds for termination are otherwise met. In re D.E.D., 476 N.W. at 738.

B.K.K. is currently in the care and custody of her paternal grandparents. The evidence presented indicates B.K.K. will continue to reside with her grandparents. Accordingly, the juvenile court was not required to terminate P.K.'s parental rights pursuant to statute.

Based on these considerations, we hold the State failed to prove by clear and convincing evidence that B.K.K. could not be returned to P.K.'s care. The law does not require termination of P.K.'s parental rights. We are concerned

about the lack of ongoing, supervised contact between P.K. and B.K.K. and the lack of skill-level appropriate services provided to P.K. We reverse the decision of the juvenile court terminating P.K.'s parental rights.

REVERSED.