IN THE COURT OF APPEALS OF IOWA

No. 1999-429 (9-682) / 99-0955
Filed December 27, 1999

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

T.C., Mother,
Appellant,

L.C., Father,
Appellant.

FILED
DEC 27 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Delaware County, Jane Mylrea, Associate Juvenile Judge.

The mother and father of three minor children appeal a district court order terminating their parental rights. **AFFIRMED.**

Stephanie C. Hassler of Roeder & Hassler, Manchester, for appellant mother.

Timothy G. Goen of Jenk & Goen, Dyersville, for appellant father.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Barbara E.B. Galloway, Assistant Attorney General, and John W. Bernau, Assistant County Attorney, for appellee State.

Mary L. Tracey of Tracey & Tracey, Manchester, guardian ad litem for minor children.

Heard by Huitink, P.J., and Mahan and Hecht, JJ.

HECHT, J.

Theresa C. and Leo C., mother and father, appeal the termination of their parental rights to their three youngest children pursuant to Iowa Code section 232.116(1)(e). We affirm.

I. Factual Background and Proceedings. Theresa and Leo are the parents of six children: Rebecca, Jeremy, Nathan, Ashley, Matthew, and Jennifer. This appeal only concerns Theresa and Leo's parental rights with respect to Ashley, Matthew, and Jennifer.[1] This family has been involved in some manner with the Department of Human Services ("DHS") since 1985. The current case arises out of several founded child abuse reports for denial of critical care and lack of proper supervision. On the first investigative visit, the case worker found the home was very cluttered with garbage, food, and other items, and was infested with insects and rodents. There were gnats in the kitchen and bathroom, parrot feces on the floor, human feces in an inoperable toilet, raw garbage outside in a pile, and a yard scattered with garbage, cans, and broken glass.

Both Lutheran Social Services ("LSS") and DHS worked extensively with this family to provide assistance in coping with their difficulties. LSS spent considerable time working with the family on proper cleaning and parenting skills. Even with this

[1] The CINA case concerning Rebecca was closed on March 30, 1999, as she had attained the age of majority. Jeremy, who is over the age of ten, remains in long-term foster care pursuant to court order and his desire not to have his parents' rights terminated. *See* Iowa Code § 232.116(3)(b) (1999). Parental rights with respect to Nathan were terminated by separate court order on May 18, 1999. That order has not been appealed.

assistance, they did not pass a housing inspection because of safety and sanitation issues and were denied rental assistance. DHS has also provided multiple family-centered services including individual, couple, and family counseling. Homemaker services have been offered several times, with limited success, and were ultimately refused by the parents.

A child in need of assistance (CINA) petition was filed on June 14, 1996. At that time, the parents were instructed to comply with both LSS and DHS services and to make improvements in the areas of safety, cleanliness, and parental control. The children were subsequently adjudicated CINA on July 22, 1997, for failure of the parents to exercise a reasonable degree of care in supervising the children and failure to provide adequate food, clothing, and shelter. More extensive in-home services were ordered, including cleaning services, mental health services, foster care services for Jeremy and Nathan, school-based services, and intensive daily intervention. However, Theresa and Leo made minimal progress toward the goals delineated by the district court. Serious problems continued to exist in the home, including severe violence among the children, missed doses of medication, lack of personal hygiene and cleanliness, failure to report to school, failure to dress children appropriately for cold weather, and failure to adequately supervise children. Ashley, Matthew, and Jennifer were removed from the home on March 24, 1998, and placed in foster care.

All three of the children at issue here have special needs and have required some sort of mental health services. At the time of her removal from the parental

home, Ashley suffered from depression, suicidal ideation, and oppositional defiant disorder. Matthew and Jennifer suffer from attention deficit hyperactivity disorder. Matthew also suffers from separation anxiety and has been very defiant, oppositional, and aggressive. All three had poor personal hygiene and missed multiple days of school due to pink eye, lice, and impetigo. All three were on medication for their mental health difficulties. Since their removal from the home, the children have made great strides in foster care. Ashley is now off all medication and wishes to remain with her foster care family. She has better self-esteem, hygiene, social skills and is proud of her accomplishments at school. Her foster family indicates they would be willing to adopt her. Jennifer no longer needs mental health services, and her behavior and hygiene has improved dramatically. Matthew has improved his social skills, appearance, and is less aggressive.

In contrast, Theresa and Leo have made minimal progress in their skills. The district court noted they do not u e, or lack the ability to use, the tools they have received to take care of their lives, finances, home, and children. They have ceased attending individual and couple therapy. Leo suffers from severe medical and mental health disabilities and service providers do not believe he could be left alone with the children. Theresa has exhibited a lack of nurturing behavior toward all of her children. She rarely interacted in a positive manner with any of her children during home visits.

The district court terminated Theresa and Leo's parental rights with respect to Ashley, Matthew, and Jennifer on May 26, 1999, pursuant to Iowa Code section 232.116(1)(e). Theresa and Leo appeal. Both parents allege the district court erred in finding the State met its burden by clear and convincing evidence and in finding it was in the best interests of the children to terminate the parent-child relationship. Theresa contends the district court erred by allowing evidence of a declaration she made during an adoption mediation meeting. Leo claims the State did not make reasonable efforts to reunify the children with their parents.

II. Standard of Review. We review proceedings to terminate a parent-child relationship de novo. We review the facts as well as the law and adjudicate the parents' rights anew. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa App. 1998). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering the credibility of witnesses. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

III. Termination of Parental Rights. Our primary concern is the best interests of the child. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997).

> We look to the child's long range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent possible harm to a child.

R.K.B., 572 N.W.2d at 601 (quoting *In re C.M.W.*, 503 N.W.2d 874, 875 (Iowa App. 1993)). Parental rights may be terminated where the court has previously adjudged the children to be children in need of assistance predicated upon a finding of physical abuse or neglect by a parent, services were subsequently offered to correct circumstances which led to the adjudication, and the circumstances which led to the adjudication continue to exist. Iowa Code § 232.116(1)(c) (1999).

A. Clear and Convincing Evidence. The grounds alleged for the termination of parental rights must by statute be proved by clear and convincing evidence. Iowa Code § 232.116(e)(4). Theresa and Leo contend the State failed to establish, by clear and convincing evidence the children could not be protected from abuse or harm if they were returned home. Ashley, Matthew, and Jennifer were originally removed and adjudicated CINA because their parents neglected to provide the children with appropriate supervision, housing, clothing, and food. Our review of the record discloses abundant evidence the children would be subject to same harm if returned home.

Leo and Theresa have failed to maintain an appropriate home for their children. The dwelling the family shared before the children were removed was unsanitary and unsafe. The family was denied housing assistance as result of these conditions. They have recently moved into a small, one bedroom apartment but the same problems have occurred in their new home despite intensive homemaker

services from the State and LSS. In addition, the new apartment has only one bedroom and therefore is inappropriate for even one child to visit.

The record also indicates Leo and Theresa have made minimal progress with their parenting skills. During multiple home visits, service providers have observed, while the parents are present, they are unable or unwilling to supervise, discipline, or use appropriate judgment with the children. The older children usually assume the responsibility of parenting the younger children. Children come and go from the home, and Leo and Theresa seem uninterested in their whereabouts. This has led to several situations where the children have been endangered. Service providers observed Leo and Theresa are often too involved in their own arguments to insure their children's safety or attempt to defuse the violence within the home. We find clear and convincing evidence in the record proving the children could not be protected from abuse or harm if they were returned home.

B. Reasonable Efforts. Leo alleges the district court erred in finding the State made reasonable efforts to reunify the children with their parents. Reasonable efforts to reunite parents with their children are required prior to the termination of parental rights. *In re T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994); *see generally,* Iowa Code § 232.102. The State has the obligation to make reasonable efforts, but it is the parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). This family has received extensive services from both DHS and LSS. In addition to services

listed above, these agencies have provided supervised visitation with all of the children.

Theresa and Leo have had regular visitation with one child at a time, with small groups of their children, and with all six children in efforts to reunite this family. To their credit, Leo and Theresa have regularly attended these visitation sessions with their children, and several times have asked for more visitation with some of the children. However, both parents have wavered on which children they actually want more visitation with and have expressed doubt they can manage more than one child at a time. Although they have complied with the case plan set out by DHS, they have failed to exhibit positive parenting skills as result of the years of services provided to them. We conclude the State did make reasonable efforts to reunite Ashley, Matthew, and Jennifer with their parents.

C. Best Interests of the Children. Theresa and Leo contend the State failed to prove termination of their parental rights was in the best interests of their children. Even if the statutory requirements for termination are met, the decision to terminate must still be in the best interest of the children. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996). The parents point to evidence of bonding between the children and the parents to support their contention termination is not in the children's best interests. Leo and Theresa also note they have also consistently kept visitation appointments. Theresa has obtained her GED and started classes at a local

community college. Lastly, the parents allege Ashley, Matthew, and Jennifer are not likely to be adopted and termination is therefore not in their best interests.

Children should not have to wait for responsible parenting. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). Parenting cannot be turned on and off like a spigot; it must be constant, responsible, and reliable. *Id.* Theresa and Leo have not substantially improved their parenting skills. Neither parent exhibits nurturing behavior toward the children. Leo and Theresa have not addressed their interpersonal issues and are not able to address the multiple special needs of their children. Ashley, Matthew, and Jennifer have thrived and flourished in their respective foster homes where they have been provided with a stable, nurturing environment. They have learned proper hygiene and have made significant strides in school and therapy. Service providers and the district court attribute these positive changes to placement in foster care.

This court has held the Stat · is not required to show, and the juvenile court is not required to find, a child is adoptable in order to terminate parental rights. *T.C.*, 522 N.W.2d at 109. Nonetheless, the State presented evidence Ashley's foster family wishes to adopt her, and Matthew and Jennifer are adoptable. We affirm the district court's finding termination is in the best interests of the children.

D. Testimony at Adoption Mediation. Theresa contends the district court erred in admitting a declaration she made during an adoption mediation meeting scheduled pursuant to the "Iowa Mediation for Permanency Project." During the mediation,

Theresa said she did not care if her parental rights were terminated so long as she was still allowed to have contact with her children. Theresa contends this declaration was evidence of an inadmissible offer of compromise made in negotiations. *See* Iowa R. Evid. 408. Theresa concedes this rule has yet to be applied in Iowa termination proceedings, but argues we should do so now.

The rules of evidence followed in civil trials are to be followed in CINA proceedings, except as otherwise specifically provided in the Juvenile Justice Act. Iowa Code § 232.96(3); *see In re S.J.M.*, 539 N.W.2d 496, 499-500 (Iowa App. 1995). Rule 408 provides:

> Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. *Evidence of conduct or statements made in compromise negotiations is likewise not admissible.* This rule does not require the exclusion of any evidence otherwise discoverable m rely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Iowa R. Evid. 408 (emphasis added).

The rule excluding offers of compromise tendered as admissions of weakness of an opposing party's claim in a civil case is supported by a public policy of promoting compromise. *State v. Burt*, 249 N.W.2d 651, 652 (Iowa 1977). Offers of compromise are excluded to further the important public policy of promoting compromise. *See In re Marriage of Clifton*, 526 N.W.2d 574, 576 (Iowa App. 1994).

This court has previously held rule 408 is applicable in dissolution of marriage cases. *Id.* The rule is not generally applicable in criminal cases except in the context of plea bargains. *Burt*, 249 N.W.2d at 652. CINA proceedings have been described as "special proceedings" which are neither criminal nor penal in character. *In re Delaney*, 185 N.W.2d 726, 728 (Iowa 1971).

Mediation proceedings are, by definition, discussions of compromise. In this case, the State and the parents participated in discussions regarding the possible adoption of the children who had already been adjudicated in need of assistance. The State obviously hoped mediation would obviate the need for adversarial termination proceedings. However, the mediation negotiation did not result in consensual termination. We conclude the strong public policy justification for the application of the rule excluding statements made in compromise negotiations in civil cases is also compelling in termination of parental rights cases. Parents should be free to candidly discuss voluntary termination ot their parental rights in furtherance of adoption without fear statements made will be used against them in termination proceedings.

Though we find the district court erred in admitting Theresa's statement made during adoption mediation negotiations, we utilize a harmless error analysis with regard to this issue. *See In re T.C.*, 492 N.W.2d 425, 429-30 (Iowa 1992). Our de novo review of the record in this case leads us to conclude, even without the inadmissible evidence, the district court had more than enough proof of the elements necessary to support its decision to terminate Theresa's parental rights. We affirm

the district court's termination of Theresa and Leo's parental rights with respect to their children Ashley, Matthew, and Jennifer.

AFFIRMED.