IN THE COURT OF APPEALS OF IOWA

No. 5-307 / 94-1900

FILED
JUN 27 1995
CLERK SUPREME COURT

IN THE INTEREST OF K.M., B.M., K.M., and R.J. III, Minor Children,

R.J., Jr., Father,
Appellant.

R.J., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Patrick R. Grady, Judge.

Parents separately appeal the termination of their parental rights pursuant to Iowa Code sections 232.116(1)(e) (child four years of age or older, previously adjudicated in need of assistance, out of parent's custody for at least twelve months, and cannot presently be returned to parent's care), and 232.116(1)(g) (child three years or younger, previously adjudicated in need of assistance, out of parent's custody for at least six months, and cannot presently be returned to parent's care) (1993).

AFFIRMED.

Michael M. Lindeman, Cedar Rapids, for appellant father.

Mark C. Meyer, Cedar Rapids, for appellant mother.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Denver D. Dillard, County Attorney, and Lance Heeren, Assistant County Attorney, for appellee State.

David Nadler, Cedar Rapids, for minor children.

Considered by Hayden, P.J., and Sackett, and Cady, JJ.

CADY, J.

Richard Jr. (Rick) and Revette appeal the termination of their parental rights to their four children, Kayosha, born July 22, 1987, Bianca, born July 3, 1988, Kassie, born December 4, 1989, and Richard III, born October 10, 1990. Upon our de novo review, we affirm.

The family came to the attention of the department of human services (DHS) in June 1990, while Revette was in the domestic violence shelter. Between December 1990 and August 1991, there were four founded child abuse reports: two were physical abuse by Rick of two of the girls and two were denial of critical care, one by Revette and one by both parents.

On September 11, 1991, Revette stipulated the children were in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(b) due to physical abuse by Rick. On October 15, 1991, the juvenile court entered a dispositional order wherein the children remained with their mother. On November 19, 1991, Rick stipulated the children were CINA pursuant to sections 232.2(6)(b) (physical abuse), (6)(c)(2) (inadequate supervision), and (g) (inadequate care).

A review order entered February 26, 1992, allowed the children to remain with Revette but she was to continue to reside in the Inn-Circle program.

On July 9, 1992, Revette voluntarily placed all four children in foster care. Revette was admitted to inpatient psychiatric care. The children were returned to

Revette on September 17, but on December 3, 1992, they were ordered returned to foster care. Two founded abuse reports led to the foster care placement: Revette was found to have physically abused Bianca and to have denied critical care to all four children. Review hearings in May and December 1993 resulted in continued foster care placement. The State filed a petition to terminate parental rights on March 16, 1994.

After a hearing, the juvenile court terminated the parental rights of each parent to each child. The court noted that the parents had been offered parenting classes, substance abuse evaluation and treatment, services through the department of corrections, mental health services, and domestic abuse services. Despite those services, the court concluded Rick had made no progress with regard to his substance abuse, acknowledging his physical abuse of his children and Revette, and accepting responsibility. The court found Revette had numerous opportunities to address her mental illness, her physical abuse and neglect of the children, and her substance abuse problem and had been unable to do so. The court concluded the children could not be returned to her. The court further concluded the children were adoptable and termination was in their best interests.

Our review of these proceedings is de novo. *In re M.S.*, 519 N.W.2d 398, 399 (Iowa 1994). We are not bound by the findings of the trial court, but give them weight particularly when considering the credibility of witnesses. *In re M.L.O.*, 477 N.W.2d 393, 394 (Iowa 1991).

The paramount consideration in termination proceedings is the best interests of the child. Iowa R. App P 14(f)(15). In making this assessment, we look to the child's long-range and immediate interests. *In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1989).

The parent's rights were terminated pursuant to Iowa Code section 232.116(1)(e) and 232.116(1)(g) (1993). Termination is permitted under subsection (e) when a child in need of assistance is four years old, has been removed from the parent's custody for twelve months or more, and there is clear and convincing evidence the child cannot be returned at the present time to the custody of the parents. Termination is permitted under subsection (g) when a child is in need of assistance is three years old or younger, has been removed from the parent's custody for six consecutive months or six of the last twelve months, and there is clear and convincing evidence the child cannot be returned at the present to the custody of the parents.

The parents do not dispute the first three requirements of these subsections have been met. The issue in contention is whether the children can be returned to Rick's and Revette's custody at the present time. We will address each parent's claims individually.

Rick asserts he has dealt with the primary issues preventing return of the children to his care, substance abuse and assaultive behavior. According to Rick he has not used any illegal substances for the past fifteen months and the domestic abuse issue is resolved because he no longer has contact with Revette.

We do not agree that Rick has addressed all of the issues necessary to return the children to his care. Our review of the record indicates issues of denial, substance abuse, domestic abuse, and child abuse still remain.

Rick has a well-documented history of substance abuse involving alcohol, marijuana, and intervenous injection of illegal drugs. Rick has consistently minimized his use of alcohol and despite the court's admonition has consumed alcohol around the time of visitation. Two weeks prior to the termination hearing, he smelled strongly of alcohol while visiting his son at the hospital. He delayed obtaining a substance abuse evaluation and when he finally obtained one it was invalid because he provided inaccurate information. After Rick obtained a second evaluation he failed to follow through with the recommended treatment.

Rick's abusive behavior problems also remain unresolved. He is unable to admit they exist and to accept treatment services. Although two founded child abuse reports were filed, and he was arrested several times between 1990 and December 1993 for assaulting Revette, he continually minimizes or denies his abusive behavior. Services have been available to Rick since 1991. His participation, however, has been minimal and inconsistent. At the termination hearing the social worker testified returning the children to Rick's care would place them in imminent jeopardy of physical abuse and neglect.

Moreover, because Rick will not recognize his or his children's problems, he has not progressed on his case permanency plan. The three to four months prior to the termination hearing are indicative of his lack of cooperation with the DHS. During that time Rick visited the children once and discontinued all other contact with the DHS. He even refused to reveal his address or phone number. We conclude there is clear and convincing evidence the children would continue to be in need of assistance if returned to Rick's care.

On appeal, Revette argues although she was unable to care for the children at the time of the hearing the trial court should have examined her recent progress and suspended its judgment for four months. She also claims there is insufficient evidence in the record to conclude termination would provide more permanence then suspending the court's judgment until she could be reunited with her children.

Revette's argument is premised on the assumption that she will resolve her substantial personal problems within four months of the hearing. The record does not support this conclusion. Revette suffers from a major depressive disorder, posttraumatic stress disorder, mixed-substance abuse problems, and dependency problems. As a result of her illness she is unable to cope with stress and has required hospitalization. She was hospitalized four times in the last two years, and was most recently hospitalized in March 1994 for substance abuse treatment.

Revette began receiving family centered services from the DHS in 1991 and has had numerous opportunities to address her problems. Although she recognized her problems and participated in treatment, she only made minor gains. From 1991 to 1993 she moved in and out of an abusive relationship with Rick despite a no-contact order. When she participated in the Inn-Circle program, she physically abused one child and denied critical care to all of the children. In April 1994 she was discharged from both a residential program for women and a substance abuse treatment program as a result of her continuing use of cocaine and marijuana, and for inappropriate sexual relationships. In early June she was also dismissed from inpatient treatment for inappropriate sexual activity.

Moreover, as recently as May 1994, Revette expressed the desire to terminate her parental rights to her children. She has particularly struggled in her relationship with Richard III and testimony indicated she has no bond with him.

The children all have special needs and would be difficult for an any parent to care for. They all exhibit behavioral features of children traumatized by extensive abuse. Kayosha, and Bianca suffer from attention deficit hyperactivity disorder, and demonstrate extensive sexual play. Kassie is aggressive, shows no remorse for her actions, and also acts out sexually. Richard III is developmentally delayed, prone to choking and bacterial lung infections, and is receiving medication for a possible seizure disorder.

individual therapist. Based on her past history and the social workers' testimony, we conclude Revette will not be able to care for her children in the near future.

Finally, Revette argues the children may not be adopted any sooner then she is able to complete her treatment and therefore, termination of her parental rights is not in their best interest. Revette's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(e) and (g). These provisions do not require the State or the juvenile court to make a finding that the child is adoptable in order to terminate parental rights. *In re T.C.*, 522 N.W.2d 106, 109 (Iowa App. 1994). Our governing consideration is the best interest of the child. Moreover, in this case, the record indicated the children were highly adoptable even considering their special needs.

The children have been in foster care since July 1992. They simply cannot wait any longer for Revette and Rick to address their personal problems and take on the responsibilities of parenting. *See In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). We conclude termination of Rick's and Revette's parental rights to all four children is in the children's best interest. We affirm the juvenile court.

AFFIRMED.

Hayden, P.J., concurs; Sackett, J., specially concurs without opinion.