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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF B.O.,
A Child;

N.O.H., Natural Mother,

Appellant.

Filed September 25, 1986

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6-268
85-1819

Appeal from the Iowa District Court for Fayette County (No. J-567) - William G. Klotzbach, Judge.

The natural mother of a ten-year-old boy appeals from a juvenile court order which terminated her and the natural father's parental rights and placed the boy in the guardianship of the department of human services. **AFFIRMED.**

T. David Katsumes, Elgin, for appellant N.O.H.

Thomas J. Miller, Attorney General; Valencia Voyd McCown and Charles K. Phillips, Assistant Attorneys General; John W. Hofmeyer III, Assistant County Attorney, for appellee, State of Iowa.

Charles D. Hurley of Hofmeyer, Anthony & Hurley, Fayette, guardian ad litem for the child.

Larry F. Woods, Oelwein, for the child.

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

DONIELSON, P.J.

The natural mother of a ten-year-old boy appeals from a juvenile court order which terminated her and the natural father's parental rights and placed the boy in the guardianship of the department of human services. On appeal, the mother asserts the trial court erred in finding there was clear and convincing evidence supporting termination of her parental rights. Specifically, she asserts there was insufficient evidence to show that the boy could not be returned to her without facing harm. The mother also asserts the trial court erred in limiting its ruling to the evidence presented at the rehearing, without reviewing the transcript of the testimony of a psychiatric social worker. In addition, the mother contends the juvenile court's only reason for terminating her parental rights was to allow her child to be adopted by his current foster parents, who have expressed an interest in adopting B.O. and could provide him with economic and cultural advantages which the natural mother could not. We affirm.

The child, B.O., was born to N.O.H. on December 9, 1976, while N.O.H. was incarcerated in the Women's Reformatory at Rockwell City. N.O.H. was never married to B.O.'s father, W.B. N.O.H. had physical custody of B.O. only during the last five months of 1977. During that time, B.O. was physically abused, malnourished, and improperly clothed. After N.O.H.'s parole was revoked and she was returned to the reformatory in December 1977, B.O. was returned to foster care and has remained there. Although the department of human services made repeated attempts to unite N.O.H. with B.O. and an older child, none of the attempts were successful due to N.O.H.'s inability to stay out of jail. N.O.H. has repeatedly been arrested and jailed for writing bad checks. During her various problems, she visited B.O. and spent some weekends with him. B.O.'s father, W.B., abandoned B.O. by failing to provide any financial support for

him or to have any significant contact with him and by refusing to sign a paternity statement.

On January 28, 1980, B.O. was adjudicated a child in need of assistance. On May 4, 1981, the custody of B.O. was transferred from N.O.H. and W.B. to the Iowa Department of Social Services for foster care placement. On August 31, 1984, the Assistant Fayette County Attorney petitioned to terminate the parental rights of both N.O.H. and W.B., pursuant to Iowa Code section 232.116(5) (1983). After a hearing on October 18, 1984, the juvenile referee terminated both N.O.H. and W.B.'s parental rights on November 8, 1984.

On November 11, 1984, N.O.H. requested a review by the district court. Arguments were heard by District Court Judge James L. Beeghly on April 8, 1985. After reviewing four tape recordings of the October 18, 1984, juvenile court hearing, Judge Beeghly filed an order on April 12, 1985, stating that he could not rule due to the fact that a tape containing a psychiatric social worker's testimony was distorted and inaudible. The review was then heard de novo before District Court Judge William G. Klotzbach on May 28, 1985, with a stipulation that the testimony of the social worker would be typed into transcript form and delivered to Judge Klotzbach. At the time of this hearing, N.O.H. was incarcerated in the Women's Reformatory at Mitchellville following a sentence for first-degree theft. Before receiving the transcript of the social worker's testimony but after discussing the tape's content with counsel, Judge Klotzbach found that by reason of N.O.H.'s incarceration and her inability to provide a home for B.O., the child could not be returned to her custody. He therefore ordered termination of both N.O.H. and W.B.'s parental rights, ordered that the Iowa Department of Human Services continue to act as B.O.'s custodian, and appointed the department of human services to act as B.O.'s guardian until further order of the court.

On appeal, we review parent-child terminations de novo. In Interest of K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). While we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

N.O.H. asserts that the trial court erred in finding that there was clear and convincing evidence supporting termination of her parental rights, specifically in the trial court's finding that B.O. could not be returned to N.O.H. without facing harm. N.O.H. asserts the real reason for termination was to allow the child to be adopted by a couple who could financially provide economic and cultural advantages not affordable by her. We disagree.

In its petition the State alleged, and the juvenile referee and district court found, that grounds for the termination of N.O.H.'s parental rights existed under Iowa Code section 232.116(5) (1983). Section 232.116 outlines six grounds upon which termination of parental rights may be authorized. Generally, if one of these grounds is established by clear and convincing evidence, the termination will be upheld. In Interest of K.L.C., 372 N.W.2d at 237. We find that clear and convincing evidence exists requiring termination on the basis of Iowa Code section 232.116(5) (1983).

The juvenile referee and the district court specifically found that B.O. was a child in need of assistance under the provisions of Iowa Code section 232.2(5)(c)(2) and (g) (1983). Iowa Code section 232.2(5) (1983) defines the conditions pursuant to which a court may find a child in need of assistance. Section 232.2(5) provides in pertinent part:

> 5. "Child in need of assistance" means an unmarried child:
>
> c. who has suffered or is imminently likely to suffer harmful effects as a result of:
>
> (2) The failure of the child's parent, guardian,

> or custodian to exercise a reasonable degree of care in supervising the child.
>
> g. whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter and refuses other means made available to provide such essentials.

Once the court has determined that a child is in need of assistance, the court may terminate parental rights pursuant to section 232.116(5) if the child has been adjudicated in need of assistance, has been placed out of the parent's custody for more than twelve months, and there is clear and convincing evidence that the child cannot be returned to the parental home because definitional grounds of a "child in need of assistance" still exist.

The paramount concern in a determination of this nature is the best interests of the child. In Interest of J.R.H., 358 N.W.2d 311, 317 (Iowa 1984); In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). While we recognize the importance of the integrity of the family unit and that the child's interests may best be served in the care of his parents, such principles are not absolute, but may be defeated by parental conduct. Dameron, 306 N.W.2d at 745. In evaluating the child's best interests, we necessarily consider the child's long-range as well as immediate interests. Id. Intrinsic to this evaluation is an examination of the parents' past performance, from which valuable insight may be gleaned as to the future quality of care the parents are able to provide. In Interest of O'Neal, 303 N.W.2d 414, 423 (Iowa 1978). In addition, the State, as parens patriae, has the duty to assume that every child within its borders receives proper care and treatment and must intercede when parents have abdicated that responsibility. K.L.C., 372 N.W.2d at 226.

Turning to the record, we find it replete with evidence of N.O.H.'s inability to properly care for B.O. and that B.O. would likely suffer imminent harm if returned to his mother's custody. B.O. was not yet one year old when the first

substantiated physical abuse of B.O. was reported; B.O. had been taken to the local medical center with his penis extremely swollen and bleeding caused by human hair being tied around it. A social worker later determined that B.O.'s older sister had perpetrated this act because she had become frustrated by her role as B.O.'s primary caretaker. In December 1977, N.O.H. was sentenced to the Women's Reformatory in Rockwell City for a parole violation and writing bad checks, at which time B.O. was placed in a foster home. Upon placement, it was discovered that B.O. was seriously malnourished and underdeveloped—through medical records it was determined that B.O. had not gained any weight from age six months to one year. Both B.O.'s and his sister's clothing was found to be ragged, ill-fitting, and inappropriate for the time of year.

Since B.O.'s placement, N.O.H. has had an extensive arrest record and has spent a considerable amount of time incarcerated. During this period of time N.O.H. signed numerous contracts with the department of human services providing for the eventual return of her children if she successfully completed her rehabilitation programs. Despite these contracts, N.O.H. was arrested several times for writing bad checks, intoxication, and forgery. Every attempt made by human services to rehabilitate N.O.H. was met with failure. N.O.H. repeatedly lied about her employment situations and was consistently fired from those sporadic jobs she did hold due to poor work habits and vulgar language. In sum, over a seven-year period, N.O.H. completely failed to demonstrate any ability to supervise and care for her children. In fact, N.O.H., at the time of the termination hearing, was incarcerated at the Women's Reformatory for first-degree theft.

Upon consideration of the entire record, we believe that the State has proved by clear and convincing evidence that N.O.H. has utterly failed to show any ability to provide B.O. with the care and supervision a child of his age so

desperately needs, and that B.O. would likely suffer harm if returned to his mother. B.O. has been diagnosed as having a learning disability caused by cerebral palsy. Long hours of special instruction will be needed to treat this disability. N.O.H. has not demonstrated an ability to provide even basic requirements such as food, clothing, and shelter and would therefore undoubtedly be unable to effectively participate in B.O.'s treatment. We believe that B.O. is entitled to a permanent and stable environment which thus far his mother has not been able to provide despite seven years of ample opportunity. We therefore hold that the statutory requirements of Iowa Code section 232.116(5) have been met and that N.O.H.'s parental rights should be and are hereby terminated.

N.O.H., however, also contends that the trial court erred in limiting its ruling to the evidence presented at the rehearing without reviewing the transcript of the testimony of a psychiatric social worker. We find no merit in this claim.

When evidence was presented on May 28, 1985, the parties were granted leave to furnish the court with further evidence of the social worker's testimony. The attorneys of record got together and agreed on what the witness's testimony was at the hearing before the referee. It was agreed that the county attorney would have the testimony typed and submitted to the court. Four and one-half months later, the testimony had still not been submitted, and the court, determining that the matter had been delayed long enough and that the child's best interests were at stake, issued an order terminating N.O.H.'s parental rights. We, therefore, can find no abuse of discretion, especially since the court discussed the contents of the testimony with the attorneys of record before rendering judgment. Furthermore, the social worker's testimony was basically unfavorable to N.O.H., and any error resulting from the district court's ruling would have been harmless, given the overwhelming evidence against N.O.H. already on record.

AFFIRMED.