IN THE COURT OF APPEALS OF IOWA

No. 9-304 / 89-459

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CLERK SUPREME COURT

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IN THE INTEREST OF S.J., A Child,

S.S., Natural Mother,

Appellant.

Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson, Judge.

The mother of a child with special needs appeals the termination of her parental rights. **REVERSED.**

Mary M. Schumacher of Roth & Schumacher, Dubuque, for appellant mother.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; and Jean Becker, Assistant County Attorney, for appellee State.

Steven Hodge of Kaufman, Lange, Hodge & Neuwoehner, Dubuque, guardian ad litem for the child.

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

SACKETT, J.

In this parental termination case, the issue we address is whether the trial court was correct in severing the biological ties between a child with special needs and his mother. The mother, though shown to have recognized the special needs and cooperated in an attempt to obtain the skills necessary to parent the child, is not able to meet the child's special needs. We reverse the termination.

Appellant S.S. is the natural mother of two children, S.J., a son born in 1980, who is the subject of these proceedings, and a daughter born in 1985, currently in her custody and care. The parental rights of the father of S.J. were terminated by the lower court. He is not a party to this appeal.

The family became involved with the Department of Human Services in May 1987 after they received a report of alleged abuse of appellant's daughter. The injury to appellant's daughter was later determined to have been inflicted by S.J. on his sister. On May 14 an ex parte order issued authorizing the emergency removal of both children from the family home. A petition was filed asking both children be found to be children in need of assistance. The children were found to be children in need of assistance and they were returned to appellant on June 29, 1987. Homemaker services were provided her and she was ordered to attend parenting classes.

On October 26, 1987, appellant filed a motion for a dispositional hearing. She contended she was having a difficult time controlling her son and she requested he be placed in a residential facility. She testified the request was made because the University of Iowa Hospital had advised her it would be necessary for her son. After a hearing the court found appellant unable to handle her son. The mother's request to have the child placed in a residential facility was denied. Instead, he was placed in foster care in December 1987. In April 1988 appellant's daughter was determined to no longer be a child in need of assistance and proceedings concerning her were dismissed. She is in appellant's custody.

The State sought to terminate appellant's parental rights to her son. In March 1989 these rights were terminated. Appellant challenges the termination contending there is not clear and convincing evidence the child cannot be returned to her and even if termination is justified, it should not be granted because she and her son have a close relationship.

This child has significant behavioral problems. He is hyperactive, aggressive, unresponsive, and unsocialized. He has delayed speech and language development. He needs occupational and physical therapy. He suffers from learning disabilities and from an attention deficit

disorder. These behavioral problems require more parental skills than the average parent possesses.

After the child was placed in foster care in December 1987, appellant visited him weekly for two- to four-hour periods. In the summer of 1988 the visitation time increased to four to six hours. In November 1988 the visitation was expanded to include overnights and two- to four-day visits during holidays. Appellant has been conscientious about visitation. She has also participated in services designed to assist her in improving her parental skills. She has cooperated with social workers and school officials. There is little or no criticism of the efforts she is making.

The visitations have not, however, been without problems. The child has at times during visitations with his mother been difficult to discipline and rowdy. He has displayed physical aggression in his mother's home. He would hit his mother, sister, and visitors who were there to observe his interaction with his mother. Appellant on occasion called the foster mother for advice and several times returned him to his foster home early.

A major emphasis in the State's case is the fact that the social workers and school officials testified the child has made progress in foster care. Testimony shows the foster mother has a unique ability to encourage his development while maintaining discipline and control. The

foster mother is better suited to meet the needs of this special child than is the natural mother, despite appellant's good faith efforts to handle her special child. The record reflects, however, the foster mother will not adopt the child, although at the time of hearing she intended to keep him until an adoptive home was found. The child may not be able to return to his family home because his mother, who is able to parent his normal sister, is unable to meet his special needs. His needs are currently being better met in foster care, and it may be necessary for an order to issue directing placement in long-term foster care, see Iowa Code § 232.104(2)(d)(4), or ultimately in residential care because there is no assurance his problems will continue to be met in a home setting.

There are constitutional and fundamental rights to parent. These rights should not be severed because someone else can be a better parent to your child. Not all children with special needs can be cared for in their own home. We do not interpret the Iowa parental termination statute to mandate termination of parental rights where a child, because of special needs, cannot be cared for in his or her own home. We consider the fact this child, because of his special needs, cannot be returned to his family home as a factor not in isolation, but in conjunction with other

factors, including the best interest of the child and the relationship of the parent and child.

Appellant contends even if she were unable to provide for the child's interests, her parental rights should not have been terminated, because mother and son have a close relationship. Iowa Code section 232.116(3)(c) provides the court need not terminate the relationship between the parent and child if the court finds there is clear and convincing evidence that the termination would be detrimental to the child at that time, due to the closeness of the parent-child relationship. This section does not mandate against termination. In the Interest of L.P., 370 N.W.2d 839, 843 (Iowa App. 1985). But it provides the court need not terminate parental rights if it makes any of the findings therein specified. Id. Appellant loves her child, who is now nearly nine years old. This child is not a prime candidate for adoption. Gary Lippe, a social worker with the Department of Human Services since July 1985, testified S.J. will be a difficult child to place. Lippe further testitied that does not mean he cannot be placed, as there are situations where placement is found for difficult children. We recognize, however, the child has strong feelings for his mother and looks forward to his visits with her. Appellant has maintained a close and consistent relationship with him. There is bonding. The child has a strong awareness of his natural family. His

age and special needs make him a child difficult to place for adoption. In April 1989 there were eighty-two children with special needs on the Iowa adoption exchange, and nationwide there were 34,000 children with special needs who were awaiting adoption.[1] We therefore find no assurance termination of parental rights will not result in this child living in a foster home or residential facility in a parentless limbo.

This mother has limited abilities, but she has shown continual concern for her son. She contacted the University of Iowa Hospital for help with him. Though not able to meet this child's special needs in her home, there are few criticisms of her desire to do what is best for this child. The value of the child knowing he has a caring, loving natural parent who visits him at regular intervals and is aware of how he is cared for must be given serious consideration.

We recognize there are times when a parent may be forced by circumstances beyond his or her control to seek care for a child outside of the home. See Doan Thi Hoang Anh v. Nelson, 245 N.W.2d 511, 516-17 (Iowa 1976).

We are becoming better educated about the continuing relationship that exists between a child this age and a

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1. Devine, Study: Recruit Singles To Adopt Special Children, Des Moines Register, April 18, 1989, at 2A.

natural parent. The biological family is the primary lifeline for children. See Beyer & Mlyniec, Lifelines to Biological Parents: Their Effect on Termination of Parental Rights and Permanence, 20 Fam. L.Q. 233, 237 (1986) (citing Colon, Family Ties and Child Placement, 17 Fam. Process 289 (1978); Teddy, Creative Cooperation Involving Biological Parents in Long Term Foster Care, 61 Child Welfare 53 (1986); Litner, Some Traumatic Effects of Separation and Placement (1976)). Even inadequate parents are significant in the child's development. Beyer & Mlyniec at 237. Such relationships are not severed by termination or adoption. Id. at 239. This child has a biological mother who has consistently and consequently given him care and attention in accordance with her ability. There is no valid reason to deprive him of this relationship.

After assessing all factors in this case, we do not find clear and convincing evidence to support a termination of the parental rights of the appellant mother. We reverse the order terminating the mother's parental rights. The child should remain a child in need of assistance. Because of the child's special needs, the mother will continue to need assistance with her parenting.

REVERSED.

Schlegel, J., concurs; Donielson, P.J., dissents.

DONIELSON, P.J. (dissenting)

S.J.'s behavioral problems are of a nature that require more parental skills than probably the average parent possesses. Social workers and school officials testified as to the marked improvement that has been seen in S.J.'s behavior since he was placed in his foster home. In contrast to this improvement, the testimony of several visiting nurses/homemaker health aids ("visiting nurses") disclosed that S.J.'s behavior during his visits with his mother was unruly and at times it bordered on uncontrollable. To facilitate her discipline of S.J., visiting nurses noted that the mother would at times physically restrain S.J. At times S.S. could only restrain him by placing him on the floor and putting her knees on his arms. S.J. often displayed physical aggression while on visits at his mother's home. His kicking and hitting would be directed at his mother, his sister, and visiting nurses who were there to observe his interaction with his family. At times S.S. couldn't control S.J. and would call his foster mother for assistance. Several times S.S. returned S.J. early from his visits because she could not manage him, and in at least one episode she returned him to his foster home early because she could not control him and she feared for the safety of her daughter.

Throughout S.J.'s foster home placement his mother received numerous social services to assist her in

developing parenting techniques that would enable her to control S.J.'s behavior and to attain his return to her home. Department of Human Services records reveal that S.J.'s mother had been receiving family-centered services prior to the lodging of the abuse allegation in May of 1987. Since at least June of 1984, she had received day care services for her children, homemaker services to assist her in a variety of areas (particularly regarding parenting), and counseling services. These services have rendered S.S. more competent to raise and parent her daughter, but there has been no visible improvement in her ability to meet the special demands that accompany a child like S.J. Despite her best attempts, S.S. has been unable to demonstrate an ability to parent S.J. which is conducive to his best interests and potential for development.

This is not a case in which S.J.'s problems are of such a nature that they cannot be managed and even overcome. S.J. has shown great progress since his placement in a foster home. Testimony at the trial court hearing illustrated the improvement in S.J.'s behavior since he was removed from his mother's home. The very positive and structured home environment of his foster home has manifested itself in noticeable improvement in S.J.'s academic performance.

There is no level of parenting skills which will make it possible for S.J. to be a normal child. However, a reasonable degree of parenting skills can make it possible

for S.J. to maximize his own potential as a human being. Despite the impressive array of services and educational opportunities in the area of parenting that were made available to S.S., she was unable to improve her parenting skills to a level that would ensure S.J.'s continued growth. In his mother's home S.J. engages in uncontrolled behavior and poses a risk to the physical safety of his younger sister. To return S.J. to this environment would result in a deterioration of the progress he has made in his academic and personal development. Despite her best intentions, S.S. is simply unable to provide the necessary parenting skills for a child like S.J.

The issue for this court is whether S.J. will suffer harm specified in Iowa Code section 232.2(6) if returned to his mother. In Interest of R.M., 431 N.W.2d 196, 199 (Iowa App. 1988). The inability of S.S. to control and discipline S.J. is a condition created by the parent, from which S.J. is likely to suffer harmful effects. Iowa Code § 232.2(6)(c)(1). Clear and convincing evidence existed for termination of parental rights in this case.

I also disagree with the majority's conclusion that "even inadequate parents are significant in the child's development," and even if S.S. is unable to provide for S.J.'s best interests, her parental rights should not be terminated because of the close relationship which exists between her and her son. Iowa Code § 232.116(3)(c). Despite the close feelings between S.S. and S.J., it cannot

be denied that his visits with his mother result in unruly and often uncontrolled episodes of fighting between the two. The detriment which will result from the severance of this relationship is outweighed by the detriment that occurs to S.J.'s behavioral progress during and following his visits with his mother. Clear and convincing evidence supported the trial court's decision and the trial court did not err in terminating S.S.'s parental rights in this matter.