

IN THE COURT OF APPEALS OF IOWA

No. 2-062 / 91-1532

FILED

APR 28 1992

CLERK SUPREME COURT

IN THE INTEREST OF W.L.O. AND M.G.S., Minor Children

S.L.S., Mother,

718

Appellant.

Appeal from the Iowa District Court for Woodbury
County, Mary L. McCollum, Juvenile Referee.

The mother of two children appeals from the termination
of her parental rights. AFFIRMED.

David L. Gill, of Baron, Sar, Goodwin, Gill & Lohr,
Sioux City, for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter,
Special Assistant Attorney General; and Charles K.
Phillips, Assistant Attorney General, for appellee, the
State of Iowa.

Debra Y. Lulf, Sioux City, guardian ad litem for
appellee children.

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

HABHAB, J.

This appeal involves two children, W.L.O., a boy born in July 1981, and M.G.S., a girl born in January 1986. S.L.S. is the mother of both children. H.O. is the father of W.L.O., and P.S. is the father of M.G.S. S.L.S. and H.O. were apparently never married, and S.L.S. has not had contact with H.O. since 1982. S.L.S. and P.S. were married in November 1985. In February 1988, S.L.S. and P.S. were divorced, but for some time thereafter they continued to live together with the children. S.L.S. is an alcoholic, and she also suffers from psychological problems.

The issues throughout this case center around S.L.S.'s alcohol abuse and her volatile relationship with P.S. In April 1988, the juvenile court first became involved with the family. S.L.S. was arrested for public intoxication and assault, and there was not a legal caretaker for W.L.O. W.L.O. was adjudicated a child in need of assistance (CINA) in May 1988. M.G.S. was adjudicated a CINA in June 1989.

Custody of the children was transferred from S.L.S. for the last time in September 1989. S.L.S. has not had custody of either of the children since then. (Custody of M.G.S. was transferred to P.S., subject to the protective supervision of the human services department. W.L.O. was in foster care, but in November 1990, his custody was also transferred to P.S., subject to the protective supervision of the human services department. Also, in September 1989,

S.L.S. was ordered to have no contact with either child until she had been involved in an aftercare program and remained sober for three months. This no contact order was never lifted.

In May 1991, the State of Iowa filed a petition for termination of the parental rights of S.L.S. pursuant to Iowa Code sections 232.116(1)(e) and 232.116(1)(k). At that time, the State of Iowa also filed a petition for termination of the parental rights of H.O. pursuant to Iowa Code section 232.116(1)(b).

In June 1991, the juvenile court heard this matter. The evidence presented included the following information. Over the last four years, S.L.S. has been involved in outpatient, inpatient, aftercare, and halfway house treatments for alcoholism, but she has been unable to remain sober. The children were removed from her care because of her drinking. She would often pass out when the children were in her care, leaving them to fend for themselves. There have also been domestic fights between S.L.S. and P.S. S.L.S. has been charged with operating a motor vehicle while intoxicated several times, and is currently incarcerated at the Women's Reformatory in Mitchellville on a conviction of one of those charges. P.S. has taken steps to divorce himself, legally and emotionally, from S.L.S. P.S. has been taking appropriate care of W.L.O. and M.G.S., and he has indicated that he intends to adopt W.L.O.

In September 1991, the juvenile court entered an order terminating the parental rights of S.L.S. and H.O. and placed custody of W.L.O. with P.S. S.L.S. has appealed. We affirm.

TERMINATION OF PARENTAL RIGHTS

Appellate 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 accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom that court heard and observed firsthand, but we are not bound by those findings. Id. at 491-92.

The paramount concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

We look to the child's long range as well as immediate interests. We consider what the future likely 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 that parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988)(citing Dameron, 306 N.W.2d at 745); see also In re A.C., 415 N.W.2d 609, 613 (Iowa 1987), cert. denied, 485 U.S. 1008, 108 S. Ct. 1474, 99 L. Ed. 2d 702 (1988).

In the past, the courts have recognized that a parental interest in the integrity of the family unit exists. Dameron, 306 N.W.2d at 745. However, this interest is not absolute and may be forfeited by certain parental conduct. Id. Because the state, as parens patriae, has the duty to assure that every child within its borders receives proper care and treatment, it must intercede when parents abdicate that responsibility. Id. (citations omitted).

ANALYSIS

The pertinent statutory provisions in this case are sections 232.116(1)(e) and 232.116(1)(k) of the Iowa Code. Iowa Code section 232.116(1)(e) (1991) states that the court may order the termination of the parental rights of a parent if it finds that all of the following have occurred:

- (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.

In this case, S.L.S. admits that the elements for termination of parental rights under Iowa Code section 232.116(e) exist. However, she urges the court not to terminate her parental rights due to the closeness of the parent-child relationship pursuant to Iowa Code section 232.116(3)(c). We agree with the trial court in rejecting this argument.

Since September 1989, S.L.S. has been under a no contact order with the children. Since that time, she has had no authorized contacts with the children, however, she has violated the no contact order on numerous occasions. S.L.S. has not had any significant contact with the children for approximately two and one-half years. Furthermore, S.L.S. could have had the no contact order lifted had she remained sober. According to these facts, and additional evidence that W.L.O. is extremely unattached from his mother, we are unable to establish that there is a close relationship between S.L.S. and her children as provided for in Iowa Code section 232.116(3)(c).

Iowa Code section 232.116(1)(k) (1991) states that the court may order the termination of the parental rights of a parent if it finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for permanent home.

The facts establish that the first two requirements of Iowa Code section 232.116(1)(k) have been met. The dispute pertains to the third requirement of that section. S.L.S. maintains that clear and convincing evidence was not shown to establish that the prognosis regarding her alcoholism

indicates that the children would not be able to be returned to her custody within a reasonable period of time as required in Iowa Code section 232.116(1)(k)(3). Based on the evidence presented at trial, we find this argument unpersuasive.

Dr. Beischel determined S.L.S. needs treatment for both alcoholism and psychiatric problems. He further determined the necessary therapy would be lengthy in duration. Joseph Parrinello, a psychiatric social worker, testified that structured visitation could possibly begin within one year if S.L.S. was following a treatment program.

A significant factor to consider is that S.L.S. has been involved in outpatient, inpatient, aftercare, and halfway house treatments for alcoholism for over four years. Nonetheless, she has been unable to remain sober. There is no evidence these unsuccessful attempts at correcting her alcohol problem will change in the future.

In her testimony at trial, S.L.S. failed to take responsibility for her own actions. She also attempted to rationalize, minimize, and justify her alcoholism. It appears extremely unlikely that S.L.S. will commit to the necessary therapy and a successful rehabilitation within a reasonable period of time. We reach this conclusion after reviewing S.L.S.'s past history of failure to follow through with any alcoholism program, her failure to remain sober, and her disposition at trial. In In re R.J., 436 N.W.2d 630 (Iowa 1989), a case with facts very similar to

the present case, the court stated, "We believe these children have waited long enough for their mother to rise above her debilitating dependency on alcohol." Id. at 635. In that case, the court also relied on the following:

"This is a history of good intentions, but feeble resistance to temptation and wrongdoing, and little or no consideration for the unwholesome influences created or the moral or mental welfare of these children." In these circumstances, we cannot gamble with the children's future. They must not be made to await their mother's maturity.

In re Kester, 228 N.W.2d 107, 110-11 (Iowa 1975)(quoting In re Morrison, 259 Iowa 301, 310-11, 144 N.W.2d 97, 102-03 (1966)).

As stated by the supreme court in In re A.C., 415 N.W.2d 609, 613 (Iowa 1987), cert. denied, 485 U.S. 1008, 108 S. Ct. 1474, 99 L. Ed. 2d 702 (1988)(citation omitted):

There are a number of stern realities faced by a juvenile judge in any case of this kind. Among the most important is the relentless passage of precious time. The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. Neither will childhood await the wanderings of judicial process. The child will continue to grow, either in bad or unsettled conditions or in the improved and permanent shelter which ideally, at least, follows the conclusion of a juvenile proceeding.

The court, in In re A.C., also stated that "plans which extend the twelve-month period during which parents attempt to become adequate in parenting skills should be viewed with a sense of urgency." Id. at 614.

It appears from the evidence that at a minimum S.L.S. needs to be in treatment for a year before she is capable of even structured visits with her children. Her past

history indicates it is highly unlikely that she will faithfully commit to rehabilitation. Realistically, she may never face her alcohol dependency. The children cannot wait indefinitely for a stable home.

We hold that the state proved by clear and convincing evidence that the grounds for termination provided for in Iowa Code sections 232.116(1)(e) and 232.116(1)(k)(1991) were present. The conditions pursuant to Iowa Code section 232.116(3) do not warrant a determination that termination is not necessary in this case. We conclude that the juvenile court's decision to terminate S.L.S.'s parental rights is in the best interests of the children.

We affirm.

The costs of this appeal are taxed to the appellant.

After considering all issues presented, we affirm the judgment of the juvenile court.

AFFIRMED.