IN THE COURT OF APPEALS OF IOWA

No. 1-473 / 91-866

FILED
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CLERK SUPREME COURT

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IN THE INTEREST OF P.S., A Minor Child,

J.O., Mother,

Appellant.

Appeal from the Iowa District Court for Mahaska County, Gene W. Glenn, Juvenile Referee.

The natural mother appeals the juvenile court's termination of her parental rights. **AFFIRMED.**

Eric J. Palmer, Oskaloosa, for appellant mother.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Judy Sheirbon, Assistant Attorney General, for appellee State.

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

HABHAB, J.

P.S. is a young boy. A founded physical child abused report was filed on the natural father. P.S. was subsequently adjudicated a child in need of assistance. He was later placed in foster care, where he remains.

In January 1991, at the order of the juvenile court, the State filed to terminate the parental rights of both the mother and the father. After a hearing, the juvenile court terminated the parental rights of both natural parents. The juvenile court relied on Iowa Code sections 232.116(1)(c) and 232.116(1)(e).

The mother, J.O., has appealed from the termination order. The father has not appealed. Because we find clear and convincing evidence supporting termination, we affirm.

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 give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

The primary 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 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 probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing to Dameron, 306 N.W.2d at 745); see also In re A.C., 415 N.W.2d 609, 613 (Iowa), cert. denied, 458 U.S. 1008 (1987).

To facilitate our examination of the mother's arguments, we set out the statutes relied upon by the juvenile court in terminating the mother's parental rights.

I. Termination Statutes

In the present case, the juvenile court terminated J.O.'s parental rights to her son, P.S., pursuant to Iowa Code sections 232.116(1)(c) and (e) (1991). These sections allow for termination when:

> c. The court finds that both of the following have occurred:
>
> (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
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> (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.
>
> * * *

e. The court 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, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(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.

Iowa Code § 232.116(1)(c) and (e) (1991).

II. The Mother's Arguments on Appeal.

The mother, J.O., claims she had stabilized her life before the termination hearing. Consequently she argues Iowa Code section 232.116(1)(c) is an inappropriate ground for termination. The mother claims the circumstances leading to the earlier CINA adjudication no longer exist. The natural father, the perpetrator of the 1989 physical abuse, is no longer in her home. J.O. has remarried and claims to have a suitable home.

J.O. also apparently contends the evidence did not support termination under section 232.116(1)(e), as she claims the evidence failed to show the child cannot safely be returned to her care.

Further, J.O. claims even if the termination is otherwise warranted, it should be avoided under Iowa Code section 232.116(3)(c). That subsection permits the court to avoid an otherwise warranted termination if it would be detrimental to the child due to the closeness of the parent-child relationship.

Before answering the mother's arguments, we review the facts as gleaned from the record.

III. The Facts.

P.S. was born in March 1985. His parents were formerly married to each other. However, around 1989 the parents separated, and their marriage has now been dissolved.

In 1989, the boy was adjudicated to be a child in need of assistance after an incident of physical abuse by his father. The father had apparently slapped P.S. hard enough to leave a palm print on the child's face. When a child protective investigator went to the house, the investigator was repeatedly threatened by the natural father. She later returned with police protection. The mother, J.O., appeared unwilling to defend the child and made excuses for the father's behavior.

Initially the child was left in the parents' home, subject to supervision. However, in November 1989, he was placed in foster care, where he has since remained.

The facts show J.O. and her ex-husband, G.S., were offered services for several years in numerous locations.

These were not only due to P.S.'s out-of-home placement, but in conjunction with the delinquent behaviors of another son and a daughter. Protective in-home services, day care, and family therapy, parenting skills instruction, and educational services have been offered. The parents only used these services sporadically. J.O. testified she did not need the family counseling and still does not need parenting instruction.

During the child's foster care the mother moved frequently. At the time of the termination hearing and since separation from her husband, she had lived at approximately seven different addresses. Most of these appear to have been apartments or homes of others, especially live-in boyfriends. She has lived with a series of boyfriends, some of whom have histories of violence and mental problems. J.O. has sometimes failed to keep the department of human services apprised of her address.

On February 15, 1991, J.O. married W.O. He has a history of nervous breakdowns and psychotic episodes. He has been institutionalized for most of his life since age fifteen. W.O. testified at the termination hearing he almost killed his mother when fifteen. He admitted he sometimes hears voices. He further testified he tends to get violent when drinking alcohol.

W.O. must take regular medication. The amount of medication is substantial. He is violent if he is off medication. W.O. has a history of being noncompliant with

medication. The mother, J.O., has apparently taken over the job of administering his medicine.

W.O. admitted he still drinks. He stated he realized problems existed with drinking, especially as it interferred quite seriously with his medication regime. However, he has taken no steps to seek counseling or obtain treatment for what appears to be an alcohol problem. He did indicate he would be willing to accept treatment, apparently if someone else were to instigate it.

W.O. has been institutionalized for most of his adult life. J.O. apparently met him when he was a patient at a mental health facility. At the time of hearing it appears he had been released for only a month and a half.

J.O. testified she had not been happy previously. However, now that W.O. was a part of her life, she contends she has found happiness and security.

During the child's foster care the mother has visited him regularly. Social workers testified they are not concerned the mother personally would commit physical abuse. However, they do question whether she would protect him from abuse by others. Social workers also believe the child's early intellectual deficits were caused at least in part by the mother's neglect and failure to provide stimulation. The child's intellectual deficits have largely disappeared during foster care.

J.O. did not seek visits or have any contact with P.S. from July to October 1990, even though the boy remained in the same foster home and attended the same school.

P.S. has attended special education preschool classes since September 1988. He has a history of social, cognitive, and motor delays. His teacher feels these were due to parental deficiencies. These difficulties included both speech problems and lack of toilet training.

When P.S. first began attending classes, he had a developmental age of twenty-four months, while his chronological age was about forty-two months. By the termination hearing, more than two years later, the boy had progressed to or beyond the developmental standard for his chronological age. His teacher testified he would be ready to enter regular classes at the next school year.

J.O. has made no effort to maintain contact with P.S.'s school teacher. This includes the year he attended special education classes while in his mother's custody.

IV. Analysis.

The current caseworker for P.S. recommended termination of parental rights for several reasons: the instability of J.O.'s lifestyle; ongoing safety concerns her new husband presents to P.S., just as past men; J.O.'s uncooperative behavior with services; and P.S.'s need for permanency. Our review of the record convinces us the caseworker is correct in her assessment.

Since October 1990, J.O. had two boyfriends, lived in three different homes, and made another move right around the termination hearing with her new husband. Prior to October 1990 and since P.S.'s CINA adjudication in March 1989, J.O. lived in seven different locations, usually with other boyfriends.

J.O. appears to be a very passive woman. She apparently lacks the capacity to protect her son if the man in her life became violent. This is reflected in her reaction to the initial investigation following the natural father's abuse of P.S. She has been unable to adequately handle her two older children as well.

We are equally concerned with the rather delicate balance in W.O.'s and J.O.'s relationship. We are convinced their present arrangement would put P.S. in jeopardy if returned to his mother. The mother's testimony basically reflects she is dependent on W.O. for her own happiness and security. W.O. is dependent on J.O.'s administration of his medications.

We determine the juvenile court correctly terminated the mother's parental rights, as P.S. cannot be safely returned to her at this time. The other requirements of section 232.116(1)(e) were established by clear and convincing evidence. We further conclude the necessary grounds for termination under section 232.116(1)(c) were clearly established. We affirm the juvenile court on this issue.

V. Parent-Child Relationship.

Iowa Code section 232.116(3)(c) (1991) indicates the juvenile court need not terminate parental rights if it is shown there is a close parent-child bond and to terminate the rights would be detrimental to the child. Contrary to the mother's argument, the evidence does not show a close mother-son bond in this case.

P.S.'s teacher testified he does not talk about his mother. However, he was excited when she gave him two cars for his birthday one year. P.S.'s caseworker indicated she has observed a limited parent-child bond.

In contrast, P.S. talks about his foster parents and their numerous family activities such as chores and church, the farm animals, and his room. He has expressed anxiety about possibly being separated from his foster parents, especially the foster father. He refers to the foster parents as his "mother" and "father." P.S. has also developed a significant bond with his homemaker and teacher.

There are other indications in the record which demonstrate some bonds between P.S. and his mother. Their limited relationship is not surprising given J.O.'s unstable lifestyle during the last three years and lengthy periods of no contact. We determine, after considering the overall record, the parent-child relationship does not outweigh the need to terminate parental rights. We affirm the juvenile court on this issue.

VI. Conclusion.

As we have so often said, this child should not be forced to endlessly await the maturity of his mother. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). Termination must occur if twelve to eighteen months have elapsed since the child was removed from the home and the parent still cannot take care of the child. Id. We cannot allow P.S. to remain in parentless limbo forever.

Evidence of the parent's past performance may be indicative of the quality of future care he or she is capable of providing. Dameron, 306 N.W.2d at 745. J.O. has not been able to provide a proper home for her older two children. She has shown herself to be very unstable and depends on others for her happiness and security. She was unable or unwilling to protect P.S. in the past. Furthermore, her new husband presents serious ongoing physical risks to this child.

In the light of the foregoing evidence, we determine the juvenile court correctly terminated the parental rights of the mother, J.O., to her son, P.S. We affirm the juvenile court in full.

Costs of this action are taxed against the mother, J.O.

AFFIRMED.