IN THE COURT OF APPEALS OF IOWA

FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE INTEREST OF L.M.C., and B.J.C., Minor Children,	)	**Filed August 29, 1985**
H. C. AND L.C., Parents,	)	
Appellants.	)	5-202 84-800
	)	

Appeal from the Iowa District Court for Polk County, Vincent Hanrahan, Judge.

The parents of two children appeal from the juvenile court order terminating their parental rights. AFFIRMED.

Ronald R. Rieper, Des Moines, for the parents (appellants).

Thomas J. Miller, Attorney General, and Gordon Allen and Charles K. Phillips, Assistant Attorneys General, for the State (appellee).

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

OXBERGER, C.J.

This tragic fact situation presents a difficult issue on appeal; whether a "no-fault" termination of parental rights should be affirmed.

The parents in this case have two children, a girl, L.M.C., aged four now, and a boy, B.J.C., who is eight years old. Both the mother, L.C., and the father, H.C., have been tested to show an intelligent quotient in the "defective range" and have been described as mildly mentally retarded. H.C. also has a hearing problem. The children first came to the attention of authorities when the parents asked that B.J. be removed from the home on February 24, 1982. The mother stated they had been having trouble controlling B.J. and she was afraid she would hurt him. The daughter, L.M.C., was removed from the home after a temporary removal hearing on March 24, 1982. Allegations were made that the children were physically abused or neglected and that B.J. had a scraped nose, had fallen off a car top, had a lacerated eye, a cigarette burn, a black eye, head lice, and had been bitten by a dog while in the family's back yard. Abuse was also cited with respect to L.M.C. in that she had cigarette burns on her face, a black eye, and a cut near her right eye. Since that time the children have remained in foster care while the family situation was evaluated and services were offered to the parents. Social workers and psychologists connected with the case determined that the parental rights should be terminated, since, pursuant to section 232.116(5)(c) of the Code, the children had been adjudicated in need of assistance, had been out of the home for 18 months, and the officials decided the parents could not make progress in correcting the circumstances leading to the CHINA adjudication. The parents assert the evidence was not sufficient to show harm would come to the children if they were returned.

We initially note that the authorities involved here switched their analysis of physical abuse to one of continuing neglect. Although one social worker stated she had found substantiated physical abuse, the record does not bear this out. This worker states that although there were plausible and confirmed explanations for the cigarette burns on the children, she decided the abuse was founded anyway since the mother was the primary caretaker and was in charge of the children's welfare. She also found abuse when the child was bitten by a dog, although the parents were inside the house and could not have prevented the attack, stating the mother should have been supervising the four-year-old at all times. Despite the fact a physician who saw the children and another social worker could not agree there was physical abuse, the worker reported the abuse was confirmed. We cannot agree that a parent is responsible for every harm that might come to a child, even when the parent is not present, and that this could form the basis for termination of parental rights. We instead turn our attention to the problem with nonintentional neglect.

The caseworker assigned to the family at the beginning, Connie Mitchell, observed the parents and children interact and described what apparently was the typical situation for the family. While the two children played, the father would sit in a corner of the room and was, for the most part, unresponsive to the children. When the children attempted to engage him in play, he would not react. At times he would become so absorbed in playing with the toys himself, he would not notice the children had become disinterested and moved on. A psychologist who observed the family also noted that during one session the father spent the time stringing beads. The mother took a more active role with the children, but the parents' main problem was with B.J. When with his parents, he would become increasingly aggressive and agitated, throwing toys, yelling, and

turning visits into chaotic situations. The mother, L.C. would at times react in a juvenile manner. In one instance, B.J. yelled at her and kicked her, and she responded by yelling back and kicked the boy. The social worker also observed the mother slap B.J.

Another problem that existed with home visits was that a large number of people would be at the home of the family visiting, preventing the parents from interacting with the children. Mitchell reported there were times during the visit in which she would have to intervene because neither parent appreciated imminent danger to the children. B.J. would play in the street, or on a fire escape. The mother typically would tell B.J. to stop, but would not follow through with action when the boy repeatedly ignored her warnings. The social worker would then stop the boy from the behavior to prevent injury.

Another social worker involved with the family for some time described a similar situation. She confirmed that L.C. did most of the nurturing available, while the father was mainly involved when L.C. directed him. The caseworker, Margie Applegate Morris, also confirmed the parents loved both children and wanted to have them returned. The parents were responsible for setting up visits, and were regular in arranging to see the children. Several types of services or evaluations were provided, and the parents complied with all that was requested of them. They had perfect attendance at Parent Growth Patterns classes where they would learn more about parenting skills. Their home was clean and safe, and they had set up gates to prevent the children from going into areas where they could be hurt.

However, Morris also testified that despite their efforts to learn how to change their behavior, she saw no changes in their abilities to parent. A large number of people continued to be present in the home during visits. The home visits became so chaotic that eventually they were moved to the caseworker's

office. L.C. slapped and kicked B.J. on occasions when she became frustrated with him. Morris also reported that B.J. continued to control his parents rather than they controlling him. He became increasingly agitated and violent during the visits, and safety of the children continued to be a problem.

Several psychologists evaluated the children, parents, and family as a whole. Dr. Barbara Cavallin observed the family for some time and repeated the caseworker's observations. When B.J. was with his parents, she said, he became aggressive and competitive and took control of the situation. The parents could not prevent him from repeating acts which endangered himself and others. The girl, L.M.C., became withdrawn around her parents. B.J. would destroy toys and throw them at people. L.M.C. played by herself and became isolated. Dr. Cavellin reports this behavior is not present when the parents are absent. Both children have thrived in foster care. B.J. has shown progress intellectually and developmentally. L.M.C. has also progressed and become more independent and outgoing. The brother and sister have become close and show affection to one another. The positive behavior disappears, however, when the parents are present.

The parents also apparently had a difficult time keeping a stepbrother of H.C. out of the home. He had been accused of molesting B.J., and the parents were told to keep him out of the house. Nevertheless, he often came to the house, although was rarely seen inside. On one occasion, a caseworker observed him in the house and saw his name on the mailbox. The parents explained he was taking his mail there but said he did not live there.

Three caseworkers, who observed the parents before and after services were offered to them, stated it was their opinion that the parents could not retain and put into use the training provided to them. They observed the parents tried to

change their behavior but simply could not. Five psychologists who evaluated and observed the family also stated that considering the parents' abilities, and the results of attempts to train them, they were incapable of providing a safe and stable home life for the children.

The attorney for the parents points out that of the services offered to the parents, only two were specifically designed to help the parents remedy their problems. Among the services offered were those of Parent Growth Patterns, foster care workers, counseling from Catholic Social Services and Broadlawns Medical Center, Parents Anonymous, Protective Day Care, evaluations at the Child Guidance Clinic, and homemaker services offered at the beginning of the adjudication. He contends only the homemaker and Parent Growth Patterns services were remedial in nature, although the caseworkers also provided information to the parents on how they could change their behavior. In addition, none of these remedial services were designed for mentally handicapped persons. Caseworker Ronda Heyer admitted services might have been sought from the Association for Retarded Citizens, the mental health unit, and additional homemaker services provided. She stated, "We should have done some brainstorming a year ago." She added that the children had been out of the home so long and were so disrupted by placement in foster care while visits continued that it would be harmful to them to try more services.

If this summed up the situation, we would have a difficult time terminating parental rights when there was some indication that the parents could be offered services that would enable them to change their behavior. However, there is ample information in the record that no matter what services were offered these parents, they cannot change. Caseworker Mary High noted the parents could not incorporate what they learned at the parenting classes into their actions with the children. The Parent Growth Patterns class report noted the parents tried to

learn what was presented and made some improvements, but that with the passage of time could not retain the information. Ms. Morris testified that the only service which would help the parents was a full-time live-in homemaker. Psychologist John Dilly also stated the only service which would make the necessary changes was a live-in surrogate parent. Another psychologist, Janet McDonough said she felt there were safety problems for the children and the parents were unlikely to be able to change their behavior.

Dr. Cavallin noted, "They seemed to be really trying to make a change. But there was very little difference in the response the children were making, and (B.J.) continued to be in control." If the behavior continued, Dr. Cavallin noted, B.J. would become more angry and aggressive, since there was no one in control of his behavior, adding, "As he grows older, he will become more able to simply rebel and become aggressive. And I could see a lot of delinquent type behavior appearing in this behavior." The girl, she indicated, would become more isolated and withdrawn.

Statements were made by the five psychologists that, after evaluating, testing, and observing the family, the parents could not change their behavior in time for the children. Four caseworkers confirmed this in their observations. All those involved recommended termination of parental rights for the best interests of the children.

We note that the court has stated that mental disability is a factor to be considered in terminating parental rights, although it is not a sufficient reason alone to reach that decision. In Interest of Wardle, 207 N.W.2d 554, 563 (Iowa 1973). In this case, witnesses testified that neither parents had adequate parent role models while they were children on which to base their parenting, and are unable to change their behavior.

We acknowledege it is a fundamental right of parents that they be allowed to rear their children, Stanley v. Illinois, 405 U.S. 645, 651, 92 S. Ct. 1208, 1212, 31 L. Ed. 2d 551, 558 (1972). However, the best interests of the children are always the primary concern. In Interest of Chad, 318 N.W.2d 213, 216 (Iowa 1982). Where children are not receiving proper care and treatment because the parents have abdicated their responsibility, the State must intervene. In re Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). Children should not be compelled to wait for their parents' maturity. In re Loeffelholz, 162 N.W.2d 415, 425 (Iowa 1968). They should not be left in a parentless limbo indefinitely. In Interest of Kester, 228 N.W.2d 107, 110 (Iowa 1975).

We believe the State has established that harm will come to these children if returned to their parents. The parents undoubtedly love their children and have tried to change their behavior. Nevertheless, they cannot change and the children's physical and emotional safety will be endangered if returned. This situation is especially pathetic because the parents want to change but cannot. The best interests of the children, however, are controlling. We affirm the court's decision to terminate parental rights.

AFFIRMED.