IN THE COURT OF APPEALS OF IOWA

No. 3-285 / 93-240

FILED
SEP 02 1993
CLERK SUPREME COURT

IN THE INTEREST OF Z.M., L.M., and V.M., Minor Children, 000393

H.M., Mother of L.M. and V.M.,
Appellant,

R.M., Father,
Appellant.

Appeal from the Iowa District Court for Appanoose County, Gene W. Glenn, Juvenile Court Judge.

The mother and father appeal from the juvenile court's termination of their parental rights. **AFFIRMED.**

Kevin S. Maughan of Clements, Pabst, Hansen & Maughan, Albia, for appellant mother.

Eric J. Palmer of Palmer & Palmer, Oskaloosa, for appellant father.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee State.

Daniel J. Jay of Drake, Wilson & Jay, Centerville, guardian ad litem for minor children.

Heard by Schlegel, P.J., and Hayden, J., and McCartney, S.J.*

*Senior judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

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MCCARTNEY, S.J.

The appellants, H.M., mother, and R.M., father, appeal from orders of the juvenile court judge terminating their parental rights in their respective children.

We affirm.

H.M. and R.M. were married in 1987. At the time of this marriage, H.M. had a daughter, A.B., from a prior marriage, and R.M. had a son, Z.M., from his prior marriage. A.B. was born in 1980, and Z.M. was born in 1983.

H.M. and R.M. have two children from their marriage, V.M. born in 1987, and L.M. born in 1990. This is the third time some aspect of this unhappy situation has been before us.

In 1989, A.B. alleged her stepfather, R.M., forced her to perform oral sex upon him. She also alleged her mother, H.M., had beat her with a belt. The department of human services (DHS) investigated the allegations and determined they were founded, and in December 1989 A.B. was adjudicated to be a child in need of assistance (CHINA) because of this sexual abuse and was placed in the care of her paternal grandparents.

In January 1992 H.M.'s parental rights to A.B. were terminated. The juvenile court found R.M. had never admitted to committing the sexual abuse and H.M. had continued to believe and support R.M. The court concluded A.B. could not be returned to H.M.'s care because H.M.

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could not protect her from further abuse. H.M. appealed. We affirmed the decision that H.M.'s parental rights to A.B. should be terminated. In re A.B., No. 2-321/92-433 (Iowa App. Sept. 29, 1992) (unpublished).

In May 1990, while the case involving A.B. was pending, the remaining children in the home, Z.M., V.M., and L.M., were adjudicated to be children in need of assistance due to R.M.'s sexual abuse of A.B. and H.M.'s lack of a protective attitude. The juvenile court found Z.M., V.M., and L.M. were at risk for sexual abuse by R.M. or physical abuse by H.M. Z.M. was placed in the care of his natural mother, P.H. V.M. and L.M. were placed in the care of their maternal aunt and uncle.

R.M. and H.M. also appealed this CHINA adjudication, and we again affirmed the juvenile court decision. In re Z.M., No. 1-327/91-108 (Iowa App. Sept. 24, 1991) (unpublished).

A dispositional hearing was held in December 1990. R.M. was ordered to seek sexual abuse counseling at his own expense. He did complete a court-ordered psychological evaluation and a drug and alcohol evaluation. He did not seek any further services.

H.M. was ordered to have individual counseling. She was provided counseling by the Rathbun Area Mental Health Center and then by the American Home Finding Association. However, she refused to believe R.M. had committed sexual

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abuse and would not leave him. H.M. had supervised visitation with the children.

In May 1991, Z.M. told his mother, P.H., and a teacher that while he had been living with R.M. and H.M., on several occasions R.M. had taken him into a bedroom, removed his clothes, and sexually abused Z.M. Z.M. stated he never wanted to see R.M. again. Z.M. also stated H.M. had beat him with a belt, causing him to bleed on one occasion. DHS determined the allegation of sexual abuse of Z.M. by R.M. was founded and the allegation of physical abuse of Z.M. by H.M. was founded.

After V.M. was placed in the care of her maternal aunt and uncle, she began to have nightmares about a monster coming to get her. She stated this monster was her father, R.M. V.M. began play therapy with Karen Leak of the Southern Iowa Mental Health Center. Leak stated V.M.'s behavior was indicative of some traumatic event in the home and that she displayed many similarities to a child who has been sexually abused. V.M. was also seen by Dr. Hamdan-Allen, whose impression was that she had posttraumatic stress disorder.

On September 17, 1992, the juvenile court ordered the placement of V.M. and L.M. be changed from the maternal aunt and uncle to foster care. The maternal aunt and uncle had become resistant to allowing H.M. visitation with the children.

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On September 24, 1992, the State filed a petition to terminate the parental rights of R.M. as to Z.M., V.M., and L.M., and the parental rights of H.M. as to V.M. and L.M. A hearing was held on December 10, 1992.

A social worker with the Appanoose County DHS testified that R.M. had not sought sexual abuse counseling. He stated that no services were available for a sexual abuse perpetrator who had not admitted to the sexual abuse. H.M. still supported R.M. and would not leave him. The social worker stated that as long as H.M. lived in that home, disbelieved the children, and supported her husband, no amount of visits and no amount of services would have remedied the situation. He further testified the situation had not changed since the CHINA adjudication, and the children could not be returned to the home.

H.M. testified at the hearing. She stated she still believed R.M. had not sexually abused A.B. and Z.M. She also stated she would not leave R.M. unless she was guaranteed the children would be returned to her. H.M. also presented the testimony of S.G., a child of the maternal aunt and uncle who had cared for V.M. and L.M. S.G. testified that the uncle had told her he had convinced V.M. the monster in her dreams was her father, R.M.

The juvenile court determined that as an untreated sexual abuse perpetrator, R.M. remained a danger to the well-being and safety of the children. Because H.M. did not believe R.M. had abused the children, she could not

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protect the children. The court found the children could not be returned to R.M. and H.M. without exposing them to danger. The court noted that services had been offered to the family. Furthermore, there were no additional services available which could lead to a correction of the situation. The court concluded it would be in the best interests of Z.M. to terminate the parental rights of his father, R.M. The court concluded it would be in the best interests of V.M. and L.M. to terminate the parental rights of their parents, R.M. and H.M.

R.M. and H.M. have each appealed the juvenile court's decision.

I. Our review in termination cases is de novo, but we give weight to the findings of the juvenile court, especially regarding the credibility of witnesses. In re A.R.S., 480 N.W.2d 888, 890 (Iowa 1992). The critical question, of course, is the best interests of the child. Id.

II. R.M. contends the State failed to show by clear and convincing evidence that his parental rights should be terminated as to Z.M., V.M. and L.M. In particular, he claims the State failed to show the children could not be returned to his care. R.M. believes the maternal uncle convinced V.M. that he, R.M., was a monster. R.M. also points out that he was ordered to pay for his own counseling, but that he did not comply because he did not

have sufficient money. He asks for an additional period of time to allow him to rehabilitate.

The termination of a parent-child relationship requires clear and convincing evidence. In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990). In determining the best interests of a child, we must consider what the future holds for the child if returned to the parent. In re M.M., 483 N.W.2d 812, 814 (Iowa 1992). Evidence of a parent's past performance is particularly relevant on this issue because it may show the quality of future care the parent is capable of providing. Id. The goal of Iowa Code chapter 232 is to prevent probable harm to the child; the statute does not require delay until after the harm has occurred. Id. at 815.

The law demands a full measure of patience with troubled parents who attempt to remedy a lack of parenting skills. In re A.C., 415 N.W.2d 609, 613 (Iowa 1987). In view of this required patience, certain steps are required by chapter 232. Id. But, beyond the parameters of chapter 232, patience with parents can soon translate into intolerable hardship for their children. Id. It is unnecessary to take from the children's future any more than is demanded by statute. Id.

The children were ordered to be removed from the home on May 31, 1990, thirty months before the termination hearing. During that time R.M. has made no efforts to rehabilitate himself. At his court-ordered psychological

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evaluation, R.M. stated the reason for his referral was to paraphrase his language, a vulgarity. He was hostile during the evaluation, and, although the juvenile court ordered him to enter sexual abuse counseling, R.M. never did so.

We conclude the State has shown by clear and convincing evidence the parental rights of R.M. to his children Z.M., V.M. and L.M. should be terminated. The evidence shows R.M. sexually abused at least two children in his household, A.B. and Z.M. R.M. was given thirty months to attempt to rehabilitate himself. During that time he has not taken a single step towards rehabilitation. We determine it is in the best interests of Z.M., V.M. and L.M. to terminate the parental rights of their father, R.M.

III. H.M. contends the State failed to show by clear and convincing evidence that her parental rights as to L.M. and V.M. should be terminated. She points out that there has been no finding that either V.M. or L.M. has been sexually or physically abused by the parents. H.M. contends V.M. and L.M. could be returned to her care. H.M. also points out that she attended all available counseling and that she participated in supervised visitation with the children. H.M. argues that the court could have ordered R.M. removed from the home, and that the court's failure to do so prevented the return of the children.

We find there is clear and convincing evidence V.M. and L.M. cannot be returned to H.M.'s care. The evidence

showed H.M. had physically abused at least two children in the household, A.B. and Z.M. At the termination hearing H.M. testified she still did not believe R.M. had sexually abused A.B. and Z.M. She also stated that she would not voluntarily leave R.M. unless she was guaranteed the children would be returned to her. H.M. has never asked the court to remove R.M. from the home, and only first mentioned this as a possibility at the termination hearing. We conclude H.M. herself is a continuing threat to the children and that she cannot be trusted to protect the children from the threat presented by R.M. or from her own abusive nature as evidenced by her conduct towards A.B. and Z.M.

We conclude the State has shown by clear and convincing evidence the parental rights of H.M. as to V.M. and L.M. should be terminated. H.M. admitted that she knew since at least December 1991, when her parental rights to A.B. were terminated, that her parental rights to her other children would most likely be terminated if she did not leave R.M. However, H.M. did nothing to change her living arrangement. We determine it is in the best interests of V.M. and L.M. to terminate the parental rights of their mother, H.M. These children should not be put at serious risk any longer.

The decisions of the juvenile court are affirmed. Costs of this appeal are assessed one-half to R.M. and one-half to H.M.

AFFIRMED.