IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 2-204 / 91-1952

IN THE INTEREST OF D.I., A Minor Child,

L.S., Mother,

Appellant.

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Appeal from the Iowa District Court for Poweshiek County, Gene W. Glenn, Juvenile Court Referee, and James P. Rielly, Judge.

Mother appeals a juvenile court decision terminating her parental rights. **AFFIRMED**

Franklin R. York of Ackley, Kopecky & Kingery, Cedar Rapids, for appellant.

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

Brian P. Bisbee of Bisbee Law Firm, Grinnell, for appellee guardian ad litem for the child.

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

OXBERGER, C.J.

Dominic was born on November 5, 1984. On April 18, 1987, the mother married. Dominic has a stepsister, H.S., who was born on July 25, 1987.

On January 21, 1987, the mother and the stepfather took Dominic to the emergency room for injuries to his left arm and bruises on his right cheek. A child abuse referral was made to DHS. A denial of critical care was founded for lack of supervision.

A second child abuse referral was received on February 27, 1987. Dominic sustained severe-looking bruises to his face. The parents claimed he fell out of bed. The report was "undetermined."

On March 25, 1987, DHS received another child abuse referral on Dominic. Dominic had long bruises on his cheek and a child's shoe print on his abdomen. This report was founded with the stepfather named as perpetrator of the physical abuse and the mother as perpetrator of denial of critical care. Subsequently, a child in need of assistance petition was filed. The petition was dismissed. Dominic was returned to the mother's custody.

On October 29, 1987, a report of further physical abuse allegations upon Dominic was received by DHS. The child had a "busted" mouth and black eye. With respect to the eye injury, Dominic reported his stepfather did it. A founded child abuse report was filed naming the stepfather as perpetrator of the abuse.

A CINA petition was filed on November 18, 1987. The petition alleged Dominic was a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2).

Several adjudicatory hearings were held. On January 21, 1988, DHS received another referral of alleged physical abuse and denial of critical care. Dominic had a black and blue mark in the left corner of his eye. DHS filed a report of denial of critical care. The juvenile court referee filed its findings and order on April 11, 1988. The juvenile court referee found the stepfather had inflicted the injuries upon Dominic. The juvenile court referee rejected the explanations for the injuries given by the mother and stepfather. The juvenile court referee concluded the mother had failed to properly supervise the child and protect him from physical abuse. The juvenile court referee rejected the opinion of a DHS staff worker who opined that Dominic could be returned home based upon the parents' cooperation in service programs. The juvenile court referee concluded the extensive and serious pattern of abuse warranted removal of Dominic from the home. The juvenile court referee therefore adjudicated Dominic to be a child in need of assistance within the purview of Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2). Temporary custody of the child was transferred to DHS for placement in foster care.

On April 15, 1988, the mother and stepfather requested a review of the referee's findings and order. On April 20, 1988, after a hearing, the juvenile court stayed certain portions of the referee's findings and order pending review and further order by the juvenile court. Dominic continued to reside at home pursuant to the stay order. Following a review hearing, the juvenile court vacated its order staying the findings and order of the juvenile court referee and reinstated in its entirety the findings and order of the juvenile court referee. Dominic was placed in foster care from August 10, 1988.

A dispositional hearing was held and on September 14, 1988, the juvenile court referee filed its findings and order. The parents continued to deny Dominic had been abused. DHS retained custody of Dominic and the parents were ordered to undergo psychiatric evaluations. The juvenile court referee ordered the parents to participate in therapy and parenting classes.

On February 10, 1989, another dispositional hearing was held. The Child Development Clinic at the University of Iowa Hospital School recommended Dominic remain in foster care. Dominic remained in DHS custody, despite the fact that the parents were making improvements in parenting.

Following a July 14, 1989, dispositional hearing, the juvenile court referee returned legal custody of Dominic to his mother and stepfather. The family was to continue

services provided by DHS. On January 19, 1990, a dispositional hearing was held and placement of Dominic remained in his parents' home.

On January 24, 1990, DHS investigated a report of child abuse on behalf of Dominic. Dominic had a purplish-blue bruise on his forehead, raised approximately the size of a quarter. Dominic stated his dad pushed him down the stairs. Dominic also reported that his back hurt. The parents provided various information regarding the incidents. A report of physical abuse was founded on the stepfather.

On January 26, 1990, an application for temporary removal of Dominic was filed. The juvenile court granted the ex parte order.

On February 5, 1990, a hearing was held on the temporary removal order, and an application to modify the dispositional order. The juvenile court referee found the stepfather's explanation of Dominic's injuries to be patently ludicrous. The juvenile court referee placed Dominic in the custody of DHS with placement in foster care. A dispositional hearing was held on March 9, 1990, and Dominic remained in the custody of DHS.

A hearing was held on an application for modification of the prior dispositional orders filed by the mother and the stepfather. The parents continued to deny abuse. On November 9, 1990, the juvenile court referee found Dominic

could not be safely returned to the custody of his parents. Dominic remained in the custody of DHS.

A review hearing was held on February 7, 1991. The juvenile court referee ordered the family to participate in a nurturing program. Following the nurturing program, a second review hearing was held. The parents continued to deny physical abuse of Dominic. The juvenile court referee ordered DHS to file a petition for termination of parental rights.

The State filed a petition for termination of parental rights. The mother testified that the night prior to the termination hearing, the stepfather was preparing to leave the home. The mother testified she chose Dominic over the stepfather. In its findings and order filed August 26, 1991, the juvenile court referee rejected the mother's testimony that the stepfather would not return to the home. The juvenile court referee found Dominic could not be returned to the home as a result of prospective physical abuse of the child by the stepfather. Based upon these facts, the juvenile court referee found it was in the best interest of the child to terminate the parental rights of his mother.

The mother filed a request for review. The district court affirmed the findings and order filed by the juvenile court referee. The district court found there was substantial evidence to support the conclusion of the

juvenile court referee that the family could not be reunited.

The mother filed this appeal.

SCOPE OF REVIEW: Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied sub nom. J.G. v. Tauke, 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 Dameron, 306 N.W.2d at 745).

TERMINATION OF PARENTAL RIGHTS: The sole issue on appeal is whether the trial court was correct in terminating the parental rights of Dominic's natural mother. The mother asserts it is not in the best interests

of the child to terminate the mother's parental rights. She argues each of the child abuse investigations were the result of physical injury to Dominic which implicated the stepfather. The mother argues the court specifically based its finding on the stepfather's presence in the home and the mother's inability to protect Dominic from the stepfather. Now the mother has decided to remove the stepfather from the home. Assurance are now being given by her the stepfather will not be allowed to return home.

There is little dispute, this child has been severely abused. Conflicting stories by the mother and stepfather describing how the injuries occurred, make it clear this mother was not willing to take steps to protect Dominic from the stepfather. The court, at its dispositional hearing on August 26, 1988 noted:

> . . . [the stepfather] and [the mother's] continued denial of physical abuse upon [D.I.] making rehabilitative therapy difficult if not impossible . . . in spite of [the mother's] awareness of [the stepfather's] excessive temper and past DHS investigations of physical abuse upon [D.I.], she has allowed the [stepfather] to be the sole caretaker of the child, the high probability that [the mother] has been present or aware when [the stepfather] has inflicted physical injury upon [D.I.] and her consistent non-action in protecting the child from injury or abuse, [the stepfather] and [the mother's] failure and omission to report injuries . . . the court finds that the child cannot remain in the home and be protected from the type of harm which has given rise to the adjudication herein. . . .

We find it very revealing that throughout this case the mother has not acknowledged abuse. She has stood by the

stepfather's stories describing the injuries and yet now acknowledges the stepfather must leave the home. Action, however, could have been taken by this mother long ago. It was not. There is evidence in the record the mother, along with the stepfather, have "severe inadequacies in personalities and parenting styles." Testimony from a social worker supervising the visits of the mother and Dominic believed he would be imminently likely to suffer harmful effects as a result of his mother's failure to exercise a reasonable degree of care in supervising him.

We find, as did the trial court, this mother's "eleventh hour" decision, on the morning of the termination hearing, to tell their attorney the stepfather was moving out of the home is not credible. The mother and the stepfather have denied responsibility for Dominic's injuries. The mother's passivity in exercising control over the stepfather is also apparent in dealing with Dominic. The State asserts Dominic has waited long enough for this mother and stepfather to learn to care for him in a nonabusive manner. We agree and affirm the trial court's termination of parental rights.

Each party will pay his or her own attorney's fees. Costs are taxed to the appellant.

AFFIRMED.