IN THE COURT OF APPEALS OF IOWA

No. 5-642 / 95-0979

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF B.C. and J.C., Minor Children,

M.C. and R.C., Natural Parents,

Appellants

Appeal from the Iowa District Court for Black Hawk County, Joseph Moothart, District Associate Judge.

M.C. and R.C. appeal the district court's termination of their parental rights to B.C. and J.C. **AFFIRMED.**

Mark D. Reed of Bertroche Law Offices, for appellants.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Judy Sheirbon, Assistant Attorney General, and Steven J. Halbach, County Attorney, for appellee.

Timothy D. Ament of Gartelos, Wagner & Ament, Waterloo, guardian ad litem for minor children.

Considered by Hayden, P.J., and Habhab and Huitink, JJ.

HAYDEN, P.J.

M.C. is the father and R.C. is the mother of B.C., born September 14, 1991, and J.C., born April 7, 1993. B.C. and J.C. were placed in emergency foster care following a temporary removal order. The court's finding revealed J.C. had been diagnosed with severe failure to thrive. Despite J.C.'s serious condition, the parents intended to leave the state and would not hospitalize J.C. B.C. suffered from chronic ear infections which multiple prescription medications were ineffective in eliminating. B.C. also suffered from an asthmatic condition. Despite this condition, the parents would not refrain from smoking around B.C.

In July 1993 the children were adjudicated CINA. The district court noted the parents' rights to three older children were terminated in May 1993. There were approximately fourteen to fifteen founded child abuse reports against the parents regarding these older children which included physical and sexual abuse and denial of critical care. With regards to B.C. and J.C., the district court found: The health of both children improved in foster care; the parents were uncooperative and hostile with caseworkers; the parents did not have a permanent residence of their own; and, the parents had not visited the children since May 10, 1993.

A dispositional hearing was held on September 8 and 22, 1993. In the court's order, the court again noted the two children had improved while in foster care. Although B.C. experienced a recurrence of the asthma-like condition and J.C. suffered

from an ear infection, the problems were easily and quickly remedied. The court also noted two instances where the parents refused to allow medical treatment for the children to proceed and exhibited a distrust for medical and social work professions

One doctor diagnosed the mother as suffering from depression disorder, post-traumatic stress disorder, and personality disorder. She had suffered from a family history of severe physical, sexual, and emotional abuse. Regarding the father, the doctor diagnosed him as having anxiety disorder and personality disorder. He was also sexually abused when he was a child. The father has a learning disability for which he receives SSI. He has served time in prison for burglary. Additionally, he believes it is appropriate to have more than one wife or more than one sexual relationship at a time. The court ordered the children be placed in the care, custody, and control of DHS for continued foster care with "liberal and frequent" supervised visitation. The parents' motion for change of venue was denied until the parents had established a permanent residence in another county.

By a February 1994 review hearing the parents had moved to three different cities and had requested a change of venue for the case as they had moved to the Knoxville area. The district court continued the previous dispositional order. However, in order to make reasonable efforts toward reunification, the judge ordered the children be moved in closer proximity to their parents. The request for change of venue was deferred.

In September 1994, the court filed its order resulting from a review hearing. The court found the parents had not followed through with the recommended classes, refused to deal with the sexual abuse issues, lacked a stable residence, and appeared to need a psycho-sexual evaluation to see whether there was a risk of physical and sexual abuse to B.C. and J.C. based on the harm suffered by the older children. The court also noted the parents' outlandish and unbelievable stories reduced their credibility to near zero. The parents' request for a change of venue was denied. A permanency hearing was scheduled for December 1994.

On December 15, 1994, the State filed a petition for termination of the parents' rights to B.C. and J.C. A combined permanency/termination hearing was held in April 1995. Following the hearing, the district court terminated the parents' right to B.C. and J.C. pursuant to Iowa Code section 232.116(1)(d) and (f) (1993).

The court stated there was clear and convincing evidence the parents lack the ability and willingness to respond to the services offered to them. The court acknowledged the parents' financial circumstances limited their ability to respond to some services and assume financial obligations for the children. However, such financial difficulties did not justify their failure to send letters, make telephone contact through collect calls, respond to attempts to arrange supervised visitation, or communicate with caseworkers. As such, the court found the parents had not maintained significant and meaningful contact with the children and made no

reasonable effort to resume care of them. The court also stated DHS had made reasonable efforts to reunite the family but it was in the best interests of the children to terminate the parents' rights.

The parents appeal. They contend the district court abused its discretion in failing to transfer venue so they could participate in services. They also claim there was insufficient evidence to support the termination and termination was not in the children's best interests.

I. Transfer of Venue.

A decision to grant or deny a motion for change of venue rests in the sound discretion of the trial court. *Locksley v. Anesthesiologists of Cedar Rapids*, 333 N.W.2d 451, 454 (Iowa 1983). Therefore, we review for an abuse of discretion. In order to show an abuse of discretion, one generally must show the court exercised its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976) (quoting *Weeks v. Burnor*, 326 A.2d 138, 1140 (Vt. 1974)).

Venue was proper in Black Hawk County when the case began because the children were living with their parents and were initially placed into foster care in Black Hawk County. In order to transfer venue from Black Hawk County to Marion County, where the parents later moved, the court must find the best interests of the

children or the convenience of the proceedings would be served by such a transfer of venue

In the juvenile court order refusing to transfer venue to the parents' county of residence, the court mentioned the parents' frequent moves during the juvenile case regarding their older children and the continuing pattern of moving during the present case. Originally, B.C. and J.C. were placed in a foster home in Black Hawk County, where the parents were located. In September 1993, the parents moved from Black Hawk County to Eddyville, then to Ottumwa. By November 1993, the parents moved to Knoxville in Marion County. In order to bring the children closer to the parents' new residence, the court ordered the children be moved to a foster home in Polk County. Subsequently, the parents again testified they were planning on moving to another county. They later moved to Ottumwa in Wapello County.

Given the frequency of the parents' moves, it was not an abuse of discretion for the juvenile court to deny the motion for a change of venue. It was the parents' decision to continually move away from where the children were located in foster care. First, the parents moved out of Black Hawk County where the children were initially located. Then, after the court attempted to help the parents by moving the children to a Polk County foster care closer to the parents, the parents again moved away from the children to Wapello County. It would not have been in the best interest of the children

to transfer venue of the case, and convenience would not have been served by such a transfer. The juvenile court did not abuse its discretion.

II. 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 sub nom. J.G. v. Tauke*, 469 U.S. 1222 (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).

Iowa Code section 232.116(1)(d) (1991) permits the juvenile court to terminate the parent-child relationship if the court finds all the following have occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

> (2) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 and the placement has lasted for a period of at least six consecutive months.
> (3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so.

Under this standard, we determine termination of the parents' rights in this case was appropriate and in the best interests of the children.

As the State points out, many services were offered and/or received by these parents and children during the years the department worked with the family. These services included: parent/child nurturing classes; in-home family therapy with numerous agencies; foster care for the children; psychiatric/psychological evaluation and counseling for the children; homemaker service; supervised visitation; parent/child assessments for the parents; anger management classes; art and play therapy for the children; child development clinic evaluation; sexual abuse evaluation and counseling for the parents.

In addition to the above services offered, the department took other measures to appease the parents including: allowing the parents to make collect calls to contact the children; moving the children to a foster home closer to the parents after the parents moved to Marion County; offering to conduct supervised visits halfway between the foster home and the parents' home; and, offering budgeting assistance after the parents indicated they suffered from financial difficulties.

Despite these services, the parents neither cooperated with the DHS nor made progress towards bettering their parenting skills. The parents refused to address abuse issues with regards to the older children, they did not attend anger management and some parenting skills sessions; they continued to smoke in the presence of the child with asthma despite being directed to the contrary, they were uncooperative with providers by either refusing to work with some or intimidating others with threats; they did not follow through with the bonding, nurturing, and parent training classes recommended; and, as of the termination hearing, they only met with their new therapist twice and put further sessions on hold until after the results of the hearing. Furthermore, the parents continually disrupted the offer and receipt of services by frequently moving and refusing to work with certain providers.

The parents have also not maintained significant and meaningful contact with the children. When the children were first placed in a Black Hawk County foster home, the parents moved out of Black Hawk County. After the children were relocated to a foster home closer to the parents new residence to aid in reunification efforts, the parents moved to another town one hundred miles from the children. Neither parent kept sufficient contact with the children despite having permission to make collect phone calls. Although the parents claim to have acquired $2500 in phone bills to the children, one caseworker claims they parents only contacted the agency approximately ten times for which they had to pay. The parents did not send cards, letters, or presents

through the case worker or service provider nor attempted to arrange phone visits with the children. Furthermore, as of the termination hearing, the parents had not visited the children face to face since May 1994.

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. In this case, there is evidence these parents abused, both sexually and physically, three older children for whom they no longer have parental rights. These parents have been unwilling to recognize any serious deficiencies in their parenting skills. They have refused to deal with the past allegations of sexual abuse, refused to participate in bonding, nurturing, and parent training, and failed to cooperate with DHS. As such, their parenting skills have not and will not improve.

These children should not be forced to endlessly await the maturity of their parents. *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.* As demonstrated above, these parents have not exhibited the ability to properly care for these children. To continue to keep these children in temporary foster homes is not in their best interests. *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989). We affirm.

AFFIRMED.