

IN THE COURT OF APPEALS OF IOWA

No. 1-290 / 91-158

IN THE INTEREST OF R.A.L.,
A Minor Child

T.L.,

Mother-Appellant.

FILED

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CLERK SUPREME COURT

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Appeal from the Iowa District Court for Scott County
Arlen Van Zee, Judge.

Natural mother appeals a judgment of the district court
terminating her parental rights. **AFFIRMED.**

Gary D. McKenrick of Gomez, May, McKenrick & Kelly,
Davenport, for appellant natural mother.

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

Stephen P. Wing of Dwyer & Wing, P.C., Davenport,
guardian ad litem for minor child.

Heard by Schlegel, P.J., and Hayden and Sackett, JJ.

SACKETT, J.

The issue in this appeal is whether the juvenile court correctly terminated the parental right of a mother to the youngest of her three daughters. The child was born February 13, 1988. The older children were born in 1982 and 1983. The mother also had a son who died in Detroit in February, 1986, five hours after his unattended birth.

This child was determined to be a child in need of assistance shortly after birth. She has spent all but about a month and one-half of her life in the same foster home. She spent forty-five days in her mother's care and five days in another foster home. The child has bonded with the foster family. There is an indication her foster parents might adopt her.

The mother is poor, uneducated, black and without spousal or extended family support. She has moved around the country. She was incarcerated as the result of shoplifting. She is an excellent housekeeper, and provides adequate meals for her children. She is also criticized for inadequate discipline. In support of its argument, the State points to a worker's report of his attempt to get the older children to camp. Emphasis has been given in the State's brief to the mother's inability to get the children to go to camp. The worker reported in part:

I want to inform you that I have very serious reservations about the continued placement of the older girls with the mother. During the week of Monday, June 11, through Friday, June 15, many more problems occurred with their placement. The older girls were all signed up for the Camp Age

Lincoln Day Camp that week. What should have been a fun and enjoyable time for the girls, and a break for the mother, turned out quite the opposite. The older girls were ready and excited about camp first thing Monday morning when I picked them up. When I picked them up at 5:00 p.m. after their first day at camp, the girls (primarily the oldest) started complaining about camp, and saying that they did not want to go back. The reasons they stated were: they had to do a lot of walking (which they didn't like), it was hot, and they wanted to play with their friends at home. I insisted that they were going to go to camp all week, as we used camp scholarships provided to us, and we paid \$25.00 registration fees for each one of them to go to camp.

When the girls got home, they started up complaining with their mother about camp, and I informed the mother that they needed to finish out the week. Later that evening, about 9:10 p.m. I received a call from the mother. She said the oldest girl was all upset and crying, and didn't want to go to bed. The mother called me for advice on how to handle the situation. The oldest girl said her mom told her to come inside about 8:00 p.m. but she wanted to stay outside and continue playing with her friends. The mother was able to get her to come inside, but she was carrying on, saying her friends were never going to play with her again since her mom forced her to come inside. When I talked with her, she continued crying almost hysterically, and then started talking more about not wanting to go to camp. I told her what I had already told her before, that she would have to finish the week. I told her to go to bed, and I would see her in the morning. I told the mother to remain firm with her, and have her go to bed.

The next day was almost a repeat of the day before. The oldest girl continued protesting her attendance at camp in the morning and evening. I received a call from the mother about 10:00 p.m. that night. The mother stated that the girls went to bed earlier, but they got up and were now running around the apartment, and would not go to bed. I spoke with the oldest girl and she stated, "Why do we have to go to camp? I don't want to go to camp. Can't you hear me, are you deaf? Bob, you can kiss my butt, you can kiss my butt." I told the mother to put the kids to bed, and not let them out of their bedroom for the rest of the night.

The following morning, Friday, June 15, when I came to pick up the girls for their last day at camp, more problems continued. When the mother answered the door to let me in, she stated "we've got a problem," Both girls were still in bed, and they refused to get up. The girls finally got up, but they argued over what clothes to wear, and they each went back and forth between wanting to go and then not wanting to go. At one point, the younger girl started threatening to hit the older girl with a shoe, and she did slap at her and used obscene language (fuck you, mother fucker, etc.) directed toward the older girl. The mother did nothing to correct the younger girl, but the mother finally verbally reprimanded her after repeated insistence by the older girl to do so. It was running late, and so we were only able to get the younger girl to go to camp. I informed the mother that the older girl should probably stay inside for the remainder of the day, as a consequence for her behavior. I heard her say this to the older girl before I left with the younger girl. Note: I later found out that the mother only kept the older girl inside until about noon, as she was hounding and pressuring her to let her go outside.

The caseworker has criticized the mother for not following his directions to force the two older daughters to go to camp against their wishes. This approach to the problem was a judgment call on the part of the worker.

Another approach to the problem would have been to visit with the children and camp personnel to see if something happened the first day of camp to cause the children to be unhappy. Such an approach is based on a theory children generally don't offer such resistance to camp unless there is a problem. This approach would attempt to resolve the dilemma by identifying and working out the problem at camp rather than forcing a child in a situation where he or she does not want to be. We give little weight to the worker's criticism of the mother on this issue.

This child and her older children were determined to be children in need of assistance primarily because of a mental disorder the mother suffers. Her condition has been diagnosed as a paranoid disorder. She has chronic grandiose and persecutory delusions. She gets high and euphoric and meets a number of the symptoms of a manic depressive. She is committed to prayer and has claimed at times to hear religious voices.

The mother has continually sought State assistance in raising her children. This child was removed from her parental home at the mother's request. The mother's mental problems make parenting difficult. The older children were removed because it was determined the mother was unable to provide discipline and direction. There was also concern that she was conveying to her children some of her religious beliefs. This child was removed, returned,

removed and returned. The removal was at the request of the mother, who felt unable to meet the demands of a young child. The children have not been subject to physical or sexual abuse.

The trial court terminated parental rights under Iowa Code section 232.116(1)(g), which provides:

g. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(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 six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

The mother concedes the first three grounds have been met. Her challenge is to the trial court's determination the child cannot be returned to her custody without being subject to adjudicable harm. The mother points out she has never harmed the child, but that the removal was the result of her request for assistance in parenting. She shows she has cooperated with department workers. She argues her inability to parent is the result of her mental condition. She contends her condition is compounded because she is poor and without extended family. She recognizes she cannot supply the home the foster parents can, but argues this is not the criteria by which she should be judged.

Before analyzing the elements of the case, we find it important to clarify our position on one issue. Evidence was introduced regarding the mother's religious practices. Some of her practices deviate from the practices of mainstream churches. The evidence was the mother prays, contends she hears from God and predicts certain events based on what she has learned talking to God through prayer. None of her religious practices have caused anyone physical harm. The mother has a constitutional right to practice the religion of her choice. This mother has a right to choose her own religion. See Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972). We will not rule on the merits of a particular religion. See Petition of Deierling, 421 N.W.2d 168, 170 (Iowa App. 1988); In re Marriage of Short, 698 F.2d 1310, 1313 (Colo. 1985); Sanborn v. Sanborn, 123 N.H. 740, 465 A.2d 888, 893 (1983); Waites v. Waites, 567 S.W.2d 326, 333 (Mo. 1978). The fact a parent holds a religious belief in opposition to the American mainstream is not relevant in assessing his or her ability to parent. See Deiering, 421 N.W.2d at 170; Gould v. Gould, 116 Wis.2d 493, 342 N.W.2d 426, 432 (1984); Johnson v. Johnson, 564 P.2d 71, 76 (Ala. 1977). We do not consider this mother's religious practices as evidence she is an unfit parent.

The problem that plagues this mother is her mental illness. The mother recognizes this problem creates limitations on her parenting.

Intensive reasonable efforts have been expended to help her keep the older children. Few, if any, have been expended to help with this child. In fact, the plan while the child has been in foster care has been to limit visitation, even though the mother has never hurt the child. It should be rare when an agency is using reasonable efforts to preserve a family that visitation be cut off between a child and his or her parent. This is particularly true where, as here, the parent has never physically or sexually abused the child and the child is in foster care because the parent has requested parenting assistance. If there are problems with the visitation, then reasonable efforts should be directed to correct the problem. Visitation problems must be realistically assessed. Even in the best homes children and parents have disagreements; children are disturbed about their parents' ideas. Foster parents must understand that the primary purpose of the child in need of assistance procedure is to reunite the family. Reasonable efforts must be made to assist the foster parents and the parents to communicate and work collectively to establish a visitation pattern that will be in the child's best interest. Where possible, foster parents and natural parents should be encouraged to arrange visitation without agency assistance. This will conserve agency resources and provide for additional visitation that might not otherwise be available in these times of serious budget cuts.

There is support in this state and others for terminating the parental rights of a parent handicapped by a mental illness. See In re M.W., 458 N.W.2d 847, 850 (Iowa 1990); In re K.F., 437 N.W.2d 559, 560 (Iowa 1989); In re M.M., 452 N.W.2d 753, 756 (Neb. 1990); In re A.C., 415 N.W.2d 609, 614 (Iowa 1987). One authority determined incompetent care due to mental illness to be one of the most common grounds on which a court may order termination. Simpson, The Unfit Parent: Conditions Under Which a Child May be Adopted Without the Consent of His Parent, 39 U. Det. L.J. 347, 355 (1962). Another authority suggests mentally handicapped parents may lose their children because of prejudicial enforcement of child neglect law. See Roos, The Law and Mentally Retarded People: An Uncertain Future, 31 Stan. L. Rev. 613, 623 (1979).

The mother does not argue she is currently able to assume custody of her daughter or that she will be able to do so in the near future. Her argument is she would not be in this situation if she were not poor and without extended family. She has never inflicted any kind of physical harm on her child, and her child's entry in the foster care system is primarily the result of her request for parenting assistance. Her arguments are powerful and troubling. Her arguments cannot easily be dismissed.

The mother is a handicapped person. Handicaps have been defined to include mental disabilities. See Halderman v. Pennhurst State School and Hospital, 446 F.Supp. 1295 (ED. Pa. 1977), aff'd in part and remanded in part, 612 F.2d 84 (1979), rev'd and remanded 451 U.S. 1 (1981). Resources are available in society for persons with handicaps. Should there be resources to assist this mother as a handicapped parent? The mother is not currently able to care for the child in her home. There is no evidence she will be able to care for the child in her home in the future. Therefore, at this point to maintain the biological family, the child would need to be placed in permanent foster care. Some states have rejected similar requests for supportive services. In re J.A.L., 432 N.W.2d 376 (N.D. 1988); In re M.M., 726 P.2d 1108 (Colo. 1986). What then of the rights of her child to a secure childhood? This child has bonded with her foster parents. They might adopt her. Adoption does not guarantee a stable and permanent home. See In re D.P., 465 N.W.2d 313, 316 (Iowa App. 1990).

Will the child be better equipped for life being raised in a more secure environment by biological strangers rather than learning to know her biological mother and understand her mental illness? Do we suggest to the child if we sever her biological ties one should sever his or her ties with a family member who suffers illness? Termination here will

cut off this child's ties to her sisters. We cannot assume termination of parental rights carries any guarantees of adoption. See In re D.P., 465 N.W.2d at 316. Involuntary termination of parental rights is an area we enter with little historical direction. We recognize the importance of biological ties. Parental rights are constitutionally protected. See Quilloin v. Walcott, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978); Wisconsin v. Yoder, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). If this woman had financial resources, she could hire supplemental care. If she had a supportive and helpful husband and/or extended family to help assume responsibilities for the children, it is very doubtful her deficiencies in parenting would cause the State to seek termination of her parental rights.

Our supreme court has, in similar factual situations, terminated parental rights and its precedent binds us. See In re A.C., 415 N.W.2d at 614. We affirm the termination.

AFFIRMED.

Schlegel, P.J., concurs; Hayden, J., specially concurs.

HAYDEN, J. (specially concurring)

I concur in the result only.