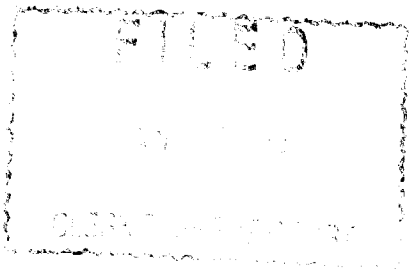
IN THE COURT OF APPEALS OF IOWA

No. 8-748 / 98-0524
Filed January 27, 1999



IN THE INTEREST OF B.K., Minor Child,

L.E. and E.E.,
Maternal Grandparents-Appellants,

T.K. and R.K.,
Parents-Appellants.

Appeal from the Iowa District Court for Plymouth County, Brian L. Michaelson, Associate Juvenile Judge.

Grandparents appeal from a dispositional order denying their motion to modify a prior order and placing the minor child in foster care. **AFFIRMED.**

Craig H. Lane, Sioux City, for maternal grandparents-appellants.

Joseph W. Flannery, Le Mars, for parents-appellants.

Thomas J. Miller, Attorney General, and Charles K. Phillips, Assistant Attorney General, for appellee-State.

John C. Polifka of the Juvenile Law Center, Sioux City, guardian ad litem for minor child.

Heard by Huitink, P.J., and Mahan and Zimmer, JJ.

HUITINK, P.J.

The parents and maternal grandparents of a minor child appeal a district court order terminating the child's parental rights and placing her in foster care for adoption proceedings. We affirm.

I. Background Facts and Proceedings.

Brittany K. was born on October 14, 1996, to Tonia K. and Raymond K., who live together but are not legally married. Elaine and Larry E. are Brittany's maternal grandmother and step-grandfather. The parties stipulated to Brittany's status as a child in need of assistance (CINA) on March 7, 1997, pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (n) (1995). Brittany was placed with Larry and Elaine from December 29, 1996 until October 20, 1997. The grandparents were allowed to intervene in the court proceedings. *See In the Interest of A.G.*, 558 N.W.2d 400, 404 (Iowa 1997)(granting grandparents right to intervene at the dispositional phase and be considered for custody of grandchild in CINA proceedings).[1]

A dispositional order was filed on October 8, 1997, providing custody of Brittany would transfer to Tonia so long as she and Brittany entered and cooperated with the Villa Maria Family Program. The order provided custody would revert to the Department of Human Services (DHS) without further court order if Tonia failed

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[1] We acknowledge Tonia and Raymond's concerns over the potential entanglement and problems which may arise when grandparents are permitted to intervene in CINA proceedings. Our supreme court, however, considered these same arguments in reaching its decision in *In the Interest of A.G.* Accordingly, we decline the parents' invitation to revisit and modify the supreme court's holding in *In the Interest of A.G.*

to complete the program. Tonia participated in the program from October 20, 1997 to November 12, 1997, when she elected to prematurely leave the program. Brittany was placed into a foster home effective November 12.

In January 1998, the grandparents requested the court remove Brittany from her foster home and place her in their care. The court concluded long-term placement with the grandparents would not be in Brittany's best interests and ordered Brittany to remain in foster care. The court also directed the State to initiate termination proceedings. The grandparents filed a timely notice of appeal from this order.

While the grandparents' appeal was pending, the court considered the State's petition to terminate Tonia and Raymond's parental rights. The court found notwithstanding the services provided to Tonia and Raymond, they failed to correct the circumstances of alcohol abuse, domestic violence, mental health issues, and inadequate parenting skills that lead to the CINA adjudication. Further, the court found Brittany was thriving in her foster home, and the foster parents indicated they would like to adopt her if parental rights were terminated.

Finding Brittany could not be returned to either parent after being out of their custody for six of the past twelve months, it ordered their parental rights terminated pursuant to Iowa Code sections 232.116(1)(c) and (g) (1997). The court transferred guardianship of Brittany to DHS for adoptive placement.

The parents and grandparents appeal. The parents contend DHS failed to offer reasonable services aimed at reunification of the family by: (1) allowing the

grandparents to have custody of Brittany for five months before entering Tonia in the Villa Maria Family Program; and (2) failing to monitor the negative relationship between Tonia and Elaine. The parents further contend Elaine and Larry intervened in the district court proceedings to sabotage the services offered to Tonia and Raymond and to testify against them in an attempt to adopt Brittany themselves.

The grandparents assert Tonia's parental rights should not have been terminated because she is capable of caring for Brittany with their continued help and assistance. They also contend the district court erred in not placing Brittany's care with them pursuant to Iowa Code section 232.117(3)(c) once parental rights were terminated. Additionally, they argue the district court lacked jurisdiction to proceed with termination proceedings in light of their pending appeal from the dispositional order.

II. Standard of Review.

We review termination proceedings de novo. Iowa R. App. P. 4; *In Interest of T.A.L.*, 505 N.W.2d 480, 482 (Iowa 1993). Accordingly, we review both the facts and the law, and we adjudicate rights anew. *Id.* Although we give weight to the factual determinations of the juvenile court, especially when considering the credibility of witnesses, we are not bound by them. *Id.*

III. Standards for Termination of Parental Rights.

The controlling standard applied in cases involving the termination of parental rights is the best interests of the child involved. *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.K.B., 572 N.W.2d 600, 601 (Iowa 1998)(quoting *In re C.M.W.*, 503 N.W.2d 874, 875 (Iowa App.1993)). The grounds alleged for the termination of parental rights must by statute be proven by clear and convincing evidence. *See* Iowa Code section 232.114(5)(c).

It is well-established that there exists a parental interest in the integrity of the family unit; nonetheless we also are cognizant that this interest is not absolute, but rather may be forfeited by certain parental conduct. *In re Dameron*, 306 N.W.2d at 745. The State has the duty to assure that every child within its borders receives proper care and treatment and it must intercede when parents abdicate that responsibility. *Id.* DHS must make reasonable efforts to reunify the family and provide services. *See* Iowa Code § 232.102(5) (1997); *In Interest of A.Y.H.*, 508 N.W.2d 92, 95 (Iowa App. 1993).

While the district court terminated the parental rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of the sections cited by the juvenile court in order to affirm the district court's ruling. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996).

IV. The Merits.

A. Reasonable Services.

Tonia and Raymond's contention concerning the services offered by DHS is two-fold: first, the DHS did not provide reasonable services aimed at solving the problems in their parent-child relationship with Brittany; second, the DHS facilitated the breakdown of the relationship between them and the grandparents, and allowed Elaine and Larry to "sabotage" the parents' attempts to reunite with Brittany. We will address each claim individually.

With regard to the services offered by DHS to Tonia and Raymond, we find the services offered were reasonable and adequate. The district court's decision to begin termination proceedings was spurned not by a lack of services offered to the parents, but rather by a complete failure by the parents to take advantage of the myriad of family and parenting services offered by DHS. The record is clear that Tonia and Raymond abdicated their parental responsibilities by not dedicating themselves to the various counseling and training courses mandated by the district court in its permanency plan. For instance, Raymond failed to complete the prescribed batterer's counseling program, and failed to dedicate himself to remedying

his alcohol abuse problem, as indicated by his second operating while intoxicated (OWI) arrest. Tonia also abdicated her responsibilities, as indicated by her quitting the Villa Maria Family Program before its completion, while having full knowledge that to do so would result in losing custody of Brittany. She also refused to take her prescribed medication for her schizophrenic condition.

The parents' second argument is equally unpersuasive. Essentially, the parents contend Elaine and Larry possessed an ulterior motive of adopting Brittany for themselves throughout their dealings with DHS. Tonia and Raymond argue but for the grandparents' "sabotage" and interference, their parental rights would remain intact. In this respect, Tonia and Raymond have switched their position from the one they asserted in the district court. At the dispositional hearing, Tonia testified:

> Q. What do you think is best for Brittany? What do you think right now would be in her best interests, would be best for her?
>
> A. For my mom and my step-dad to raise her for me.

Tonia's testimony at trial clearly is contradictory to the position she asserts on appeal. The record also reflects Elaine and Larry were very supportive of Tonia's attempt to undergo counseling and parental skills training. They visited her on numerous occasions while she was enrolled in the Villa Maria Family Program, often providing transportation for Raymond to visit as well. The record reflects they also strongly suggested Tonia not quit the Villa Maria program, as she would likely lose custody of Brittany.

Additionally, we find the district court's disposition in this case was unaffected by the alleged attempts by the grandparents to secure Brittany's adoption for themselves. The district court clearly enunciated that the reason for termination of parental rights was Tonia and Raymond's abdication of their parental responsibilities and failure to complete necessary remedial counseling and parental skills training, not the alleged "sabotage" efforts of the grandparents.

B. Grandparents' Claims.

The grandparents assert two separate claims: (1) Tonia's parental rights should not have been terminated because she is capable of adequately caring for Brittany with their continued help, love and support; and (2) once Tonia's parental rights were terminated, the district court should have placed Brittany's permanent care with them. We find both arguments to be without merit.

First, Tonia has empirically demonstrated an inability to fulfill her parental responsibilities toward Brittany. As discussed above, Tonia has abdicated her obligations by her failure to complete the requirements of the case permanency plan. Moreover, the record reflects Tonia was provided with twenty-four-hour counseling and support at the Villa Maria Family Program. Her failure to complete the program clearly illustrates her inability to provide for Brittany's care, regardless of the level of aid and support she receives.

We agree with the district court that there is clear and convincing evidence supporting the termination of the parent-child relationship pursuant to Iowa Code sections 232.116(1)(c) and (g).

With regard to Brittany's placement after termination, we are convinced the district court's disposition is proper. Although the preservation of family relationships is an important goal in attaining what is best for children born into those relationships, that factor should not be determinative in this case. *See In re J.M.W.*, 492, N.W.2d 686, 690 (Iowa 1992).

Our supreme court encountered similar facts in its decision in *J.M.W.*, when it stated:

> We do not have here, as we did in *Reed*, an immediate family relationship interrupted by the sudden death of both parents. Rather, we have a termination of parental rights wherein parental disqualification was established. That circumstance substantially diminishes the role of the grandparent-grandchild relationship. We have recognized in other contexts that when the rights of natural parents are legally terminated "the rights of natural grandparents likewise end." (citations omitted.)

Id.

We do not, however, rest our decision entirely on the diminution of the grandparents' "family relationship" with Brittany. Even if the grandparents' blood relationship is given full recognition, the other considerations that arise from the evidence tip the scales heavily in favor of placing Brittany for independent adoption. Determination of parenting ability must necessarily be based on what is likely to occur in the future not only because of present conditions but also because of what

has occurred in the past. *Id.* (citing *Stafford v. Taylor*, 158 N.W.2d 621, 624 (Iowa 1968)).

Our review of the record indicates the district court was concerned with Larry and Elaine's hostility toward the services offered by DHS and other entities. The grandparents indicated they were not willing to maintain contact with the services if they were named as Brittany's guardians. The record also contains several psycho-social evaluations and adoptive family assessments which do not recommend Larry and Elaine as adoptive parents. These evaluations, as well as those of DHS and Brittany's guardian ad litem, all recommended adoption outside the family was in Brittany's best interests. We find all of these facts relevant indicators of the level of parenting Larry and Elaine are capable of providing Brittany should they be granted her physical care. We are convinced they cannot adequately meet Brittany's needs.

Even more significant in our view is the likelihood, implicitly recognized by the district court, that the primary objective of Larry and Elaine in this litigation is to serve as Brittany's surrogate parents, while fostering a continuing relationship with Tonia and Raymond. Both Larry and Elaine indicated such an intent during the various evaluations conducted through DHS. We find such an arrangement not in Brittany's best interests. We agree with the district court when it stated:

> Brittany deserves the opportunity to establish permanency and stability in her life. For this to be accomplished, it is in her best interests that the impediments to her forming new, lasting family relationships should be swept away.

We affirm the district court's disposition regarding Brittany's placement in foster care pending adoption proceedings.

V. District Court's Jurisdiction to Terminate Parental Rights.

We have carefully considered the grandparent's jurisdictional claims and we find them to be without merit. *See* Iowa Code § 232.133(3) (providing an appeal "shall not suspend the order of the juvenile court regarding a child and shall not discharge the child from the custody of the court . . . unless the appellate court otherwise orders on application of an appellant"). *See also In the Interest of B.L.*, 470 N.W.2d 343, 347 (Iowa 1991)(holding juvenile courts retain a residuum of jurisdiction to handle issues involving the child's welfare).

AFFIRMED.