

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 23 1989

CLERK SUPREME COURT

IN THE INTEREST OF
E.K., A Child.

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D.K., Mother,

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9-257
89-52

329

Appellant.

Appeal from the Iowa District Court for Muscatine County (No. 2599), John G. Mullen, District Associate Judge.

The mother of a child appeals from a juvenile court order terminating her parental rights. **AFFIRMED.**

Neva Rettig Baker of Muscatine Legal Services, Muscatine, for appellant mother.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; and Anne Burnside, Assistant County Attorney, for appellee State.

William Creasey of Goedken & Creasey, Muscatine, guardian ad litem for the child.

Considered by Donielson, P.J., and Schlegel and Habhab, JJ.

DONIELSON, P.J.

D.K., the mother of E.K., appeals from a juvenile court order terminating her parental rights. She challenges the sufficiency of the evidence to establish that the child cannot be returned to her care. She also contends the juvenile court erred by relying primarily on her mental illness as a factual basis for termination. Finally, she contends that termination under this record denies her due process right to the integrity of the family unit. We affirm the juvenile court order.

The child in question is a girl born in July 1976. Her parents were married to each other at that time. However, sometime in 1985 her father abandoned the family. The father has had no contact with the child since 1985.

E.K. lived with her mother until July 1986, when she was ten years old. The mother suffers from mental illness. She has been diagnosed as a paranoid schizophrenic. During one period of active mental illness she formulated the idea that refrigeration was bad; as a result of this idea, she fed her children spoiled food until they became ill, and she then refused to obtain proper medical care for the children.

At that time the child and her two-year-old brother were placed in emergency foster care. Both children were adjudicated to be children in need of assistance in October 1986. The children remained in foster care while their

mother was undergoing treatment at the Mental Health Institute. In December 1986 the children were returned to the mother's home on a trial basis. The mother voluntarily returned E.K.'s younger brother to foster care in January 1987. The mother's mental condition deteriorated drastically and in July 1987 the girl in question was once again placed in foster care. She has remained in foster care since that time although she has had continuous visitation with her mother.

The parental rights of both parents have already been terminated as to the younger brother, and that termination was affirmed by the Iowa Court of Appeals on February 23, 1989. In the Interest of D.J.K., No. 88-1272.

In September 1988 the State filed the present petition to terminate the parental rights of both parents with regard to the girl involved here and after a hearing, the juvenile court terminated the parental rights of both parents. E.K.'s father has not appealed the termination order.

Appellate review of the proceedings to terminate a parent-child relationship is de novo; thus, it is this court's duty to review the facts as well as the law and adjudicate their rights anew. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom the court heard and

observed firsthand, but we are not bound by these findings. Id.

Central to a determination of this nature are the best interests of the child. Id. In this connection we look to the child's long range as well as immediate interest. Id. Hence, we necessarily consider what the future likely holds for the child if returned to his or her parents. Id. 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 that parent is capable of providing. Id.

I. Mental Illness Factor. We will first address the mother's contention the juvenile court erred by relying primarily on her mental illness as a factual basis for termination. We are guided by the rule that mental disability, standing alone, is not a sufficient reason for termination of the parent-child relationship. In Interest of K.F., 437 N.W.2d 559, 560 (Iowa 1989), citing In re O'Neal, 303 N.W.2d 414, 422 (Iowa 1981). Nevertheless, "it is a proper factor to consider and, when it contributes to a person's inability to parent, may be determinative on the issue of whether termination is required in the child's best interest. In Interest of K.F., 437 N.W.2d at 560.

D.K. concedes her illness is a proper factor, but contends it was improper to make the final determination based on her illness. The record shows that D.K. has

recurring episodes of severe illness during which time she is not capable of managing her own affairs nor taking care of her children properly. The illness manifests itself in D.K.'s neglect of her own personal hygiene, her failure to maintain minimal home sanitation, and her neglect in providing basic care for her children. In fact, prior to E.K.'s final removal from the home, E.K. had taken on the parental role in providing meals for herself and her mother. We find that D.K.'s mental illness contributes substantially to her inability to parent her children and therefore her mental illness may properly be the determinative factor in termination of her parental rights.

II. Sufficiency of the Evidence. Termination was ordered in this case under Iowa Code section 232.116(1)(e) (1987). Under that statute, termination of parental rights may occur if:

- (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 for at least twelve of the last eighteen months.
- (3) 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.

A child cannot be returned as provided in section 232.102 if upon return the child cannot be protected from some harm which would justify adjudication of the child as a child in need of assistance. Iowa Code § 232.102(4)(b) (1987). The

mother here challenges the sufficiency of the evidence to establish that her daughter cannot be returned to her care.

The grounds for termination of parental rights must be shown by clear and convincing evidence. Iowa Code § 232.116(1)(e) (1989). The mother here contends that she has been in a state of remission since October 1987 and has demonstrated an ability to function on a personal and social level. She asserts there is not clear and convincing evidence that she cannot provide an environment free from abuse or neglect.

The Iowa Supreme Court recently considered the sufficiency of the evidence to support a termination in In Interest of K.F., 347 N.W.2d 559, 563-64 (Iowa 1989). K.F. is factually similar in that it involved termination of a mother's parental rights based on her mental illness. The court concluded in K.F. that the decisive question in a case involving a recurring mental illness is whether the mother, if allowed to resume her daughter's care, would remain in remission and maintain a stable home for her, thus extinguishing the need for the child's continued CINA status. In Interest of K.F., 437 N.W.2d at 563.

The record reveals that D.K. has been committed seven times since 1977 for treatment of her illness. Prior to her commitment in July 1986, D.K. had not been hospitalized since March 1982. She apparently was in remission during that time until the refrigeration incident. Paranoid

schizophrenia can be controlled to some extent by medication, but people who suffer from the illness, including D.K., have a poor history of taking the medication. This is apparently because they, like D.K., deny they suffer from any illness.

D.K.'s illness results in poor judgment and neglect of her parental responsibilities. The refrigeration incident indicates D.K. is not able to make rational decisions concerning E.K.'s health and need for medical assistance. D.K. continues to express her distrust of doctors and refuses to seek medical assistance for herself or her daughter. Although E.K.'s teeth are cutting into her gums, D.K. denies any need for braces. D.K.'s poor judgment is further demonstrated by an incident in which D.K. refused to wear her glasses while driving and insisted her daughter stick her head out the car window and navigate. In addition to these incidents, D.K.'s illness results in depression, low energy levels, and lethargy. During these episodes D.K. fails to respond physically or emotionally to the needs of E.K. E.K. has been left to carry on household and personal responsibilities herself in addition to caring for her mother. There is also evidence in the record D.K. became violent during a supervised visitation. D.K.'s illness is apparently activated by the stress of parenting when she is not on medication.

E.K. is now old enough to have some understanding of her mother's illness. Although E.K. is not afraid of her mother, she does express apprehension at being reunited with her and fears this period of remission will not last. During her mother's illness, E.K. has had the responsibility of providing her own essential needs, including food, clothing, structure, and discipline. E.K. has suffered emotional harm due to her mother's neglect of her parental duties. She needs stability in her life and the opportunity to grow up without the responsibility of carrying on her own parenting.

We find sufficient evidence D.K., if allowed to resume her daughter's care, would again experience periods of psychosis. This would result in her inability to provide the essential needs of her daughter, thus warranting E.K.'s continual CINA status. We do not, by our holding here, infer that parents who suffer from paranoid schizophrenia are unable to care for their children and should have their parental rights terminated. On the contrary, each case must be decided on its own facts. However, it is apparent in this case that the parent-child relationship would require continual intervention from the Department of Human Services. A child should not be forced to endlessly suffer the parentless limbo of foster care, Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977). Based on the mother's past performance in failing to provide her daughter's physical

and emotional needs during the active stages of her illness and the likelihood she will not remain in remission if placed in the stressful parental role, we find it is in the best interests of E.K. to terminate D.K.'s parental rights.

III. Fundamental Liberty Interests. The mother's final contention is that the termination statute violates her fundamental parental rights. She seems to be arguing that the "all or nothing" aspect of the statute as applied to her situation violates her fundamental right in maintaining the parent-child relationship. She asserts that even though she may not be able to resume the full care and custody of her daughter, the State must show that the harm to her daughter from maintaining the relationship is greater than the harm in continuing the relationship.

A parent has a fundamental liberty and privacy interest in maintaining the integrity of the family unit. Alsager v. District Court of Polk County, Iowa, 406 F. Supp. 10, 16 (S. D. Iowa 1975), aff'd 545 F.2d 1137 (8th Cir. 1976), cited with approval in In Interest of M.H., 367 N.W.2d 275, 280 (Iowa App. 1985). This interest includes the right to the care, custody, management, and companionship of minor children. May v. Anderson, 345 U.S. 528, 533, 73 S. Ct. 840, 843, 97 L. Ed. 1221, 1226 (1953). A parent's fundamental interest and the rights attaching thereunder are not absolute, however, and may be forfeited by certain conduct. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa

1981). The State, as parens patriae, has the duty to assure that every child within its borders receives proper care and treatment and must intercede when parents abdicate that responsibility. Id. Iowa Code Chapter 232 sets out the conduct which forfeits the parental rights and authorizes state intercession. Chapter 232 carefully balances the competing interests of the child and the parents' rights. In Interest of T.D.C., 336 N.W.2d 738, 740 (Iowa 1983).

In addressing D.K.'s claim, we first point out that the termination statute does require the State to show by clear and convincing evidence the child cannot be returned to her mother's custody. In Interest of C. and K., 322 N.W.2d 76, 78 (Iowa 1982); Dameron, 306 N.W.2d at 745; Iowa Code §§ 232.116(1)(e), 232.102(4) (1989). The appellate courts of this state have interpreted the statute to require a showing of harms; that is, a showing that the harm to the child in allowing the parent-child relationship to continue is greater than the harm to the child in terminating that relationship. In Interest of C. and K., 322 N.W.2d at 81; In Interest of D.T., 418 N.W.2d 355, 357 (Iowa App. 1987).

We also note that while it is true the mother's rights must be considered, the central consideration in termination proceedings is the best interests of the child. Dameron, 306 N.W.2d at 745. In making the child's welfare the paramount consideration, we do not deprive the

parent of due process. In Interest of Vanderbeek, 231 N.W.2d 859, 862 (Iowa 1975). Therefore, a determination that termination is in the best interests of the child does not violate the parent's fundamental rights because such rights have been forfeited by the parent's conduct.

The mother here argues no showing was made that her continued relationship through visitation was more harmful than termination. We disagree. A child should not be forced to endlessly suffer the parentless limbo of foster care, Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977). The termination statute specifically provides for termination when the child has been in foster care for twelve of the last eighteen months and there is clear and convincing evidence the child cannot be returned to the parent's custody. Iowa Code § 232.116(1)(e) (1989). The law demands a full measure of patience with troubled parents who attempt to remedy a lack of parenting skills. In Interest of A.C., 415 N.W.2d 609, 613 (Iowa 1987). However, patience with parents can soon translate into intolerable hardship for their children. Id. The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. Id. These principles warrant the inference that it is in the best interests of the child to terminate the relationship rather than continue an indefinite relationship through periodic visitation.

We note the termination statute does provides for a permanency order, which is a less severe disposition than termination. Iowa Code § 232.104(2)(d) (1989). However, such an order may only be entered when it is in the best interests of the child. Iowa Code § 232.104(e)(a) (1989). E.K.'s long-range interest will be best served by terminating the parent-child relationship and all parental rights, thereby affording her the advantage of a suitable adoption. Dameron, 306 N.W.2d at 747. The longer this child remains in foster care, the more difficult a suitable adoption becomes. Id. We therefore cannot justify denying her a brighter future in the vague, if not fanciful, hope that her mother will continue to remain in remission. The odds against achieving this are unfavorable; the risk in waiting is too great. Id. We find a permanency order would not be in E.K.'s best interest.

We find sufficient evidence E.K. cannot safely be returned to the custody of her mother and that it is in her best interests to terminate the parent-child relationship. We do not find that the termination statute as applied here unconstitutionally deprives D.K. of her fundamental liberty interest. Accordingly, we affirm the juvenile court.

AFFIRMED.