IN THE COURT OF APPEALS OF IOWA

No. 0-296 / 00-0144

Filed July 26, 2000

FILED
JUL 26 2000
CLERK

IN THE INTEREST OF

S.D. and R.D. MINOR CHILDREN

T.D., MOTHER,

Appellant.

Appeal form the Juvenile District Court for Polk County, Karla J. Fultz, Judge.

Mother appeals the termination of her parental rights to her daughters.

AFFIRMED.

William A. Price, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, Jenniffer Panko-Rahe, Assistant County Attorney for appellee-State

George Arvidson, Des Moines, guardian ad litem for the minor children.

Considered by Sackett and Hecht, J.J., and Honsell, S.J.*

Senior judge assigned by order pursuant to Iowa Code Section 602.9206 (1999).

HONSELL, S.J

S.D. and R.D. were born on March 26, 1999. Their father died during April of 1999. Child in Need of Assistance Petitions were filed on April 29, 1999. On May 4, 1999, ~~premised~~ on events that took place on April 27, 1999, an Order for Temporary Removal of S.D. and R.D. was entered and the children were placed in the temporary legal custody of the Department of Human Services. Removal Hearing was held on May 12, 1999, removal of the children was confirmed, and it was further ordered T.D. be afforded supervised visitation at the discretion of DHS. The children were not in T.D.'s physical care for more than six consecutive months prior to the termination hearing. On June 25, 1999 the children were adjudicated as Children in Need of Assistance. The court further found placement outside of the home was necessary because continued placement in the home would be contrary to the children's welfare, and reasonable efforts had been made to eliminate the need for removal. Disposition Hearing was had on October 19, 1999 and continued out-of–home placement was deemed necessary because reasonable efforts had failed to eliminate the need of removal. T.D. was ordered to participate in a number of services aimed at providing her with the skills necessary to provide her children with a safe environment.

A Petition To Terminate Parental Rights was filed November 10, 1999. On November 24, 1999 a motion to Strike and Recast the Petition to Terminate Parental Rights was filed. It asserted that the averments made in the petition were not simple, concise and direct, and that the pleading was prolix and confusing. The motion requested that the court order the petitioner to recast the

pleading. The court subsequently overruled the motion "For reasons Set Forth on the Record."[1]

Prior to April 27, 1999, the day when DHS workers went to T.D.'s residence, Department of Human Services personnel were aware that T.D. had a history of substance abuse; she had not participated in substance abuse treatment; and she had failed to cooperate with DHS requested participation in offered services concerning other children of T.D.[2] When DHS workers went to T.D.'s home on April 27, 1999 they found two women caring for the children for T.D. who was not there. Neither woman knew the names of the twins. One woman appeared to be under the influence of a drug or drugs. Had a medical emergency involving either of the children arisen, neither of the women was in a position to cope with it in an appropriate and timely manner. This incident led to the institution of the proceedings giving rise to this case.

Pursuant to court order T.D. completed a substance evaluation on June 10, 1999. During that evaluation she indicated that the last time she knowingly used drugs was in March of 1998. When it was later learned T.D. had tested positive on May 12, 1999 for methamphetamine use, attempts were made to schedule another evaluation. However, T.D. eluded such attempts until August by which time T.D. had indicated to her DHS worker that she had used methamphetamine since 1985.

---

[1] The original court order was lost and a duplicate filed on March 10, 2000. See page 45 of the Appendix. The hearing on the motion to strike and recast was court reported as shown beginning at page 110 of the Appendix. During the hearing T.D.'s counsel stated T.D. didn't want the petition dismissed, however, he could not ethically answer paragraph 10 of the petition because of its prolixity in that portions of the allegations may have been known to him to be true therefore those facts could not be denied.

[2] T.D.'s parental rights concerning her other two children were terminated on April 28, 1999

During July of 1999 T.D. completed a psychosocial evaluation after missing four appointments. The evaluation concluded in part that she was involved in the use of drugs. The evaluator's diagnosis regarding T.D. was she suffered from "Psychoactive substance Abuse (methamphetamines and marijuana) [and] Narcissistic Personality Disorder with Antisocial and Paranoid Traits, Sadistic Traits".[3]

After completing an evaluation in August, T.D. was referred to a Dual Diagnosis Treatment program. She completed the intake procedure and attended only one group session. She didn't attend any individual sessions. T.D. honored only four of nineteen requests for drug screening made prior to the end of August 1999. She did not take advantage of court ordered supervised visitations. During a period of six months she did not appear for eight weekly visits and was late for four others.

Reasonable and appropriate services were made available to T.D. to help her remedy the aforementioned problems. She failed to cooperate and take advantage of them. She did not appear at the December 21, 1999 termination trial which culminated in the order terminating her parental rights.

I. The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 Iowa App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. T.D. contends the trial court abused its discretion in overruling T.D.'s motion to strike and recast the petition. In order to show any abuse of

discretion, the party must show the juvenile court's action was unreasonable under the attendant circumstances. *In re J.L.L.*, 414 N.W.2d 133, 135 (Iowa 1987).

The juvenile court clearly explained on the record the reasons for overruling the motion and review of the motion, the resistance to it, and the record does not reflect the decision was unreasonable.

III. T.D. contends the State failed to offer clear and convincing evidence that the children could not be returned to her pursuant to Iowa Code sections 232.116(1)(f) and (k), and that it was in the best interests of the children to have the parental rights of their mother terminated. Section 232.116(1)(f) provides termination may be declared if all of the following have occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.
> (3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services that would correct the situation.
> (4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

Section 232.116(1)(k) provides that termination may be declared if all of the following have occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.
> (2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.
> (3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

---

[3] Pages 73 and 74 of the Appendix.

When the juvenile court terminates parental rights on more than one statutory ground, we need only find ground to terminate under one of the sections cited by the juvenile court to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999) (citing *In re A.J.*,553 N.W.2d 909, 911 (Iowa App. 1996)).

A good prediction of the future conduct of a parent is to look at the past conduct. *In re N.F.*, 579 N.W.2d 338, 341 (Iowa App. 1998). The parent's past performance may indicate the quality of care the parent is capable of providing in the future. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997).

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must still be in the best interests of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the best interests of a child, the court looks to the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The court must consider the physical, mental, and emotional condition and needs of the children in deciding to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996).

Upon reviewing the record de novo we find that the evidence clearly and convincingly reflects that the statutory criteria of Iowa Code section 232.116(1)(f) has been met, and the best interests of the children dictate that T.D.'s parental rights be terminated.

We affirm the decision of the juvenile court terminating T.D.'s parental rights.

AFFIRMED.

SACKETT, C.J. (concurs specially).

I concur specially. Tracey, the mother of twin daughters Stevie and Ricki, born in March of 1999, appeals from the juvenile court's order terminating her parental rights. The father of the children committed suicide shortly after their birth. Tracey contends the juvenile court abused its discretion in denying her motion to strike and recast the petition for termination of parental rights. I agree with Tracey that the sixteen-page petition does not conform to the dictates of Iowa Rules of Civil Procedure and is cast in a manner that makes it difficult to answer and creates some confusion as to the posture the State intends to take. The petition does serve to notify Tracey of the nature of the petition filed against her. The issue of whether a termination petition must conform to the Iowa Rules of Civil Procedure has never been clear to me. Therefore, I concur with the majority that the juvenile court did not abuse its discretion in overruling Tracey's motion. My concurrence should not be construed as approval of the manner in which the State constructed the petition.

I also concur with the majority conclusion that clear and convincing evidence shows the children cannot be returned to Tracey's care. Tracey is a drug addict despite her contentions to the contrary. This fact alone renders her unable to care for young children. Tracey seeks no special accommodations because of her addiction nor does she claim the addiction to be a disability. Consequently those issues are not before us and need not be addressed.