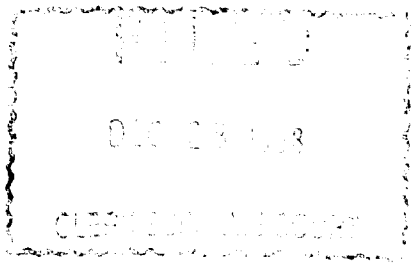
IN THE COURT OF APPEALS OF IOWA

No. 8-677 / 98-0697
Filed December 28, 1998

IN THE INTEREST OF E.D. and J.D.,
Minor Children,

T.D., Mother,
Appellant,
M.D., Father,
Appellant.



Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis, District Associate Judge.

The parents separately appeal from the district court order terminating their parental rights to two of their minor children. **AFFIRMED.**

Lars G. Anderson of Holland Law Office, Iowa City, for appellant-mother.

Joseph T. Moreland of Hayek, Hayek & Brown, L.L.P., Iowa City, for appellant-father.

Thomas J. Miller, Attorney General, and Gordon E. Allen, Deputy Attorney General, for appellee-State.

L. Jay Stein of Stein, Russell & Pugh, L.L.P., Iowa City, guardian ad litem of minor children.

Considered by Sackett, P.J., and Huitink, Streit, Vogel, and Mahan, JJ.

STREIT, J.

Tanya and Milo, the parents of Justin, born in June 1986, and Eric, born in December 1987, separately appeal the district court order terminating their parental rights. They each contend the court erred in finding clear and convincing evidence the children could not be returned to them at the time of trial, and termination was in the children's best interests.

Tanya and Milo also have three older children, Dale, Nathan, and Stephanie. At the time of trial, only Stephanie was a minor. She was in residential substance abuse treatment. Dale and Nathan were Tanya's children from a previous marriage, and were adopted by Milo. Milo has two adult children from a previous relationship. Tanya and Milo married in 1981, separated in 1991, and are contemplating a divorce. Tanya was thirty-eight at the time of trial; Milo was forty-seven.

Tanya and Milo both had a substance abuse problem that has caused nothing by chaos in the children's lives. Tanya said she began experimenting with drugs in 1991, and Milo said their drug use began in 1993. Milo acknowledged an alcohol problem prior to that, which he contends ended after treatment in 1993. Milo was arrested for possession of cocaine in 1994, and was placed in Hope House. Milo's probation was revoked in August 1996 and he was incarcerated until November 1996. Milo lost his job with the City of Iowa City, which he had held for seventeen years. In early 1997, after failing a urinalysis test, he entered a residential substance abuse

treatment program. He was released in January 1998 and remained drug-free to the time of the termination hearing in March 1998.

Tanya's drug involvement led to a number of criminal offenses. She was placed on probation for five years in April 1996. Tanya then spent one year in the Gary Hinzman Center. While she was away, living conditions in the home deteriorated. She was discharged in March 1997, and shortly afterwards relapsed into drug use. After stipulating to several parole violations, she was placed in another treatment program in Mitchellville from August through October of 1997. She remained drug-free from that point to the time of the termination hearing.

During the time their parents were abusing drugs, Justin and Eric were left unsupervised and missed a lot of school. In August 1996, in response to petitions filed by the State, Justin and Eric were adjudicated children in need of assistance (CINA), along with two of their older siblings. Justin and Eric were placed in the custody of the Department of Human Services (DHS) in September 1996. Later that month, a dispositional hearing was held. Tanya and Milo were offered various services.

The State filed a petition to terminate Tanya's and Milo's parental rights pursuant to Iowa Code sections 232.116(1)(c), (e), and (k). The State also sought to terminate Milo's parental rights pursuant to sections 232.116(1)(b) and (d).

Following a hearing, the district court terminated both parents' parental rights to Justin and Eric. The court found clear and convincing evidence the children could

not be returned to either parent at the time of trial. The court expressed doubts either parent was committed to remaining drug-free. The court found they had failed to establish a stable life style, remaining dependent on their respective parents for financial support. The court noted the children were doing well in foster care and had made marked improvements in school attendance and performance. The court found reasonable efforts had been made to preserve the family and termination would be in the children's best interests.

We review termination of parental rights de novo. *In re N.F.*, 579 N.W.2d 338, 340 (Iowa App. 1998). Although we are not bound by the trial court's findings of fact, we give them deference, particularly concerning the credibility of witnesses. Iowa R. App. P. 14(f)(7); *In re C.W.*, 554 N.W.2d 279, 281 (Iowa App. 1996). Our primary concern in a termination proceeding is the best interests of the children. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995).

On appeal, Tanya and Milo separately contend there was not clear and convincing evidence the children could not be returned to their care at the time of the termination hearing. Tanya asserts she had overcome her substance abuse problem by the time of trial. She complains the court improperly considered her reliance on her mother's support as a reason for terminating her rights. Both parents claim the record shows they were capable parents for a long period of time prior to their drug use, and argue the record also shows they were demonstrating their parenting skills

again at the time of the termination hearing. They emphasize the evidence does not establish they will be unable to control their substance abuse problem in the future.

Both parents had been out of treatment for a short time at the time of trial: Tanya for seven months, Milo for two months. Tanya was living with Eric Chaney, another drug user with whom she had an affair. The State presented testimony both Tanya and Milo are at substantial risk of relapse into drug abuse. The trial court made the difficult credibility judgment implicitly in its finding the children could not safely be returned to their parents at the time of trial. Because the trial court "heard and observed [the witnesses] first hand" we defer to its credibility assessment. *In re J.W.*, 528 N.W.2d 657, 659 (Iowa App. 1995). We find the parents' record since treatment is too brief not to consider their substance abuse a threat to the children if they were returned to their parents' care. *See* Iowa Code § 232.116(1)(k). Additional factors supporting the finding the children could not be returned to their parents' care at the time of trial include the parents' inability to obtain and maintain stable employment, the lack of "reasonable efforts to resume care of the child[ren]" including financial provisions and an "affirmative assumption . . . of the duties encompassed by the role of being a parent." Iowa Code § 232.116(1)(d)(3).

Tanya and Milo alternatively argue even if the statutory criteria for termination were established, termination was not warranted in the present case. Both argue no family is currently waiting to adopt their children, and suggest adoption will not occur, given their ages and attention deficit disorder. They also emphasize they are

bonded with their children, and Justin and Eric expressed a desire to return to them if they remain drug free and clean the house. Iowa Code section 232.116(3) gives the court discretion not to terminate parental rights if "[t]here is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship." Iowa Code § 232.116(3)(c); *In re C.W.*, 554 N.W.2d at 282. We determine the court did not abuse its discretion in not refusing to terminate Tanya's and Milo's parental rights.

AFFIRMED.