IN THE COURT OF APPEALS OF IOWA

No. 3-398 / 93-354

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF T.C.T., JR. and R.T., Minor Children,

A.T., Natural Mother,
Appellant,

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STATE OF IOWA,
Appellee.

Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Juvenile Court Referee.

The mother appeals the juvenile court's order terminating her parental rights. **AFFIRMED.**

Joseph G. Bertogli, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Judy Sheirbon, Assistant Attorney General, John P. Sarcone, County Attorney, and Marcia Schoben, Assistant County Attorney, for appellee State.

William Denman, Des Moines, for father.

J. Michael Mayer, Des Moines, guardian ad litem for minor children.

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

HAYDEN, J. 000582

A.T. is the mother of four children: T.C.T. Jr., born January 9, 1985; R.T., born November 9, 1986; H.I., born October 6, 1990; and A.I., born December 27, 1991. T.C.T. Sr. is the father of T.C.T. Jr. and R.T. The mother appeals the termination of her parental rights to T.C.T. Jr. and R.T. H.I. and A.I. are not the subjects of this appeal.

A.T. and T.C.T. Sr. were married in 1984. The marriage was problematic. The parties separated on several occasions. During most of these separations the children remained with A.T.

Six founded denials of critical care were filed on behalf of the children between May 1989 and August 1990. Three of the reports were filed against A.T. In September 1990 the juvenile court adjudicated T.C.T. Jr. and R.T. in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (g) (1989). The court placed the children in the custody of the Iowa Department of Human Services (DHS) for temporary foster care. On January 1, 1992, the juvenile court transferred legal custody of T.C.T. Jr. and R.T. to their paternal aunt, T.T. In May 1992 the court granted guardianship of the two children to T.T.

On October 8, 1992, the State filed a petition to terminate the parental rights of A.T. and T.C.T. Sr. The petition alleged, among other things, the children could

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not be returned to the custody of A.T. because of the unstable living conditions and her inability to protect the children from abuse. T.C.T. Sr. consented to the termination of his parental rights. On January 26, 1993, the juvenile court entered an order terminating the parental rights of A.T. and T.C.T. Sr. as to T.C.T. Jr. and R.T. pursuant to Iowa Code section 232.116(1)(e) (1991).

A.T. appeals, contending the State failed to prove by clear and convincing evidence the two children should not be returned to her.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

The primary concern in termination proceedings is the best interests of the children. Iowa R. App. P. 14(f)(15); In re J.K., 495 N.W.2d 108, 110 (Iowa 1993).

> Those best interests include the children's long-range as well as immediate interests. We must concern ourselves with what the future likely holds for the children if the children are returned to their mother. The best evidence for this determination is the mother's past performance because that performance may indicate the quality of future care she is capable of giving.

In re J.K., 495 N.W.2d at 110 (citing In re M.M., 483 N.W.2d 812, 814 (Iowa 1992)).

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The juvenile court terminated A.T.'s parental rights pursuant to Iowa Code section 232.116(1)(e) (1991). The section provides the juvenile court may terminate parental rights if (1) the child involved is at least four years old, (2) the child has been adjudicated in need of assistance pursuant to section 232.96, (3) custody of the child has been transferred from the child's parents for at least twelve of the last eighteen months, and (4) clear and convincing evidence supports a finding the child cannot be returned to the custody of the parent as provided in section 232.102. Iowa Code § 232.116(1)(e) (1991). At the termination hearing the juvenile court granted the State's oral motion for partial summary judgment as to the first three elements of this section. We review the facts of this case. At the time of the termination hearing, the children were eight and six years old. Both children had been adjudicated in need of assistance. Subsection three was also satisfied because the children were removed from the custody of A.T. on September 20, 1990, and had been in foster care and custody of their aunt for twenty-eight months at the time of termination. We determine three of the four subsections of 232.116(1)(e) have been met. We now address whether clear and convincing evidence supported the termination of A.T.'s parental rights.

I. DHS became involved with this family beginning in May 1989. DHS received reports A.T. was leaving the two children, ages four and two, unattended at the YWCA. DHS

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made an immediate referral to child protective treatment services. The record shows several founded denials of critical care were filed on behalf of T.C.T. Jr. and R.T. between May 1989 and August 1990:

1. May, 1989	founded denial of critical care on A.T. for lack of supervision
2. October, 1989	founded denial of critical care on A.T. for allowing abuse on T.C.T. Jr. by her paramour and for lack of medical care
3. March, 1990	founded denial of critical care on T.C.T. Sr. for lack of supervision
4. May, 1990	founded denial of critical care on A.T. for lack of supervision
5. June, 1990	founded denial of critical care on T.C.T. Sr. for lack of medical care
6. August, 1990	founded denial of critical care on T.C.T. Sr. for lack of medical care

The abuse report filed in October 1989 involved A.T.'s failure to protect T.C.T. Jr. from abuse. T.C.T. Jr. had belt marks on his thigh. The alleged perpetrator was identified as J.T., the father of A.T.'s two younger children. A.T. took no action in response to this abuse of her child. The abuse report indicates A.T. continued to have contact and expose her children to J.T. A.T. also admitted J.T. hit her once during a domestic argument.

In March 1990 another founded abuse report was filed after R.T. was admitted to a hospital and treated for an overdose of his seizure medication. T.C.T. Sr. left R.T. with a baby-sitter, and when he returned home he found R.T. in a dazed condition. Evidence indicates T.C.T. Sr. left the medication within R.T.'s reach.

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A report filed in August 1990 claims T.C.T. Sr. denied critical care to T.C.T. Jr. The report indicates T.C.T. Jr. had head lice, R.T. was not properly receiving his medication for a seizure disorder, and T.C.T. Sr. had failed to return T.C.T. Jr. to the hospital for follow-up examinations for ear infections and tonsillitis.

In addition to the three founded child abuse reports filed against her, A.T. has shown a pattern of instability. She has moved frequently and has failed to remain in contact with her children or DHS over extended periods of time. From February 1989 to May 1989 A.T. lived at the YWCA with the two children. In September 1989 A.T. picked up the children from their father's care and took them to California for a month. She failed to notify T.C.T. Sr. or DHS of her intent or their whereabouts for two or three days. In a June 4, 1990, report, a DHS social worker reported A.T. had lived in eleven different places in three different states in the previous twelve months. At the end of August 1991 A.T. returned to California without her children. A.T. did not return to Iowa until July 5, 1992. During her absence, she failed to maintain any significant contact with her children. A.T. maintains she sent birthday cards to her children but they were returned to her unopened. Upon returning to Iowa, A.T. visited the children only two times between July 1992 to November 1992.

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Evidence shows A.T. is unable to secure consistent and adequate housing for her family. At the time of the termination hearing, in January 1993, A.T. was expecting her fifth child. The father of this child was neither T.C.T. Sr., the father of T.C.T. Jr. and R.T., nor J.T., the father of A.T.'s two youngest children. At that time A.T. already had two children in her custody and resided in a one-bedroom apartment. She was currently allowing a male friend to sleep on the floor of her apartment. From the time of her return from California on July 5, 1992, until January 1993, A.T. has already occupied three, different residences. She testified she was contemplating another move if awarded custody of T.C.T. Jr. and R.T. A.T. continues to show an inability to secure stable housing for her and her children.

The Iowa Supreme Court has stated several times "'we cannot gamble with the children's future. They must not be made to await their mother's maturity.'" In re D.W., 385 N.W.2d 570, 578 (Iowa 1986) (quoting In re Kester, 228 N.W.2d 107, 110-11 (Iowa 1975)). The amount of patience for A.T.'s actions must be reasonably limited because "patience with parents can soon translate into intolerable hardship for their children." In re A.C., 415 N.W.2d 609, 613 (Iowa 1987), cert. denied sub nom. A.C. v. State, 485 U.S. 1008 (1988).

> There are a number of stern realities faced by a juvenile judge in any case of this kind. Among the most important is the relentless passage of precious time. The crucial days of childhood

> cannot be suspended while parents experiment with ways to face up to their own problems. Neither will childhood await the wanderings of judicial process. The child will continue to grow, either in bad or unsettled conditions or in the improved and permanent shelter which ideally, at least follows the conclusion of a juvenile proceeding.

Id. Children should not be forced to endlessly suffer parentless limbo. In re L.M.F., 490 N.W.2d 66, 68 (Iowa App. 1992) (citing In re A.C., 415 N.W.2d at 613). A.T. has not achieved a level of stability to properly parent and protect her children. A.T. has failed to maintain consistent housing, provide a nurturing environment, or provide supervision and safety for T.C.T. Jr. and R.T.

The State presented witnesses who have evaluated the children, their behaviors and attitudes, and their living situations. Chris Lewis, a clinical social worker, has provided therapy for the two children and their aunt for almost a year. She stated the children needed permanency and stability in their environment, especially in light of the behavioral difficulties and problems with feelings of abandonment. Lewis testified the children were making progress in their therapy and had bonded with their aunt, T.T. The therapist indicated, however, the children had suffered drastic setbacks in their behavior after visiting with their mother in July 1992. Lewis opined it was in the best interests of the children to terminate A.T.'s parental rights.

Linda Starkey-Smith, a child protective treatment worker for DHS, prepared a termination report regarding the

two children. Smith testified at the termination hearing and recommended A.T.'s parental rights be terminated. She based her opinion on A.T.'s past history and lack of involvement. Smith explained A.T. had been told she needed to establish stable housing. She also believed termination would be in the best interests of the children.

We determine the termination of A.T.'s parental rights to T.C.T. Jr. and R.T. is supported by clear and convincing evidence.

II. DHS must make reasonable efforts to reunify the family and provide services. Iowa Code § 232.102(5) (1993). As early as May 1989, services were being offered to A.T. and her family. DHS offered an early childhood program to help A.T. with her parenting skills. Homemaker services were also offered, but A.T. failed to maintain contact and canceled appointments with the homemaker. A.T. failed to show improvement in her housekeeping skills or personal hygiene. DHS also provided supervised visits to A.T. She, however, was inconsistent and sporadic with her visits. For example, A.T. visited her children only one time from April 1991 to August 1991. She then left for California and failed to maintain any significant contact with her children for over ten months.

In September 1990 the juvenile court ordered a parenting evaluation for A.T. A.T., however, failed to complete the evaluation until March 1991. A.T. agreed to arrange individual therapy sessions upon completion of the

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evaluation. A.T., however, never followed through with the therapy. Upon returning from California A.T. failed to comply with the recommendations by a caseworker to attend an appointment to follow up on the results of her parenting evaluation.

In-home family counseling services were initiated on October 2, 1991. A.T., however, failed to take advantage of these services because she moved to California and failed to remain in contact with DHS.

The record shows DHS has made reasonable efforts to reunify this family and has provided adequate services. Given A.T.'s past performance, we doubt additional time or services will be of benefit to her. After a thorough review of the record, we conclude the requirements of Iowa Code section 232.116(1)(e) have been met. The Iowa Supreme Court has stated "the legislature has made a categorical determination the needs of a child are promoted by termination of parental rights in cases meeting the conditions of section 232.116(1)(e)." In re J.P., 499 N.W.2d 334, 339 (Iowa App. 1993) (citing In re M.W., 458 N.W.2d 847, 850 (Iowa 1990)). The best interests of T.C.T. Jr. and R.T. warrant the termination of A.T.'s parental rights. We affirm the decision of the juvenile court.

AFFIRMED.

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

SACKETT, J. (specially concur)

I concur specially without opinion.

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