IN THE COURT OF APPEALS OF IOWA

No. 1-498 / 01-0380
Filed August 29, 2001

FILED
AUG 29 2001
CLERK SUPREME COURT

IN THE INTEREST OF J.B. and A.B., Minor Children,

D.M.B., Mother,
Appellant.

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

The mother of two minor children appeals a juvenile court order terminating her parental rights. **AFFIRMED.**

William L. Binkard, South Sioux City, Nebraska, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Dewey P. Sloan, Assistant County Attorney, for appellee State.

Irene A. Schrunk, Sioux City, guardian ad litem for minor children.

Considered by Hayden, S.J., Habhab, S.J., and Harris, S.J.*

*Senior judges assigned by order pursuant to Iowa Code section 602.9206 (1999).

HABHAB, S.J.

Darlene B. is the mother of two minor children, J.B., born September 9, 1991, and A.B., born October 1, 1997. On November 2, 1999, the Department of Human Services filed an application for J.B.'s temporary removal. On the same day, a child in need of assistance petition was filed on behalf of J.B. and A.B. An emergency removal hearing was held six days later. With the consent of Darlene, J.B. remained in relative placement.

An adjudicatory hearing was held on December 28, 1999. The parties stipulated that both children were children in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and (c)(2) (1999). J.B. remained in the custody of the department for relative placement, and A.B. remained with the mother under the protective supervision of the department. By court order, A.B. was subsequently removed from his mother. She did not contest the removal.

On February 29, 2000, a dispositional hearing was held. The parties agreed to the continued placement of the children in relative placement[1]. A permanency/dispositional review hearing was held on September 27, 2000. The department recommended termination of parental rights. The State and guardian ad litem agreed with the recommendation, and Darlene elected to remain silent. She executed consents to the termination of her parental rights to both children. The court ordered the institution of termination proceedings.

The State on November 16, 2000, filed a petition to terminate Darlene's parental rights. Following a hearing on February 7, 2001 (at which time Darlene

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[1] The court ordered an adoptive home study on the home of the relative placement.

withdrew her consent), the juvenile court terminated those rights pursuant to Iowa Code sections 232.116(1)(c), (e), and (g) (1999). Darlene has appealed. On appeal, she contends the State failed to prove by clear and convincing evidence that: (1) her parental rights should be terminated pursuant to Iowa Code section 232.116(1)(c), (e), and (g); and (2) it was in those children's best interest that her parental rights be terminated. We affirm.

I. Appellate review of proceedings to terminate a parent-child relationship is de novo—the reviewing court may review the facts as well as the law and adjudicate the parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). However, weight is to be accorded the findings of the juvenile court, particularly with respect to the credibility of witnesses. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990).

II. Iowa Code section 232.116(1)(c) (2001) provides that termination may occur when:

> *c.* The court finds that both of the following have occurred:
>
> (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
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> (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continued to exist despite the offer or receipt of services.

The mother contends on appeal that the circumstance which led to the adjudication no longer exists for at the time of the termination hearing she was

able to establish a suitable home for the children. However, this argument is somewhat inconsistent with her testimony at the termination hearing.

In explanation, on September 21, 2000, Darlene signed two forms consenting to the termination[2] of her parental rights to J.B. and A.B. In each of these consent forms she wrote:

> I am unable at this time to provide a stable home for my children and I want them to have a stable home. I would want my children to be adopted into the same home.

The trial court, when questioning Darlene, referred to the statement above and then asked her if there had been any changes since she made that statement. Her response was "Nothing really." She also agreed that "at this point in time" she could not parent her children.

From our de novo review of the record, it is clear that Darlene was no more able to provide a home for her children at the termination hearing than she was at the beginning of the child in need of assistance hearing. Further, it appears through testimony by the service provider that the situation had become worse. To compound the problem, Darlene does not know the current address of her home. It appears that eight days prior to the termination hearing she moved into a two-bedroom apartment with her current boyfriend and another couple. It is clear her working habits and living arrangements are yet unsettled. Factually,

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[2] At the permanency review hearing held on November 28, 2000, Darlene's attorney advised the court that the consents to terminate were withdrawn. Darlene was able to withdraw her consent as one of the terms in the written consent forms.

it appears that she continues to move from place to place and house to house without any meaningful direction. Her arguments in this regard are without merit.

Iowa Code section 232.116(1)(e) (2001) provides that termination may occur when:

> *e.* The court finds that all of the following have occurred:
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> (1) The child is four years of age or older.
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> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
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> (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
>
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Iowa Code section 232.116(1)(g) (2001) provides that termination may occur when:

> *g.* The court finds that all of the following have occurred:
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> (1) The child is three years of age or younger.
>
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
>
> (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
>
> (4) 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 at the present time.

The mother argues that she is now cooperative with services and that she is able to provide stable and suitable housing for herself and the children. However, the record does not support this assertion. On the contrary, the record is clear that the mother is unable to provide a stable home for her children. Regarding the mother's assertion that she is now cooperative with services and is willing to respond to services, Darlene's testimony indicates to the contrary. She testified that she has received services since April of 1998 and that she has learned from those services. However, by her own testimony, she does not feel that she can take care of her children without going to the House of Mercy. Darlene's request for House of Mercy came late in the proceedings. House of Mercy concluded that Darlene did not meet their entrance requirements.

At the permanency review hearing held in November 2000, the court found that Darlene had been receiving services for over the last two and one-half years. Unfortunately, those services did not result in a reunification of the children with their mother.

Although Darlene received numerous social services, her progress was inconsistent. Darlene had difficulty maintaining employment and a stable residence. J.B. was diagnosed with ADHD, but despite treatment, her progress was slow. She continued to have suicidal ideations and exhibited extreme cruelty to animals. Both children's behaviors degenerated during Darlene's visitation.

Darlene was sexually abused in her younger years. There is evidence in the record that improper advances and touchings were made toward J.B. by J.C.,

one of Darlene's live-in boyfriends. Even though J.B. told her mother of these improper touchings, nonetheless Darlene continued to allow J.C. to be near J.B.

A psychosocial evaluation was made a part of the record. It is detailed and complete in all respects. It would unnecessarily prolong this opinion to set forth its entire content. Sufficient to say by way of summary, that the areas of concern by the preparer of this report revolve around Darlene's failure to protect J.B. from further sexual abuse, her inadequate supervision of A.B., her unstable employment history, and her failure to follow through with recommendations made by the department. It was the evaluator's opinion that "these children would be placed at harm if Darlene regains custody."

III. "The legislature has determined the interval for which patience with parents may last. This period must be reasonably limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children." *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). A child should not be forced to endlessly suffer the parentless limbo of foster care. *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990). To continue to keep children in temporary or even long-term foster homes is not in their best interests, especially when the children are adoptable. J.B. and A.B. are adoptable. The evidence is clear and convincing that the children cannot be returned to the custody of their mother as provided in section 232.102. We agree with the juvenile court that the evidence is clear and convincing that Darlene's parental rights should be terminated.

IV. We agree with the appellant that the primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544

N.W.2d 274, 275 (Iowa Ct. App. 1995). But those best interests are to be determined by looking at the child's long-range as well as immediate interests. We must consider what the future likely holds for the child if that child is returned to his or her parents. In this respect, insight for that determination can be gained from evidence of the parents' past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981); *In re T.T.*, 541 N.W.2d 552, 555 (Iowa Ct. App. 1995).

In cases meeting the criteria set forth in Iowa Code section 232.116(1)(e) (2001), the legislature "has made a categorical determination that the needs of a child are promoted by termination of parental rights." *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990). Termination is in the best interests of the child whenever there is sufficient evidence to prove any of the statutory grounds for termination. *In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa Ct. App. 1992). This same reasoning applies to Iowa Code section 232.116(1)(g) (2001). *In re C.K.*, 658 N.W.2d 170, 175 (Iowa 1997).

We also agree with the juvenile court that J.B.'s and A.B.'s long range and immediate interests are best served through the termination of the parental rights of Darlene.

AFFIRMED.