IN THE COURT OF APPEALS OF IOWA

No. 0-286 / 99-1323
Filed May 31, 2000

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CLERK SUPREME COURT

IN THE INTEREST OF M.S., Minor Child,

K.B., Father,
Appellant,

S.S., Mother,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

Father and mother appeal separately from the juvenile court order terminating their parental rights. **AFFIRMED.**

Heidi L. Noonan-Day, Cedar Falls, for father-appellant.

Diane Ruisch Larsen, Waterloo, for mother-appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Melissa Smith, Assistant County Attorney, for appellee-State.

Andrew Thalacker, Juvenile Public Defender's Office, Waterloo, guardian ad litem for minor child.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

Mahan, J.

Keeth B. and Sheila S. each appeal the juvenile court order terminating their parental rights to their son, Malike. Both parents claim the Department of Human Services (DHS) failed to make reasonable efforts to reunify them with their son, and the court should have placed Malike either with his maternal aunt or with his foster mother by a permanency order instead of proceeding with termination. We affirm.

Malike S., was born July 16, 1996. He tested positive for cocaine exposure on September 6, 1996, and was removed from the home. The court found him in need of assistance under Iowa Code section 232.2(6)(n) (1995) on September 23, 1996. He was returned to his home in December 1996. He was removed again in March 1997, when he tested positive for cocaine exposure. He returned to his home on a trial basis in August 1997, but was removed later that month when Keeth tested positive for opiates. After Keeth's agreement to participate in substance abuse treatment, Malike was returned home. In October 1997, he was removed again when he and both parents tested positive for cocaine. Malike remained in foster care from October 1997 until the court terminated Keeth's and Sheila's parental rights in August 1999.

Sheila has two other children, a son, Dontail, born in March 1987, and a daughter, Jericka, born in November 1990, whose father is Houston S. Dontail and Jericka were removed from Shelia's care at the same time as Malike in 1996 for positive cocaine tests and Sheila's founded denial of critical care for them. Like Malike, they were found to be in need of assistance in September 1996.

They were placed with their father. In October 1998, after aborted attempts to return them to Sheila's care, the court transferred sole custody of Dontail and Jericka to their father. They are not part of this appeal.

DHS offered numerous services to Sheila in an attempt to reunify her and her children. In an attempt to correct the circumstances which led to their removal, DHS offered family-centered services, assistance in parent skill development, supervised and unsupervised visitation, inpatient and outpatient substance abuse treatment, mental health referrals, and therapy for the children to help them deal with their removal from the home. The family also was referred to community-based services, including alcoholics anonymous and narcotics anonymous. Sheila participated in services sporadically. She also did not provide urinalysis samples as ordered by the court or required by DHS. Frequently her drug tests were positive. She sometimes left Iowa and did not keep in contact with her case worker.

Keeth has a history of domestic violence and substance abuse. He was arrested in October 1997, for attempting to alter a prescription. He was incarcerated for a time. He also had probation violations, had his probation revoked and began serving a ten-year sentence. He was released to a residential facility but incarcerated again when he walked away from the facility. During the pendency of this case, he did not maintain regular contact with DHS or the case worker. He was often unavailable for services because of his incarcerations. Keeth continued to use illegal drugs and to fail urinalysis tests.

The State filed a termination petition on January 21, 1999, alleging termination was proper under Iowa Code sections 232.116(1)(b), (d), (g), (h), and (k) (1999). The court terminated both parents' rights on August 2, 1999, under sections 232.116(1)(d), (g), (h), and (k). It found numerous services were offered to the family, but both parents had a history of being resistive to services, being noncompliant with recommendations, and failing to make themselves available. Keeth was in the custody of the department of corrections during the termination hearing in April 1999.

Sheila and Keeth appeal separately. They each claim the trial court erred (1) in terminating their parental rights because DHS failed to make reasonable efforts to reunify them with Malike, and (2) in failing to order long-term placement with a relative or the foster mother under a permanency order so as to ensure the best interests of the child. Neither parent challenges any of the grounds for termination cited by the court. The State responds both parents failed to preserve error on their claims reasonable services were not offered, and have waived any issues with regard to remaining statutory elements under which their rights were terminated.

We review proceedings to terminate parental rights de novo. We review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995); Iowa R. App. P. 14(f)(7).

When the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds 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). Since neither Sheila nor Keeth appeal any of the grounds for termination, they have waived any claim relating to those grounds.

We also look to see whether a reasonable effort was made to reunite the child with the parents. *See In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App.1994). While the State has an obligation to make reasonable efforts, it is the parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa App.1997). Services should be challenged when the case plan is entered. *L.M.W.*, 518 N.W .2d at 807. Sheila and Keeth's claims concerning reasonable efforts come too late, as the State argues. We do not address them on appeal.

Finally, Sheila and Keeth claim the juvenile court erred in not placing Malike in a long-term placement with a relative or with the foster mother. They argue termination is not in Malike's best interests. Even if the statutory requirements for termination are met, the decision to terminate must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the best interests of a child, we look both to the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). We consider what the future likely holds for the child if he is returned to his parents. Insight for that determination may be gained from evidence of the parents' past performance, for that performance can be indicative of the quality of the future

care that the parents are capable of providing. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *Dameron*, 306 N.W.2d at 745; *In re T.T.*, 541 N.W.2d 552, 555 (Iowa App. 1995). Case history records are entitled much probative force when a parent's record is being examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). We consider the physical, mental, and emotional condition and needs of the child in deciding whether to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App.1996). We find Sheila has been either unable or unwilling to address her psychological and substance abuse problems. She has been resistant to services and repeatedly relapses when Malike is returned to her care. We find termination of her parental rights to be in Malike's best interest.

Keeth has been unavailable to care for Malike for much of his young life as a result of his choice not to obey the law. Like Sheila, Keeth has an ongoing struggle with substance abuse. We find it to be in Malike's best interest to terminate Keeth's parental rights.

Concerning the possible placement with a relative or with the foster mother, to keep Malike in temporary or even long-term foster homes is not in his best interests. *See In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989); *T.T.*, 541 N.W.2d at 557-58. He deserves the stability his parents cannot give him and which the suggested long-term placement cannot provide. Our courts have long recognized the best interests of a child are often not served by requiring the child to stay in "parentless limbo". *See, e.g., Long v. Long*, 255 N.W.2d 140, 146 (Iowa 1977). Malike's well-being requires impediments to his forming new family

relationships be swept away. *See In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990).

AFFIRMED.