IN THE COURT OF APPEALS OF IOWA

No. 1999-428 (9-681) / 99-0379
Filed December 27, 1999

FILED
DEC 27 1999
CLERK SUPREME COURT

IN THE INTEREST OF

S.H.,
Minor Child,

S.H., Father,
Appellant.

Appeal from the Iowa Associate District Court for Cerro Gordo County, Gerald McGee, Associate Juvenile Judge.

A father appeals the termination of his parental rights to his daughter. **AFFIRMED.**

Charles H. Levad, Mason City, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Gregg Rosenbladt, Assistant County Attorney, for appellee.

Timothy LaPointe of LaPointe & LaPointe, Mason City, for mother.

Mark Young of Young Law Office, Mason City, guardian ad litem.

Considered by Huitink and Mahan, J.J., and Honsell, S.J.*

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

HONS[redacted]

Steve and Sandy are the parents of Stacy, who was born on June 15, 1990. In October 1996, they were found to have denied Stacy critical care because they were under the influence of a controlled substance or substances which caused them to keep Stacy up all night one night. On October 18, 1996, Stacy was removed from parental custody by an *ex parte* order. She was returned to her parents after a few days. The family continued to reside in Iowa until they moved to Colorado in January 1997 where Steve had employment. Sandy and Stacy returned to Iowa in April 1997. She obtained a no-contact order against Steve, based on allegations of domestic abuse. Steve returned to Iowa in May or June 1997. Premised on violations of the no contact order by Steve, the continued use of controlled substances by Stacy and Steve, the parents reuniting, and Stacy's anxiety; Stacy was removed from her mother's care by *ex parte* order on July 31, 1997 and placed in foster care, where she remained throughout the CINA proceedings.

Steve did not appear at the August 1997 review hearing. The court ordered visitation at the discretion of DHS. Steve did not appear at the December 1997 review hearing. His attorney moved to withdraw because Steve had not kept in contact with him. The court confirmed case plan requirements for substance abuse treatment, individual and family therapy, and supervised visitation.

At the March 1998 review hearing, the court found both parents had made "very minimal" progress. It also found, "It is imperative that they take immediate

steps to comply with Court Orders and to stabilize their lives if reunification is to occur." It ordered both parents to participate in therapy and substance abuse treatment, to provide samples for drug testing, to maintain employment, and to maintain a stable residence. They were given three months to stabilize their lives and demonstrate "their ability to provide for the physical and emotional needs" of Stacy.

At the July 1998 review and permanency hearing, the court found neither parent had substantially complied with prior court orders. The court on page three of the review order filed July 29, 1998, put both parents on notice:

> that the consequences of a permanent removal of this child may include termination of the parent's rights and further that failure to identify a deficiency in services or request additional services may preclude them from challenging the sufficiency of services in a termination proceeding.

Steve tested positive for cocaine use that same month.

The State petitioned to terminate parental rights in August 1998. The termination hearings concerning each parent were held separately. After the trial held on December 3, 4, and 7, 1998, the court terminated Steve's parental rights by order filed February 10, 1999. At page 12 of his decision Associate Juvenile Judge Magee succinctly concludes:

> The Court Finds that probable irreversible damage has been done to the parent/child relationship, by acts of Stacy's parents, and also to Stacy's long-term emotional health. Waiting until Stacy is healthy enough to have a relationship with her father or until he consistently establishes that he can care for her and poses no danger to her translates into an "intolerable hardship". See, *In Re: R.J. 436 N.W. 2nd 630, 636 (Iowa 1989)*. Stacy should not be further exposed to those hardships and we should not gamble with her future. The statutory requirements have been met and termination should occur. Stacy should not "be forced to

endlessly suffer the parentless limbo of foster care." *In Re: D.J.R. 554 N.W.2nd 838, 845 (Iowa 1990).*

The record on appeal supports Judge Macgee's conclusion.

Appellate claims. Steve claims the State did not show by clear and convincing evidence Stacy will suffer harm if returned to his care. He asserts that he has done everything the Department of Human Services required him to do: he has completed a substance abuse program, obtained employment, and is buying a house to create a stable environment for Stacy. He contends Stacy was not afraid of him during counseling in Colorado, and his social worker feels Steve's social situation is much improved. Steve also asserts that Stacy is eager to see him and any fear she may have was generated by Sandy's desire to keep Steve and Stacy apart. He claims they have a close parent-child bond which should not be disturbed. He also contends the State has not made a reasonable effort to reunite him with Stacy. He states he has not been allowed to visit Stacy since July 1998, and he claims the State has made no effort to reunite them.

The State responds that Steve has not preserved error on the issue of reasonable efforts to reunite Steve and Stacy. It claims Steve failed to present this issue to the juvenile court. In addition, the State contends the issue should be addressed in CINA hearings not in termination hearings.

Standard of review. Appellate review of proceedings to terminate a parent-child relationship are de novo; thus "it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and

presented to us." *In re O'Neal*, 303 N.W.2d 414, 422 (Iowa 1981). We accord weight to the findings of the juvenile court, especially when considering the credibility of the witnesses whom that court heard and observed firsthand, but are not bound by those findings. *Long v. Long*, 255 N.W.2d 140, 143 (Iowa 1977). Central to our determination are the best interests of the child. *Id.*

We look to the child's long-range as well as immediate interests. We necessarily consider what the future likely holds for Stacy if returned to Steve. Insight for this determination can be gained from evidence of the Steve's past performance, for that performance may be indicative of the quality of the future care he is capable of providing. *O'Neal*, 303 N.W.2d at 423; *In re Ponx*, 276 N.W.2d 425, 433 (Iowa 1979).

Discussion. Iowa Code Section 232.116(1)(e) states that termination may occur if the court finds that all of the following have occurred: (1) The child is four years of age or older. (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 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.

The purpose of this code section is prevent children from being perpetually kept in foster care. *In re J.P., 499 N.W. 2d 334, 339 (*Iowa Ct. App. In *In re E.B.L.,*

501 N.W.2d 547, 551 (Iowa 1993) the Court emphasizes that after the statutory time has elapsed, the case must be viewed with a sense of urgency.

All of the statutory mandates were shown to have been met by the requisite degree of evidence presented to the trial court.

Appellate courts have often recognized the parental interest in the integrity of the family unit; nonetheless we also are cognizant this interest is not absolute, but rather may be forfeited by certain parental conduct. *In re Wall*, 295 N.W.2d 455, 457 (Iowa 1980); *In re Voeltz*, 271 N.W.2d 719, 723 (Iowa 1978).

Steve does have stable employment and has worked for the same company since January 1998. He also purchased a two-bedroom home from his uncle in January 1998. However, between July 1998 and the termination hearings in December, he missed six of fifteen therapy appointments. Until July 1998, he claimed he had done all he needed to do for reunification and did not have any issues to address in therapy. He continued to deny or minimize the domestic and child abuse which occurred. The State's witnesses testified Stacy is still "scared to death" to tell Steve how she felt. She "is a traumatized child with a significant anxiety disorder" who would suffer harm if returned to Steve's care and custody. *See, e.g.*, Iowa Code § 232.2(6)(c)(1). The requirement of Iowa Code section 232.116(1)(e)(4) is met "when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance, Iowa Code section 232.2(6), exist." *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988). If any one of the grounds listed in section

232.2(6) can be proven by clear and convincing evidence, there is a sufficient basis for the termination. *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990); *In re R.L.*, 541 N.W.2d 900, 903 (Iowa App. 1995). Steve himself admits Stacy could not be returned to his care at the time of the termination hearings. The requirements of section 232.116(1)(e) have been satisfied.

While the State has the obligation to make reasonable efforts, the parents have a responsibility to demand services prior to the termination hearing. *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). Challenges to the plan for reunification should have come when the plan was entered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). It is too late to challenge the service plan at the termination hearing. *See In re C.D.*, 508 N.W.2d at 101. Steve did not preserve his reasonable-efforts claim. This issue should have been raised earlier and we will not consider it now. *Id.*

We affirm the termination of Steve's parental rights to Stacy on the grounds set forth in Iowa Code section 232.116(1)(e).

AFFIRMED.