IN THE COURT OF APPEALS OF IOWA

No. 7-719 / 97-1082

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

T.S., Mother,
Appellant,

F.M., Father,
Appellant.

FILED
DEC 29 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Dubuque County, Jane Mylrea, Associate Juvenile Judge.

A mother and father appeal from the termination of their parental rights. **AFFIRMED.**

Ann M. McDonough, Dubuque, for appellant mother.

Monica L. Ackley, Dubuque, for appellant father.

Dirk J. Hamel and Kathryn Conway Kordell of Norman, Gilloon, Wright & Hamel, P.C., Dubuque, for minor child.

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

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

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MAHAN, J.

A mother and father appeal the termination of their parental rights to their minor child. We affirm on appeal.

Traci and Francis are the parents of Kelsey, who was born in July 1993. The Department of Human Services (DHS) issued founded reports against Traci and Francis in December 1993 and April 1994. In April 1994, the juvenile court removed Kelsey from the home and placed her in the hospital due to failure to thrive and an unexplained fracture to her arm. She was placed in foster care on her release from the hospital. Kelsey was adjudicated a child in need of assistance.

Traci and Francis both have borderline intellectual functioning. Traci has been diagnosed with dependent personality disorder, an adjustment disorder and depression. Francis has been diagnosed with a learning disability and personality disorder. The relationship between Traci and Francis has included incidents of domestic violence.

The parents were cooperative with services. They found an apartment and obtained jobs. They also completed a nurturing class. Kelsey was returned to their care in April 1995. The family continued to receive family-centered services.

In August 1996, DHS issued a founded report of denial of critical care against Traci due to injuries Kelsey received from falling out of a pickup and bumping her head on a table. Kelsey also sustained a burn from an accident with a deep fat fryer.

In September 1996, Kelsey's day care providers discovered she had an extensive burn on her buttocks. Kelsey was hospitalized for the injury. The parents claimed they did not know how the injury occurred, but stated it could have been caused by hot bath water. Health professionals stated the burn was intentional and caused by a hot object, not hot water. DHS issued a founded report of physical abuse against Traci. DHS also issued a founded report of denial of critical care against both parents for failure to obtain medical care for the burn. Kelsey was again placed in foster care upon her release from the hospital.

After Kelsey's removal Traci began individual therapy to help her deal with depression. Traci and Francis separated in March 1997 after Traci was assaulted by Francis and his brother. Francis gave Traci a letter in which he threatened to kill her, the children, and then himself.

On March 13, 1997, the State filed a petition to terminate the parental rights of Traci and Francis. The juvenile court terminated the parents' parental rights pursuant to Iowa Code section 232.116(1)(g).

After the termination hearing, Traci filed a motion for new trial claiming she had new evidence to show Francis had caused Kelsey's burn. Both parents also filed appeals of the termination order. The juvenile court determined it did not have jurisdiction to consider the motion for new trial.

I. STANDARD OF REVIEW. The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination

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must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. TRACI. Traci contends the juvenile court should not have terminated her parental rights. She believes the State produced insufficient evidence to show Kelsey could not be returned to her care. She alleges Francis caused the abuse to Kelsey and she should not be held responsible.

We find there is clear and convincing evidence in the record to show Kelsey could not be returned to Traci's care. We do not consider the allegations in the motion for new trial because this evidence was not considered by the district court. However, even if Francis had caused the physical abuse to Kelsey, Traci failed to protect Kelsey from harm and did not obtain proper medical care for her. Traci admitted she continued her relationship with Francis, even though he was abusive to her, and she believed he was abusive to Kelsey. Traci has not yet addressed her dependent personality disorder. We do not believe she would be able to keep Kelsey safe from harm in the future.

Traci claims she did everything required by the case permanency plan. She believes it was improper to terminate her parental rights when she has done all the things DHS asked of her.

At the time of the termination hearing, neither parent would admit what happened to Kelsey to cause the burn on her buttocks. Both parents were home at the

time of the incident. Because the parents would not admit what happened, they were not able to address the issues which caused the child abuse to happen. For this reason, Kelsey remained at risk. We find termination of Traci's parental rights to Kelsey was proper.

Traci asserts it was not in Kelsey's best interests to terminate her parental rights. She feels there is a positive bond between herself and Kelsey. She points out her parental rights to her other three children have not been terminated, although these children were removed from the home when Kelsey was burned.[1] Traci believes it would be detrimental to Kelsey if Traci is not able to visit her as she can the other children.

We find termination is in Kelsey's best interests. Kelsey was subjected to intentional abuse while in Traci's care. Besides the serious burn she received, Kelsey had multiple unexplained bruises. Kelsey deserves to live in a home free from physical violence.

III. FRANCIS. Francis claims the juvenile court should not have terminated his parental rights to Kelsey. He feels he should have been given more time to correct his parenting deficiencies. Francis points out he has limited intellectual functioning, and states he needs more time to learn parenting skills. He believes DHS did not make reasonable efforts to assist him to care for Kelsey.

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[1] Traci and Francis are the parents of another child, B.M., who was born in 1994. In addition, Traci had two children, M.S. and M.S., with different men.

We find there is clear and convincing evidence in the record to support termination of Francis's parental rights under section 232.116(1)(g). We find no evidence to show Kelsey could be returned to Francis's care at the present time. We determine Francis received reasonable services. However, like Traci, Francis has not admitted how Kelsey came to be abused. Until this happens, he cannot fully participate in services because he is unable to address the issues which led to the abuse. We conclude his parental rights were properly terminated.

At the termination hearing, Francis sought to introduce the results of a polygraph test. The juvenile court refused to admit the test results. Francis contends the juvenile court abused its discretion in finding the test results inadmissible.

Polygraph evidence is generally inadmissible in the absence of a stipulation of the parties. *In re A.D.L.*, 497 N.W.2d 178, 180 (Iowa App. 1992). Iowa courts have refused to admit polygraph results under our rule of evidence because of their questionable reliability. *In re S.J.M.*, 539 N.W.2d 496, 500 (Iowa App. 1995). We find no abuse of discretion in the juvenile court decision not to admit the results of the polygraph test here.

We affirm the decision of the juvenile court to terminate the parental rights of Traci and Francis to Kelsey.

AFFIRMED.