IN THE COURT OF APPEALS OF IOWA

No. 8-313 / 97-2162

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF S.L.N. and T.J.R., Minor Children,

R.R., Father,
Appellant.

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

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

John C. Nelson, Sioux City, for appellant.

Marchelle M. Denker of the Juvenile Law Center, Sioux City, for minor children.

Thomas J. Miller, Attorney General, and Chris Odell, Assistant Attorney General, for appellee State.

Considered by Sackett, P.J., and Huitink and Mahan, JJ.

MAHAN, J.

Rory, the father, appeals from the termination of his parental rights. He claims the State did not prove all of the statutory elements of Iowa Code sections 232.116(1)(c), (d), or (k) (1997).

Rory and Vicky are the parents of Sara, born March 28, 1987, and Travis, born August 4, 1992. Rory and Vicky never married and separated in January 1993 after six years of an emotionally and physically abusive relationship.

In January 1993, Vicky married Joseph. During a visit with the children in March 1993, Rory discovered Travis had multiple injuries inflicted by Joseph. Vicky was aware Joseph was injuring her son. Both she and Joseph were convicted of child endangerment. The court adjudicated the children in need of assistance (CINA), removed them from Vicky's care, and placed them in foster care. In August 1993, a dispositional order placed the children in Rory's care.

Initially things went fairly well while the children were in Rory's care. However, in 1994 it was discovered Rory was using marijuana, and school authorities reported concerns about Sara's tardiness and deteriorating personal hygiene. Rory was ordered to submit to periodic urinalysis testing. A founded child abuse report was filed following an incident in which Rory left three-year-old Travis home alone. Rory continued to use marijuana despite repeated instruction from case workers to stop. The children were removed from his home and placed in foster care in December 1996. The January 1997 removal order, citing prior court admonitions to

Rory to stop using marijuana, again ordered him to submit to drug screens and to refrain from any further usage of illegal drugs. Rory failed to complete drug treatment in early 1997. He continued to test positive for marijuana use, even at the first day of the termination hearing in September 1997.

A petition to terminate the parental rights of Vicky and Rory was filed in June 1997. Following hearings in September, the court terminated the parental rights of Vicky and Rory by order filed November 13, 1997. Vicky has not appealed. Rory's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(c), (d), and (k).

"The overriding purpose of Chapter 232 is the child's welfare and best interests; of secondary importance is that the child remain in his or her home." *In re N.H.*, 383 N.W.2d 570, 572 (Iowa 1986). The parental interest in the family unit is not absolute and may be forfeited by certain conduct. *In re A.L.*, 492 N.W.2d 198, 200 (Iowa App. 1992) (citing *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)). "Every child deserves a safe, healthy, and stimulating environment in which to grow and mature." *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990).

The State has the duty to see every child within its borders receives proper care and treatment and must intercede when parents abdicate that responsibility. *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988). At a minimum, this care includes proper food, clothing, discipline, and supervision. The court considers what the future likely holds for the child if that child is returned to his or her parents. Insight for that

determination may be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is 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 to much probative force when a parent's record is being examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

In his appeal, Rory argues the State failed to prove all of the statutory elements for termination. He claims he was never physically abusive to the children and their initial removal in 1993 was not the result of his conduct. However, during his custody of the children, Rory was the subject of a founded child abuse report. Services were offered to help him cope with his pre-existing injury and parenting deficiencies. Although Rory made some improvement, he refused to relinquish his drug use, placing Sara and Travis at risk of further abuse or neglect. Although the initial adjudication of Sara and Travis as children in need of assistance was based on the abuse by their stepfather, their removal from Rory's home was caused by his own actions of abuse and neglect.

Rory contends he is just a casual user of marijuana and the State did not prove he has a chronic substance abuse problem. He claims the State's case permanency plans did not require a substance abuse evaluation or treatment during much of this case despite the State's knowledge of his use of marijuana. A parent's challenge to services should be made when they are offered. *In re C.W.*, 522 N.W.2d 113, 117

(Iowa App. 1994); *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App.1993). Rory contends the State did not establish a nexus between his infrequent use of marijuana and the problems he encountered in 1996 and 1997 in parenting his children.

From our review of the case history records, we find multiple examples from 1994 through 1997 of discussions with Rory concerning his marijuana use. He chose to continue using it himself, exposing his children to adult parties where drugs and alcohol were used, and even allowed Travis to put the marijuana pipe in his mouth. Various case permanency plans over the years mention substance abuse. Yet Rory continued to fail drug screenings or refused to participate in screenings. Not until his children were removed from his care did Rory participate in a drug treatment program. Even then, he was resistant to treatment and failed to complete the program. We conclude termination was proper under Iowa Code section 232.116(1)(k).[1] If termination is ordered on more than one statutory ground, we may affirm if we find grounds to terminate parental rights under any one of the sections cited by the district

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[1] Iowa Code section 232.116(1)(k) requires clear and convincing proof of the following:

> k. The court finds that all of the following have occurred:
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> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.
>
> (2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.
>
> (3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

court. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996); *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa App.1995).

Rory claims the children are bonded to him and could be returned to him in the near future. He argues he had custody of the children for more than three years during the pendency of the CINA action, and for all but the last three or four months of that period, his home was appropriate and his parenting skills were acceptable. Rory contends he was not given adequate time to comply with requirements of aftercare following his substance abuse evaluation and he should be afforded six to eight months to address and cure his substance abuse problem.

We find Rory had more than ample time to address his marijuana use but refused to do so. Even when in danger of losing his children, he refused to comply with treatment and continued to use marijuana through the beginning of the termination hearing. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d at 495. To keep children in temporary or even long-term foster homes is not in their best interests, especially when the children are adoptable. *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989); *In re T.T.*, 541 N.W.2d 552, 557-58 (Iowa App. 1995).

Case reports discussed the improvement the children made while in foster care. The district court found the children were adoptable. We conclude termination is in the best interests of Sara and Travis.

AFFIRMED.

Huitink, J., concurs; Sackett, P.J., specially concurs without opinion.