IN THE COURT OF APPEALS OF IOWA

No. 8-315 / 98-0095

FILED
AUG 28 1998
CLERK SUPREME COURT

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

T.D.-L., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary L. Timko, Associate Juvenile Judge.

The mother of a minor child appeals a juvenile court order terminating her parental rights. **REVERSED.**

Randy S. Hisey, South Sioux City, Nebraska, for appellant.

Thomas J. Miller, Attorney General, Chris C. Odell, Assistant Attorney General, and Rhoda M. Tenuta, Assistant County Attorney, for appellee State.

Joseph Kertels, Sioux City, guardian ad litem for minor child.

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

SACKETT, P.J.

Traskka, the mother of Michael, born in June of 1986, appeals the juvenile court order terminating her parental rights. She contends the juvenile court abused its discretion in terminating her parental rights because of the close bond she has with Michael. We reverse the decision of the juvenile court.

Michael came to the attention of the Nebraska Department of Social Services in 1995. There was a report Traskka had a nomadic lifestyle and was uncooperative with social services. The family moved to Sioux City. In June of 1995, the Iowa Department of Human Services, based on a report nine-year-old Michael was left unsupervised and often begged for food from neighbors, had the Sioux City Police Department remove Michael from Traskka's custody.

Michael was subsequently found to be a child in need of assistance and placed in foster care at the Crittenton Shelter for less than one month and then with the family where he resided at the time of the termination hearing. The court ordered family preservation services be provided to the parents once Traskka obtained a permanent address and an in-home inspection was done. Traskka has not established a permanent home. Traskka reported to the Department she had housing with friends but refused to reveal their identity or her address. Until April 1997, the Department had no record of a permanent address for Traskka.

There was a second dispositional hearing in December 1995. Traskka, pregnant with a child ultimately placed for adoption, was not employed. Traskka had

to this time attended all visitation and had unsupervised visitation every other Saturday. The court ordered Michael to remain in foster care and Traskka to keep appointments for prenatal care and attend individual therapy.

In August 1997, the State filed a petition to terminate Traskka's parental rights under Iowa Code sections 232.116(1)(c),[1] 232.116(1)(e),[2] and 232.16(1)(h).[3] The

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[1] Iowa Code section 232.116(1)(c) reads, in pertinent part:

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

. . . .

c. The court finds that both of the following have occurred:

. . . .

(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 continues to exist despite the offer or receipt of services.

[2] Iowa Code section 232.116(1)(e) states in pertinent part:

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

. . . .

e. The court finds that all of the following have occurred:

. . . .

(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.

[3] Iowa code section 232.116(1)(h) states:

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

petition also sought termination of Michael Sr.'s parental rights pursuant to section 232.116(1)(b). Following a hearing, the juvenile court entered an order terminating both parents' rights.

The juvenile court found Traskka failed to comply with the case permanency plan and was living day-to-day and home-to-home. The court determined there was a bond between Traskka and Michael. The court found while Traskka's colorful character might be fun for a child to be around, such character was not conducive to rearing a child and providing the basic necessities of life. The court also found Traskka unable to provide the basic necessities of life for herself, as evidenced by her unemployment, nomadic lifestyle, and drug use.

Traskka does not dispute grounds for termination exist under Iowa Code sections 232.116(1)(c), (e), and (h). Traskka does contend it is not in Michael's best interest that her parental rights be terminated because there is a bond between them.

. . . .

h. The court finds that all of the following have occurred:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

Iowa Code section 232.116(3)(c) provides, in pertinent part:

> 3. The court need not terminate the relationship between the parent and child if the court finds any of the following:
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> . . . .
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> c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.

Iowa Code § 232.116(3)(c).

The crux of section 232.116(3)(c) requires us to determine whether the evidence is clear and convincing Michael's interest will be better served by not legally terminating the relationship with his mother. To do that, we look at (1) Michael's age and time spent with his mother; (2) the deficiencies that led to his removal and the termination; (3) the impact of Michael's time in his mother's care on his behavior; (4) the strength of his bond with his mother; (5) the evidence of what the projected future holds for Michael if his mother's parental rights are terminated, and if they are not.

1. MICHAEL'S AGE AND TIME SPENT WITH HIS MOTHER. Michael is now twelve years old. He lived in his mother's home until he was nine, and after that time, he has had substantial contact with his mother through visitation. These factors weigh towards Traskka's position.

2. DEFICIENCIES LEADING TO REMOVAL. There is no evidence Michael has been physically or sexually abused by his mother. Hers have been sins of omission. Traskka failed to provide Michael with the supervision and housing

current society expects a parent to provide for a nine-year-old.[4] The termination is primarily supported by evidence of Traskka's inability to find housing, being a poor housekeeper, and alcohol and drug use by Traskka and her current husband, Sean. The factors show a lack of direction and discipline in Traskka's life and have impacted on her ability to care for Michael. These factors weigh against Traskka's position.

3. IMPACT ON MICHAEL'S BEHAVIOR. Michael experienced bed-wetting and stealing on removal from his mother's care. He is not a good student. There are no other major problems with Michael's behavior, nor does he manifest serious psychological difficulties. Michael bears the markings of a child loved from infancy who grew up in a home with little discipline or structure.

4. THE STRENGTH OF THE BOND. The need for a child to be loved by a constant person in life is recognized as an important part of a child's development. There is strong evidence that adoptees, even those adopted as infants, have a driving desire to associate with their birth parents. *See* Wald, *State Intervention on Behalf of "Neglected" Children: Standards for Removal of Children From Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights*, 28 Stan. L. Rev. 623 (1976).

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[4] A report following a psychological evaluation of Traskka states she "has a background that likely resulted in rather independent functioning at a fairly young age. She may have high expectations of her own child to do likewise. This is reflected in her statement that her child has a key, that he can let himself in at any time."

The record contains the following information concerning Michael's relationship with his mother:

> In a July 11, 1995, Iowa Department of Human Service Investigative Report, it stated: "Michael was somewhat guarded and hesitant in answering too many questions about his mother. Michael appears to be very defensive about her and seemed genuinely worried that any more information he would give me would just get his mother into trouble."
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> In a 10-3-97 Case Permanency Review by Detrick, he stated: "Michael appears through his counseling and supervised visits to be bonded to his mother and step-father, but it is felt to be more of a concern with Michael wanting to protect his mother and to know that she is OK." The report also stated: "Even though Michael has expressed that he wants to be reunited with his mother and Sean, this worker does not believe it would be in his best interest. Michael needs to be able to be a child and this worker fears this would not occur if reunited with his mother and Sean.
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> In a 4/24/96 CINA Order, it said Michael did not appear to be upset when visitations [between his mother and stepfather] were suspended.
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> In a 2/4/97 CINA Order, it said reduction in visits have not had adverse affects on Michael.
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> In a 5-9-97 Crittenton Center Report by Carla Bata, it stated: "Mike consistently expressed the desire to remain with his mother and did in the future. . . . Mike felt living with Aunt Sandy and Uncle Art in Florida would be 'OK, OK' if he could not live with mom and dad and would miss his parents." The report further stated: "I feel if the decision of the court is termination of parental rights, it would be very important for Mike's parents to give him their permission to go on with his life and be happy with his new family. Mike needs to know he has their permission so he can move forward and share happiness with his new family without feeling guilty or disloyal to his biological mother and Sean."
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> In an 8-18-97 Case Permanency Plan, it stated: "No matter what Michael has been through, he is loved and bonded to his mother and to terminate that relationship might be detrimental in Michael's future. Hopefully this can be addressed in therapy and there is a question on how healthy this bond is with his mother."

5. FUTURE. At the time of the termination hearing, there was no adoptive home available for Michael. The juvenile court found Michael should "be allowed to be adopted and placed in a 'forever' home"[5] and "the impediments to his forming new family relationships should be swept away."

Richard Detrick of the Department of Human Services had testified Michael was adoptable, and waiting to allow adoption would only decrease his chances. Yet, we have no evidence of the number of children waiting for adoption or the kind and number of homes anxious to adopt a twelve-year-old boy.

We cannot assume termination guarantees adoption. *In re B.H.*, 517 N.W.2d 715, 717 (Iowa App.1994). We have little historical perspective on the effect of termination on a child Michael's age. We have little or no evidence to help us understand the impact of terminating Michael's relationship with his mother because we consider her unworthy. Michael is bonded with his mother. He is concerned for her and wants to protect her and feel that she is alright. Michael has indicated he wants to be with his mother.

There is absolutely no guarantee Michael will find a new family. There is no guarantee Michael will find happiness in a new home. We cannot, therefore, assume either in looking to Michael's future. Adoption will take him from the only bonds he

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[5] There is no evidence "forever" homes exist or that Michael is ready to forget the mother with whom he spent the first nine years of his life.

has known in his twelve years: (1) his foster parents who want to keep him under a long-term care arrangement, and (2) his mother who loves him.

Michael is not going to forget his mother. Michael's foster parents are willing to keep him as a permanent foster child. The record shows Michael's mother has not been rehabilitated to be the kind of parent society feels a small child should have. Yet, Michael is no longer a small child. He needs to know where his mother is, continue contact with her and know she is alright and that she continues to love him.

On the record here, it appears Michael has the better chance by having his mother's ties remain intact and he be placed permanently in the foster home where he is bonded. We reverse the termination.

REVERSED.