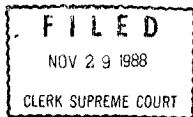


IN THE COURT OF APPEALS OF IOWA



IN THE INTEREST OF B.D.,)
J.D., and V.D., Children.)

R.D., Mother,)
)

8-412
88-341

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Appellant.

Appeal from the Iowa District Court for Sioux County (JT 760), Terry Huitink, Juvenile Referee, and Cameron B. Arnold, District Associate Judge.

The mother of three children appeals a juvenile court order terminating her parental rights. **REVERSED.**

Bradley K. De Jong of Klay, Veldhuizen, and De Jong, Orange City, for appellant mother.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; and Lloyd Bierma, Assistant Sioux County Attorney, for appellee State.

Myron Toering, Sioux Center, guardian ad litem for the children.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J.

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R.D., the mother of three children, appeals a juvenile court order terminating her parental rights. She challenges the sufficiency of the evidence to establish that the children cannot be returned to her custody, pursuant to Iowa Code section 232.116(5) (1987). We reverse.

The children in question are two girls, B.D. and V.D., born in 1979 and 1985, and a boy, J.D., born in 1983. R.D. was married to B.D. and V.D.'s father, E.D., but they are now divorced. J.D.'s natural father is unknown. R.D. is the custodial parent of all three children. E.D. voluntarily and intelligently consented to the termination of his parental rights with regard to B.D. and V.D., pursuant to Iowa Code section 232.116(1) (1987).

In July of 1985, the Department of Human Services became involved with the family through a protective service referral. The Department provided homemaker and day care services at that time to assist R.D. with the care of the children. These services appeared to be successful until April 9, 1986, when R.D. contacted the Department and indicated that she desired foster care for the children. On April 13, 1986, R.D. picked up the children from foster care, but requested foster care for them again on April 23, 1986, where they have remained since. The reason for the voluntary placement was so that R.D. could admit herself to an inpatient psychiatric clinic in Sioux Falls, South

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Dakota, to deal with emotional problems she was having at the time.

On May 19, 1986, a CHINA petition was filed and on June 6, 1986, the children were adjudicated CHINA and were placed in the custody of the Department.

After R.D. was released from the hospital in May 1986, she exercised consistent visitation with the children for approximately four months. Thereafter, R.D.'s visitation became more and more sporadic until January 1987, when she discontinued any further visitations with the children. In explaining her visitation failures, R.D. indicated that she was having difficulty getting along with the children's foster parents, problems with her work schedule, difficulties in arranging transportation, and emotional difficulty dealing with the return of the children to the foster parents at the end of visitation.

In June 1987, the State filed a petition to terminate the parental rights of both parents. With respect to E.D., the State relied upon grounds of consent to termination. With respect to R.D., the State relied upon the grounds stated in Iowa Code section 232.116(5). After a hearing, the juvenile court terminated the rights of both parents, and with respect to R.D., the court relied heavily on her failure to exercise consistent or frequent visitation.

The court terminated R.D.'s parental rights pursuant to

Iowa Code section 232.116(5).(1) That section permits the juvenile court to terminate the parent-child relationship if the child has been adjudicated in need of assistance, has been placed out of the parent's custody for more than twelve of the last eighteen months, and there is clear and convincing evidence that the child will suffer harm specified in Iowa Code section 232.2(6) (1987) if returned to the parent. See In re K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). The State must prove the allegations of the petition to terminate by clear and convincing evidence. See Santosky v. Kramer, 455 U.S. 745, 770, 102 S. Ct. 1388, 1402, 71 L. Ed. 2d 599, 617 (1982). This includes the requirement that before the court may terminate the parental rights there must be clear and convincing proof that the child will suffer harm in a manner specified in section 232.2(6). See In re Chad, 318 N.W.2d 213, 219 (Iowa 1982).

The trial court correctly found that the first two elements in a section 232.116(5) analysis had been met. B.D., V.D., and J.D. were adjudicated to be children in need of assistance and had been placed out of R.D.'s

1. The court also cited Iowa Code section 232.116(4) as grounds for termination, however, we find that section to be inapplicable to the facts of this case since the children had been in foster care placement for more than twelve months when the termination petition was filed. See Iowa Code § 232.116(4)(b).

custody for more than twelve months. We ⁶⁷do not find, however, that there has been a showing, by clear and convincing proof, that the children will suffer any of the harms delineated in section 232.2(6) by being returned to the custody of R.D.

The record indicates that R.D.'s effort to comply with court orders regarding visitation with her children, who have remained in foster care since April of 1986, was minimal in the children's first six months of foster care, and nonexistent in the second six months. We agree with the State that R.D.'s reasons for her lack of visitation are not justifiable excuses for her behavior. We fail to find, however, that evidence of R.D.'s failure to exercise consistent or frequent visitation is clear and convincing proof that R.D. is unable to care for her children or would do harm to her children if they were returned to her custody. The record is devoid of any clear and convincing evidence which would indicate that the children would suffer any of the harms delineated in Iowa Code section 232.2(6). While it is true that R.D. did have some emotional problems and some difficulty in coping with her parental duties some two years ago, there is nothing in the record that indicates that these are ongoing problems which should be of concern to the court such that termination of R.D.'s parental rights is warranted.

We conclude that the June 6, 1987, order⁶⁸ terminating R.D.'s parental rights in the minor children B.D., V.D., and J.D. must be and hereby is reversed.

REVERSED.