IN THE COURT OF APPEALS OF IOWA

No. 1999-231 (9-455) / 99-394
Filed August 27, 1999

IN THE INTEREST OF
C.B. R.B. and J.B.,

Minor Children,

L.L., Mother,

Appellant.

FILED
AUG 27 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Muscatine County, James A Weaver, District Associate Judge.

Mother appeals from juvenile court order terminating her parental rights.

AFFIRMED.

Neva Rettig Baker of Baker Law Office, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Katherine S. Miller-Todd, Assistant Attorney General, Richard Phillips, County Attorney, and James S. Burger, Assistant County Attorney, for appellee-State.

Roland M. Caldwell of Muscatine Legal Services, Muscatine, guardian ad litem for minor children.

Considered by Huitink, P.J., Mahan, J., and **Hayden, S.J.*** Vogel, J., takes no part.

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

HAYDEN, S.J.

Lisa and David are the parents of Robert, born in June 1990; Joshua, born in December 1991; and Cynthia, born in March 1993. Lisa appeals the decision of the juvenile court which terminated her parental rights to Robert and Cynthia. We affirm the decision terminating her parental rights.

The Department of Human Services (DHS) became involved with the family due to allegations the home was unsanitary, filthy and dangerous. The home contained a broken mirror propped against a wall. A battery, medicine, disinfectant spray, and a razor were in areas accessible to the children. The kitchen was filled with dirty dishes, many of which contained moldy food. Dirty diapers were on the floor. Cockroaches were seen climbing the walls. DHS issued founded reports of denial of critical care in July and October 1992. Lisa has borderline intellectual functioning. She voluntarily received services, including parent skill development, home environment management, and counseling.

Lisa and David separated in February 1993. The couple had a history of domestic violence. DHS conducted an investigation in July 1993, after Robert started a fire in the kitchen. They again found the home was still filthy, unsanitary and dangerous. DHS issued another founded report of denial of critical care. In August 1993, Lisa was arrested for injuring David. She had thrown a saw blade at him which had stuck in his back. The children were determined to be in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2). They remained in Lisa's care under DHS supervision.

An investigation conducted in April 1994 showed the home remained filthy, with dirty diapers on the floor and dirty dishes throughout the home. The conditions in the home raised safety concerns for the children, especially for Joshua, who was born with a brain defect and is developmentally delayed. DHS issued a founded report of denial of critical care. The children were removed from the home and placed in foster care.

Lisa began living with Duane in June 1994. Her relationship with Duane involved incidents of domestic violence. In June 1995, during an unsupervised visit Lisa fell asleep, leaving the children without adequate supervision. DHS issued a founded report of denial of critical care. Lisa made little progress in demonstrating an ability to care for her children. She was not nurturing during visits.

Eventually, social workers switched their attention to David, who was making progress with services. Robert and Cynthia were in David's care from March 1996 until March 1998. After a short time in the care of the paternal grandmother, they were placed in foster care. Joshua has been placed in the guardianship of the maternal grandmother, who is a certified nurse's aide.

Lisa divorced David and married Duane. DHS determined Duane should not be present during Lisa's visits with the children. In May 1998, Duane attended an unsupervised visit and slapped Cynthia on the arms, causing bruises. DHS issued founded reports of physical abuse against Duane and denial of critical care against Lisa. Lisa's visitation was changed to supervised. In September 1998, Lisa pled guilty to domestic assault.

Robert and Cynthia have done well in foster care. Robert had exhibited signs of anxiety, but these became better in foster care. Also, Cynthia had difficulties with delayed speech. Once she was placed in foster care her ability to communicate greatly improved. The children have stated they want to be adopted. Social workers believe there is a good chance the children will be adopted. The maternal grandmother, who already has guardianship of Joshua, has expressed interest in caring for these two children.

In October 1998, the State filed a petition to terminate Lisa and David's parental rights. The juvenile court terminated Lisa's parental rights to Robert and Cynthia under section 232.116(1)(e). The court found Lisa was unable to care for the children. David's parental rights were also terminated. Lisa appealed.

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 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).

Lisa contends the State failed to present clear and convincing evidence to show the children could not be returned to her care, which is an element of section 232.116(1)(e). She states her housekeeping skills have improved since the case began. She believes Robert and Cynthia would not be in any danger in her home.

During the termination hearing Lisa admitted her present housing was not adequate. She testified it might take as much as a year before she found a place large

enough for the children. The children have already been out of the mother's home since April 1994. We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children. *In re A.Y.H.*, 508 N.W.2d 92, 96 (Iowa App. 1996).

Also, Lisa and Duane continued to have problems with domestic violence, as shown by Lisa's recent conviction for domestic assault. In addition, the June 1998 founded reports of physical abuse and denial of critical care regarding these children show the children remained in danger in Lisa's care. Lisa's parental rights were properly terminated under section 232.116(1)(e).

Under section 232.116(3)(a), a court need not terminate parental rights if a relative has legal custody of the child. Lisa asserts the children should be placed in the care of the maternal grandmother and her parental rights should not be terminated.

The factors in section 232.116(3) are permissive, not mandatory. *In re A.J.*, 553 N.W.2d 909, 916 (Iowa App. 1996). It is in the juvenile court's discretion to apply the factors in this statute based on the unique circumstances of each case and the best interests of the children. *Id.*

The children are not in the maternal grandmother's or any relative's care. They remain in foster care. The grandmother was being considered as a placement option. Even if the children were placed with the grandmother, termination of Lisa's parental rights would be appropriate. The children need stability and want to be adopted. Termination of Lisa's parental rights is in the children's best interests.

We affirm the decision of the juvenile court terminating Lisa's parental rights to Robert and Cynthia.

AFFIRMED.