IN THE COURT OF APPEALS OF IOWA

No. 7-193 / 96-1772

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF A.M., Minor Child,

J.B., Mother,
Appellant,

R.B., Father,
Appellant.

Appeal from the Iowa District Court for Polk County, Constance Cohen, Associate Juvenile Judge.

Mother and father appeal the juvenile court's order terminating their parental rights. **AFFIRMED.**

Kevin E. Hobbs, Des Moines, for appellant-mother.

Trever T. Hook of Sinclair & Associates, P.L., West Des Moines, for appellant-father.

Thomas J. Miller, Attorney General, Diane M. Stahle, Special Assistant Attorney General, and Emily McConkey, Assistant County Attorney, for appellee-State.

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

VOGEL, J.

Alyse's mother, Janneen, and father, Robin, appeal the juvenile court's order terminating their parental rights. Janneen argues termination is not in the best interests of the child and that the State did not make reasonable efforts to reunite her with her child. Robin argues the court erred in ruling the child could not testify at the termination hearing and in finding the termination was in the child's best interest.

Scope of review. Appellate review of termination proceedings is de novo; we may review the facts as well as the law and adjudicate the parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We accord weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995); Iowa R. App. P. 14(f)(7).

The primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d at 275.

> We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can 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. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing *Dameron*, 306 N.W.2d at 745).

I. Termination. Janneen and Robin's parental rights were terminated under Iowa Code sections 232.116(1)(c) and 232.116(1)(k) (1995). Iowa Code section 232.116(1)(c) allows the court to terminate parental rights to a child if *both* the following have occurred:

> (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as a result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
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> (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.

Id. Iowa Code section 232.116(1)(k) provides parental rights may be terminated if all the following have occurred:

> (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.
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> (2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.
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> (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.

Id.

A. Janneen's appeal. Janneen contends Alyse's best interests can be served by reuniting her with Alyse, and Janneen further contends she was not given a full and fair opportunity to be reunited with Alyse.

We find it would not be in Alyse's best interests to be reunited with Janneen. While it appears Janneen loves her daughter and wants what is best for her, Janneen has admitted her life is controlled by her addictions and thus she cannot provide stability for Alyse. Janneen has at times provided clothing, books, and school supplies for Alyse, but she has not been a stable and dependable source of financial support.

Neither has Janneen been a source of emotional support and security for Alyse. Janneen did not appear at the termination hearing as she was "on the run" from an apparent warrant out for her arrest. Janneen in the past has failed to protect Alyse from contact with perpetrators of sexual abuse and has exposed Alyse to adult sexual situations and domestic violence. The juvenile court was concerned about Janneen's detrimental effect on Alyse and entered a no-contact order prohibiting Janneen from contacting Alyse in person, by writing, or by telephone. Prior to this, when Janneen was allowed to see Alyse, her visits were sporadic, due in large part to her chemical abuse. On May 11, 1996, Janneen had one meeting with Alyse's therapist who gave Janneen two assignments to complete in order to determine whether a visitation could take place. Janneen was to write a letter to Alyse about her abandonment of Alyse and her recent rehabilitative efforts. Janneen was also to have pictures taken of

herself to give to Alyse. Janneen failed to follow through on these two tasks and thus jeopardized any chance she would have to visit her daughter. This lack of parental involvement and concern is troubling as it is indicative of Janneen's future behavior if her parental rights are not terminated. Further, Janneen's actions effectively belie her goal of wanting to be reunited with Alyse.

Alyse continues to have serious psychological problems with her therapists and the workers agree her condition will not improve until she has permanency and stability in her life. One of Alyse's therapists stated:

> Alyse remains an angry and severely oppositional child whose life has been put on hold for 3 years with no resolution to permanency and a committed family who will care for her needs on a long term and permanent basis. To continue such a pattern in Alyse's life will continue to render permanent, irreversible damage in Alyse's sense of trust and attachment to adult caregivers and parenting figures. It is cruel to continue this pattern any longer. Alyse needs permanency now. Waiting longer will only increase her attachment problems, behavior problems and negatively affect her personality development.

We do not think it is in Alyse's best interests to allow Janneen's parental rights to remain intact.

Janneen also argues the State made no reasonable efforts to reunite her with Alyse. Reasonable services must be provided by the State to attempt to reunite the family before a termination of parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). However, while the State must make reasonable efforts to reunite the family, the parents have the ultimate responsibility to demand services *prior* to the termination proceeding. *Id.; In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). We

find the record lacks evidence indicating Janneen raised this issue prior to the termination hearing.[1] We are thus precluded from addressing this issue.

Notwithstanding this issue has not been preserved for appeal, we note the State did make reasonable efforts to reunite Janneen with Alyse. Janneen failed to take advantages of the opportunities offered. Failure to take advantages of services does not mean reasonable services were not provided. *See In re B.K.J.*, 483 N.W.2d 608, 610-11 (Iowa App. 1992). The reunification efforts of the Department of Human Services (the "Department") were made to no avail. Janneen did not complete a parenting evaluation, did not complete individual therapy, and did not successfully complete substance abuse treatment. She was under court order to submit to regular drug screens; Janneen failed to follow through on this and of the four she did submit in 1993 and 1994, three were positive for cocaine.

We further note it is not possible to return Alyse to Janneen's home without great concerns for her safety and stability. Additionally, "[w]hile the law demands a full measure of patience with a troubled parent who attempts to remedy a lack of parenting skills, . . . a child need not endlessly wait the maturity of his of her natural parent." *In re B.K.J.*, 483 N.W.2d at 611. Moreover, the Iowa legislature does not make a special provision to allow young parents more time to learn to adequately

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[1] The only request Janneen made prior to the termination hearing was visitation with Alyse. Janneen failed to follow through on two conditions that needed to be met to allow her visitation. Janneen never challenged the services she was offered, nor did she ask for additional services to be provided.

function as parents. A child's rights are not a function of his or her parent's age. *In re M.R.*, 487 N.W.2d 99, 103 (Iowa App. 1992). We therefore affirm the juvenile court's order terminating Janneen's parental rights.

B. Robin's appeal. Robin argues the trial court erred by not allowing Alyse, eight years-old at the time of the termination hearing, to testify. Parents do not possess an inherent right to subpoena their children to testify in termination cases; rather, the court must assess whether it is in the best interest of the child to testify. *In re H.R.K.*, 433 N.W.2d 46, 49 (Iowa App. 1988). We find the juvenile court correctly declined to allow Alyse to testify.

Robin requested Alyse be allowed to testify, not in open court, but that she be questioned by the Judge, on the record, in the Judge's chambers with the only persons present being the Judge, Alyse, and a court reporter. The court issued a protective order, finding, at the behest of Alyse's therapist, that Alyse "was barely hanging on; that this could push her over the edge given her delicate emotional state, notwithstanding her intelligence, that it would be unduly harmful psychologically to have her testify." The court specifically noted it could get a complete picture of this case without Alyse's testimony.

We are convinced there is a bond between Robin and Alyse; however, we cannot, in looking to the best interests of Alyse, discount the detrimental effect Robin would have on Alyse if his parental rights are not terminated. Alyse's behavioral problems at school and in her foster home escalated after more liberal visitation from

Robin was allowed. Dr. Cavellin expressed grave concerns about returning Alyse to her father until he could be assured Alyse would get the structure and consistency she needed to keep her behavior under control. Notwithstanding these concerns, Alyse was returned to Robin's home in December of 1995. Three months later, on March 8, 1996, an emergency removal order was entered returning Alyse to the custody of the Department.

The emergency removal was effected because the court found Alyse's "life or health would be in imminent danger if she remains in the custody of her father." During the time Alyse was in her father, Robin's, care, he tested positive for cocaine, failed to administer Alyse's medication consistently, and routinely failed to get Alyse to school on time. Sleeping arrangements were less than ideal. Alyse had to either sleep on the couch with her father, in a room with her adolescent brother, or in the living room with several other people, including Robin's friends. Alyse reported she was afraid her father would let someone harm her. She was often up until 1:00 a.m. At that time, Robin was also living with his girlfriend in a chaotic and violent relationship. Moreover, Alyse's anxiety, behavior, and depression deteriorated to the extent of being close to hospitalization. In school, she was oppositional, often fell asleep during class, and had an attention deficit.

Since March of 1996, Robin has not visited Alyse because he has not submitted to regular drug screens as ordered by the court. Robin did submit twenty drug screens and twelve of them were positive. Robin also admitted he was not in a

position to take care of Alyse and testified it would take him at least "a month or month and a half" to get a new job and adequate place to live before he was ready for Alyse to live with him.

Thus, the fact that Alyse was not able to testify would not warrant the termination hearing to be re-opened as Robin urges. We conclude there is sufficient evidence, without Alyse's testimony, to justify terminating Robin's parental rights. Robin has been given numerous services and opportunities to prove himself a fit parent. Despite extensive services offered and the efforts of Robin over a long period of time, we find Robin cannot provide Alyse the safety, stability, and structure she needs.

Having carefully considered the arguments on appeal, we affirm the juvenile court's termination of Janneen and Robin's parental rights.

AFFIRMED.