



IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF D.R., A Child;)
M.R., Natural Mother,)
Appellant.)

Filed May 28, 1987

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86-1090

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Appeal from the Iowa District Court for Linn County (No. JT 569-1285),
Sylvia Lewis, Juvenile Referee.

The natural mother of a two-year-old boy appeals from the juvenile court order terminating her parental rights pursuant to Iowa Code section 232.116(5) (1985) (child in need of assistance who has been transferred from parents' custody for at least 12 months cannot be returned there). **AFFIRMED.**

Carroll Lucht, Iowa City, for appellant.

Thomas J. Miller, Attorney General; Gordon E. Allen, Special Assistant Attorney General; Katherine S. Miller-Todd, Assistant Attorney General; and Robert A. Kimm, Assistant County Attorney, for appellee State of Iowa.

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

DONIELSON, J.

The natural mother of a two-year-old boy appeals from the juvenile court order terminating her parental rights pursuant to Iowa Code section 232.116(5) (1985). The natural mother, M.R., contends that the juvenile court should not have terminated her parental rights because: (1) the case plan adopted for her was vague, was difficult for her to comply with, and was developed without input from her psychiatrist; and (2) there were abrupt and unexplained changes in the social workers assigned to her case. We affirm.

D.R. was born on March 8, 1984. M.R. is his natural mother; his father is unknown. D.R. was a premature baby and was born with severe hyaline membrane disease, which requires supplemental oxygen, and must wear a leg brace. Shortly after D.R.'s birth, M.R. was placed in the University of Iowa Psychiatric Hospital after she attacked the hospital staff on at least three occasions. Approximately one month after D.R.'s birth, the Linn County Juvenile Court ordered that temporary custody of D.R. be placed with the Iowa Department of Human Services. The court in its order noted that M.R., during an outburst, refused to give D.R. oxygen, resulting in D.R. becoming cyanotic and requiring immediate medical attention. The court determined that because M.R. has had a history of psychiatric disorders M.R. was unable to care for D.R. at that time. D.R. was eventually released from the University Hospitals and transferred to St. Luke's Hospital in Cedar Rapids, Iowa.

While D.R. was at St. Luke's, the staff again made efforts to allow visitation by M.R. M.R., however, proved to be incapable of dealing with the difficulties presented by D.R.'s condition. M.R. again became explosive and assaultive towards the hospital staff. During one episode on May 14, 1984, M.R. assaulted the hospital staff and attempted to flee the hospital with D.R. Again, in August 1984, when D.R. was admitted to the hospital, M.R. became violent and explosive

and twice assaulted hospital staff. The hospital filed assault charges against M.R. on August 11, 1984.

On September 13, 1984, following trial, the juvenile court found by clear and convincing evidence that D.R. was a child in need of assistance based upon D.R.'s considerable health needs and M.R.'s assaultive behavior. The court found that M.R.'s behavior towards medical personnel treating D.R. made it unlikely she would see that his medical needs were met. M.R. was at this time spending considerable time either in jail, as a result of her frequent assaults on individuals, or at the Mental Health Institute in Independence.

The human services department developed a case plan for M.R. with input from her attorney. The plan basically required M.R. to stay out of jail, undergo mental health therapy, improve her parenting skills, spend more time with D.R., wait for D.R.'s health to improve, and give the department permission to contact various persons and agencies. M.R. began seeing a psychiatrist regularly after the case plan was developed. M.R.'s case was handled by three different social workers. When she threatened the first social worker and his family, she was assigned to a second. The second social worker asked to be taken off M.R.'s case when M.R. became assaultive. This second social worker apparently did not notify M.R. that she was being transferred to a third social worker. M.R. attacked the third social worker during a visit with D.R.

In December 1985 a petition was filed to terminate M.R.'s parental rights pursuant to Iowa Code section 232.116(5) (1985) (child in need of assistance who has been transferred from parent's custody for at least twelve months cannot be returned there). At trial, Dr. Vincent Faherty, a social work expert, testified on behalf of M.R. Dr. Faherty testified: (1) that the language of M.R.'s case plan was vague and that with such a plan it would be difficult for a client to determine exactly what was expected; (2) that the psychiatrist treating M.R.

should have been involved in the development of the plan; and (3) that an abrupt change in social workers might upset a client. Neither M.R. nor her psychiatrist testified.

On July 1, 1986, the court ordered that M.R.'s parental rights be terminated and that custody of D.R. be transferred to the Department of Human Services for adoptive placement. M.R. has subsequently appealed.

On appeal, we review parent-child terminations de novo. In Interest of K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). While we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

M.R. asserts that the trial court erred in finding that there was clear and convincing evidence supporting termination of her parental rights. M.R. contends that the case plan adopted for her improvement was too vague and had been developed without input from her psychiatrist and that there were abrupt and unexplained changes in the social workers assigned to her case. We find no merit in either of these arguments and affirm the trial court's order terminating M.R.'s parental rights.

In its petition the State alleged, and the district court found, that grounds for the termination of M.R.'s parental rights existed under Iowa Code section 232.116(5). Section 232.116 outlines six grounds upon which termination of parental rights may be authorized. Generally, if one of these grounds is established by clear and convincing evidence, the termination will be upheld. K.L.C., 372 N.W.2d at 237.

The district court specifically found that D.R. was a child in need of assistance under the provisions of Iowa Code sections 232.2(5)(c)(2), 232.2(5)(b), and 232.5(e) (1983). Iowa Code section 232.2(5) defines the conditions pursuant to which a court may find a child in need of assistance. Section 232.2(5) provides

in pertinent part:

5. "child in need of assistance" means an unmarried child:

* * *

(b) whose parent, guardian, or other custodian has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

(c) who has suffered or is imminently likely to suffer harmful effects as a result of:

* * *

(2) The failure of the child's parent, guardian, or custodian to exercise a reasonable degree of care in supervising the child.

* * *

(e) who is in need of medical treatment to cure, alleviate, or prevent serious physical injury or illness and whose parent, guardian or custodian is unwilling or unable to provide such treatment.

Once the court has determined that a child is in need of assistance, the court may terminate parental rights pursuant to section 232.116(5) if the child has been adjudicated in need of assistance, has been placed out of the parent's custody for more than twelve months, and there is clear and convincing evidence that the child cannot be returned to the parental home because definitional grounds of a "child in need of assistance still exist."

The paramount consideration in a determination of this nature is the best interests of the child. In Interest of J.R.H., 358 N.W.2d 311, 317 (Iowa 1984); In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). While we recognize the importance of the integrity of the family unit and that the child's interests may best be served in the care of his parents, such principles are not absolute, but may be defeated by parental conduct. Dameron, 306 N.W.2d at 745. In evaluating the child's best interests, we necessarily consider the child's long-range as well as immediate interests. Id. intrinsic to this evaluation is an examination

of the parent's past performance, from which valuable insight may be gleaned as to the future quality of care the parents are able to provide. In Interest of O'Neal, 303 N.W.2d 414, 423 (Iowa 1978). In addition, the State, as parens patriae, has the duty to assume that every child within its borders receives proper care and treatment and must intercede when parents have abdicated that responsibility. K.L.C., 372 N.W.2d at 226.

We first address M.R.'s claim that the case plan she received was inadequate because it was difficult for her to understand what was expected of her. Though M.R. contends that the issue of the adequacy of treatment for parents and family reunification plans has not been considered by the courts of Iowa, this court directly considered this issue in the case of In Interest of M.H., 367 N.W.2d 275 (Iowa App. 1985). In M.H., the natural mother argued that she should have been given an adequate case plan so that she would know how to comport herself in order to achieve the return of her children. 367 N.W.2d at 280. The mother argued that since the court had indicated to her that the plan was inadequate and no new plan was implemented, she was denied fair procedures in violation of the fifth and fourteenth amendments to the United States Constitution and article 1, sections 9 and 10 of the Iowa Constitution. In rejecting the mother's claim, we stated:

We do not dispute petitioner's claim that her interest in maintaining the integrity of her family unit is protected by the Due Process Clause of the United States and Iowa constitutions. Alsager v. District Court of Polk County, Iowa, 406 F. Supp. 10, 22 (S.D. Iowa 1975). However, we agree with the State that neither is there a contract relationship between the State and the parent; where after a CHINA adjudication a case plan is presented, and if the parent gets a passing score the children are returned to them. As we have indicated in our discussion, petitioner visited her children regularly, attended the meetings required, and complied in large part with the case plan presented. Whether the mother received a passing grade on this case plan, or would have with a more involved case plan, the evidence still points to the fact the mother is incapable of changing her behavior in time for these children.

We cannot accept petitioner's argument that she was denied fair procedures or the statute was unconstitutionally vague as applied. In cases where the Iowa courts have addressed similar arguments, the courts have found that a long and detailed history of juvenile court proceedings can afford the parent with ample information of what is expected of them. Long v. Long, 255 N.W.2d 140, 144 (Iowa 1977). In discussing whether another termination statute was constitutionally applied, the court has said, "Briefly stated, the ordinary parent should encounter no difficulty in 'getting the message' clearly conveyed by (the statute)." In Interest of Lewis, 257 N.W.2d 505, 511 (Iowa 1977).

Id.

We find much of this language dispositive of the present case. D.R. has numerous medical needs that require responsible attention. Yet the record is replete with evidence that M.R. is unable or unwilling to work with medical personnel regarding the care of D.R. M.R. time and again physically assaulted hospital staff and physicians alike while D.R. was hospitalized at University Hospitals and again at St. Luke's Hospital, where she tried to run away with D.R. M.R. made no efforts to attend any training classes offered to learn how to care for D.R.'s medical needs. M.R.'s indifference to D.R.'s serious medical condition is aptly illustrated by her comment at University Hospitals, that "if [D.R.] has to suffer (due to her demand for a change in oxygen level) he'll just have to."

The record also reveals that throughout the time periods in question, M.R. displayed unstable, violent, and erratic behavior towards anyone with whom she came into contact. At the temporary custody hearing on May 24, 1984, M.R., despite repeated warnings by the court, hurled repeated profanities at the court, threw her purse across the courtroom, and ran from the courtroom minus her shoes and with one handcuff on. The record reveals that despite the efforts of three social workers, M.R. displayed violent behavior towards all three. M.R. threatened one social worker's life and his family. Another social worker testified that, despite his long experience with threatening and

difficult clients, he asked for a transfer from M.R.'s case because the threat of violent conduct against him was exceptional. During a supervised visit with D.R., accompanied by a third social worker, M.R. attacked the social worker, breaking her glasses, and causing cuts and bruises.

The record additionally reveals that on several occasions, M.R. sent back letters sent to her by the Department of Human Services, and her telephone calls to the department were erratic. The most that can be said of M.R.'s visits with D.R. is that some of the visits went smoothly. On a number of occasions, however, M.R. displayed violent behavior towards a social worker, and another time, just prior to a scheduled visit at the Mental Health Institute, M.R. began yelling, "Why are you people doing this to me," and smashed her hand into a window. Even M.R.'s witness, Dr. Faherty, who testified concerning the shortcomings of the case plan, admitted that it would be dangerous to place custody of D.R. with M.R. at the present time.

We believe the above facts glaringly confirm the judgment of the district court that D.R. would suffer imminent harm if returned to the custody of M.R. Despite nearly two years of efforts by various hospitals, agencies, and social workers, M.R. has shown little, if any, progress in curbing her violent and aggressive behavior towards others. Like the court in M.H., we are convinced that, whether or not M.R. would receive a passing grade on the present case plan, or would have achieved a better chance with a more involved case plan, the inescapable conclusion is that M.R. is incapable of changing her behavior in time for D.R. While we are sympathetic to M.R.'s mental health problems, given M.R.'s past violent behavior and given D.R.'s significant medical needs, we need not sit idly by before actual harm is inflicted upon D.R. We decline to gamble with D.R.'s future. In Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983), citing In Interest of Kester, 228 N.W.2d 107, 110-11 (Iowa 1975).

M.R. also contends that the Linn County Department of Human Services acted unprofessionally and incompetently in handling M.R. We need but briefly address this issue. We initially note that M.R. points to no actual incidents of incompetence in the department's attempt to implement the case plan. Rather, M.R. argues that unfairness resulted from her being assigned three different social workers in approximately a two-year period. Dr. Faherty, testifying on behalf of M.R., testified that it appeared to him that the social workers appeared to become tired of M.R. and simply requested that another social worker be assigned to the case. Dr. Faherty also testified that M.R. should have been contacted when a transfer was made and that she should have been informed that the transfer was not a result of rejection by the social worker.

We find no evidence that had the transfers been accomplished as M.R. desired, M.R. would have been less uncooperative or violent towards the social workers assigned to her case. Despite the fact that M.R. was either in jail or at the Mental Health Institute, numerous attempts were made to enable M.R. to exercise visitation with D.R. While some visits were uneventful, others were marred with violent or hostile conduct. Given M.R.'s conduct towards the social workers, it is clear that communication with M.R. would have been difficult under the best of circumstances. The record reveals that M.R., her attorney, and her guardian ad litem were all informed of the change in social workers. We also note that at least two attorneys withdrew as M.R.'s representative due to harrassing telephone calls and threats of violence towards themselves and their families. We therefore find no merit in M.R.'s argument that the Department of Human Services efforts to implement the case plan were unprofessional or incompetent.

AFFIRMED.