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IN THE COURT OF APPEALS OF IOWA

SAMUEL O. ERHARDT,

)

Appellee,

)

Filed April 26, 1979

IN THE INTEREST OF

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DENNY EUGENE RAINES, A Minor,

)

VIVIAN MARTIN RAINES and

)

ROBERT MILTON RAINES,

)

Appellants.

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2-61982

Appeal from Wapello District Court - Max H. Ruschmeyer, Magistrate.

Natural parents appeal from trial court order terminating parental rights.

AFFIRMED.

Bailey C. Webber of Ottumwa, Iowa for appellants.

Thomas J. Miller, Attorney General; Steve Robinson and Francis Hoyt, Assistant Attorneys General; Samuel O. Erhardt, Wapello County Attorney; and John Moreland, of Ottumwa, Iowa; for appellee.

Thomas Walter of Ottumwa, Iowa, for child.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

CARTER, J.

The natural mother and father (parents) appeal from a juvenile court order terminating their parental rights as to their two-year-old son, Denny. The juvenile court found that grounds for termination of parental rights had been established under each of three separate statutory provisions: subsections (4), (5) and (6) of section 600A.8, The Code 1977.

Our review is de novo. In Interest of Voeltz, 271 N.W.2d 719, 722 (Iowa 1978). We need only determine whether any one of the statutory grounds is established by clear and convincing evidence in order to uphold the action of the juvenile court. Voeltz, 271 N.W.2d at 723; In Interest of Kelley, 262 N.W.2d 781, 785 (Iowa 1978).

We are satisfied upon reviewing the record de novo that clear and convincing evidence supports the juvenile court's determination that following an adjudication that Denny was in need of assistance, reasonable efforts under the direction of the juvenile court had failed to correct the conditions giving rise to such adjudication. This is a statutory ground for termination under subsection (6) of section 600A.8.

Denny was adjudicated to be a child in need of assistance on May 19, 1977. At this time his parents had voluntarily placed the child in foster care in recognition of their inability at that time to properly care for him. The order of the juvenile court provided that Denny's custody be placed with the Wapello County Department of Social Services and that his status be reconsidered by the court in six months. In the meantime, the natural parents were granted rights of visitation and directed to work under the supervision of the Department of Social Services in order that the conditions giving rise to the adjudication under section 232.2(13), The Code 1977, be corrected. Thereafter substantial effort was made under the direction of the juvenile court involving psychiatric counselling and a program of infant-parent interaction wherein a qualified health educator sought to aid the parents in improving their child rearing abilities.

Dissatisfied with the results of these efforts, the Department of Social Services recommended that a petition for termination of parental rights be filed. Such a petition was filed on January 20, 1978, and following two evidentiary hearings, the juvenile court ordered that the parents' rights be terminated on April 6, 1978.

Without detailing all of the evidence of the parents' inadequacies it has clearly and convincingly been established that the parents still lack sufficient parenting

capability to be able to occupy that role with respect to Denny. The prognosis for improvement by the parents in this regard is seen as very poor by nearly all of the responsible parties who have worked with them under the direction of the juvenile court. On this appeal the parents do not suggest that the conditions giving rise to the adjudication under section 232.2(13) have been sufficiently corrected to end Denny's status as a child in need of assistance. Instead, they urge that this status be continued indefinitely. We are concerned as was the court in Voeltz that if we simply maintain the status quo in the present case this will result in the continuation of a state of "parentless limbo" for Denny. We believe that such result is not in the best interests of the child. Subsection (6) of section 600A.8 is designed to prevent this from happening. We find that the juvenile court was correct in ordering termination of the parents' rights under that statute.

AFFIRMED.

Donielson and Snell, JJ., concur. Oxberger, C.J., and Johnson, J., dissent.

OXBERGER, C. J. (dissenting)

I dissent. The majority terminates the Raines' parental rights because it does not want to continue this case indefinitely. I agree there is usually merit in expediting cases through the court system. However, I believe an exception should be made for parents who lack the intelligence to perform their parenting duties within the normal range of competency.

I favor long term juvenile court assistance to parents who are unfortunate enough to have limited intellectual ability. In 1950, Mrs. Raines was diagnosed at Iowa City Psychopathic Hospital as having a high borderline to dull normal level of intelligence. She quit school in the seventh grade because she suffered verbal abuse from other children who teased her about her intellectual capacity.

The court psychiatrist, Dr. Mahannah, testified, "Mrs. Raines has been very faithful and diligent in respect to keeping her appointments." He further stated that "her efforts were sincere." He said, "since I first saw her, Mrs. Raines' capacity to meet the needs of her child increased."

The issue here presented is whether the juvenile court should be required to provide long term assistance to low intelligence parents to help them raise their children. For me, the answer is yes.

JOHNSON, J. (dissenting)

I dissent. While there is evidence to show that the parents in this case are far from model parents, I believe the record fails to disclose by clear and convincing evidence that the conditions giving rise to the child-in-need-of-assistance adjudication have not been substantially corrected through the assistance given to the parents.

There is no evidence of abuse; the mother's schizophrenic condition is in remission; the parents have cooperated with those persons designated to render assistance to them in improving their abilities as parents. Unless we are prepared to say, which I am not, that all children should be removed from their parents and placed in the environment most stimulating to their mental abilities and conducive to their maximum growth and development, trial court's judgment should be reversed.