IN THE COURT OF APPEALS OF IOWA

No. 1-587 / 01-501
Filed September 26, 2001

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF A.F., J.F., and B.F., Minor Children,

J.F., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights to her three children. **AFFIRMED.**

Elizabeth A. Rosenbaum, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Dewey Sloan, Assistant County Attorney, for appellee-State.

Marchelle Denker, Juvenile Law Center, Sioux City, guardian ad litem for minor children.

Considered by Huitink, P.J., and Miller and Hecht, JJ.

MILLER, J.

A mother appeals the decision of the juvenile court which terminated her parental rights to her three minor children. She claims the State did not present sufficient evidence to justify termination of her parental rights. We affirm on appeal.

Jean and Brett are the parents of Angela, born in June 1993; Joshua, born in August 1994; and Brittany, born in May 1996. Jean has a history of suffering from depression.

Brittany was born with a heart defect, and she required open heart surgery soon after her birth. The parents failed to attend training necessary to care for Brittany after her release from the hospital. Also, Brittany was particularly susceptible to germs, and the parents' home was very unsanitary. Brittany was placed in foster care. In July 1996, Jean was hospitalized for emotional problems. All three children were adjudicated to be children in need of assistance pursuant to Iowa Code sections 232.2(6)(c), (e), and (n) (1995).

The parents were cooperative with services, including family-centered services, housekeeping, and supervised visitation. Eventually, a plan was created to gradually transition Brittany into the parental home. In November 1997, shortly before Brittany was to be returned to the home, the parents were involved in a physical altercation which Angela and Joshua witnessed. Brett was arrested for domestic assault. The plans to return Brittany were abandoned. Angela and Joshua were removed from the home and placed in foster care.

In June 1998, acting on the recommendation of the therapist for Angela and Joshua, the juvenile court suspended the parents' visitation with all the

children. Angela and Joshua had some behavioral problems after visits, such as aggressive behavior and bed-wetting.

In July 1998, Jean sought a restraining order against Brett. She revealed there had been on-going problems with domestic abuse in the parents' relationship. The parents began dissolution proceedings.[1] Jean began living with her mother. She became more involved with services, and even initiated some training on her own. However, she was arrested for shoplifting in October 1998. Jean had a psychosocial evaluation, which determined she had depression, a dependent personality disorder, an eating disorder and very poor decision-making abilities. The evaluation recommended that the children not be returned to her care.

Jean requested that visits with the children resume. During a hearing in March 1999, the juvenile court found out the therapist for Angela and Joshua had been told in May 1998 that termination of the parents' rights was imminent, and that this influenced her decision to recommend visitation be suspended. The court ordered that a new therapist should be assigned to the case, and this therapist would make a recommendation concerning whether visitation should be reinitiated. In July 1999, Jean began having visits with Angela and Joshua during their play therapy sessions with Dr. Denise Marandola.

In December 1999, the State filed a petition to terminate the parental rights of Jean and Brett to Angela, Joshua, and Brittany. In an order dated April 18, 2000, the juvenile court determined Brett's parental rights should be terminated. Regarding Jean, the court stated:

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[1] A dissolution decree was entered for the parents on April 16, 1999.

> The court does not feel it is in the children's best interests to terminate Jean's parental rights at this time in light of the progress that has been made with Dr. Marandola and the children's' relationship with Jean. However, if progress does not continue to be made, and/or there is any significant setback, time will expire on the hope that the children can be reunified with her. Jean must cooperate fully from this point forward if there is to be success in the time necessary.

The court ordered the State to immediately establish a visitation plan for Jean with all three children.

Jean then began an extensive visitation schedule with Angela and Joshua, and later with Brittany as well. The older children were granted an extended visitation with Jean, beginning near the end of June 2000. By August 2000, concerns arose because Jean and the children were not home during times they should have been present for drop-in visits by social workers. Also, Jean's home became extremely dirty. There were concerns that Jean and her mother had asked the children to lie about the conditions in the home. Furthermore, DHS received a report Jean's mother had pushed Joshua, giving him a scratch. The children were removed from Jean's care that same month. Dr. Marandola concluded that continued attempts at reunification would be counter-productive because Jean did not see any need to change.

In September 2000, the State filed a petition to terminate Jean's parental rights to her three minor children. The court terminated Jean's parental rights under section 232.116(1)(e) (1999). The court determined the children could not be returned to Jean's care without suffering further psychological damage or other harm. The court concluded termination was in the children's best interests, that the children needed stability and permanency. Jean appeals.

I. SCOPE OF REVIEW

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the child. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. SUFFICIENCY OF THE EVIDENCE

Jean contends the State did not present sufficient evidence to warrant termination of her parental rights. Her parental rights were terminated under section 232.116(1)(e), which requires the juvenile court to find:

> (1) The child is four years of age or older.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Jean claims the State did not prove the third element, because the children were in her home for an extended visit of more than thirty days. We determine the statute should be read in the disjunctive, so that the State could show **either** the children had been removed from Jean's care for at least twelve of the last eighteen months, **or** they were removed from Jean's care for the last twelve consecutive months with any trial period at home being less than thirty days. *See Iowa Erosion Control, Inc. v. Sanchez*, 599 N.W.2d 711, 714 (Iowa 1999) (the word "or" used in a statute is presumed disjunctive, unless a contrary

intent appears). Here, the State presented clear and convincing evidence the children had been removed from Jean's care for at least twelve of the last eighteen months. In fact, at the time of the termination hearing in November 2000, Brittany had been out of her mother's care for more than four years, and Angela and Joshua had been out of her care for about three years.

Jean also claims the State did not prove the fourth element. She asserts she was doing everything required by DHS, and the children could have been returned to her care. She claims service providers were biased against her. A court 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 Ct. App. 1996). Once the limitation period found in section 232.116(1) lapses, termination proceedings must be viewed with a sense of urgency. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000).

Contrary to Jean's assertions, she was given many chances, over a very long period of time, to improve her parenting skills. Despite receiving services over a period of four years, she was still not able to maintain the children in her home during the trial extended visitation. Jean continued to have problems with unsanitary conditions in the home. She had problems with honesty, and encouraged the children to lie to social workers. Furthermore, she did not provide the stability the children needed. For all of these reasons, we find the children could not safely be returned to Jean's care. The State presented sufficient evidence to terminate Jean's parental rights under section 232.116(1)(e).

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We affirm the decision of the juvenile court.

AFFIRMED.