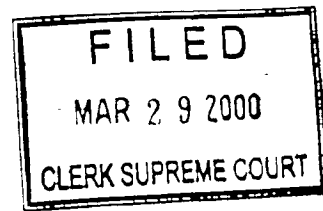


IN THE COURT OF APPEALS OF IOWA

No. 0-064 / 99-1210
Filed March 29, 2000



IN THE INTEREST OF A.M.G. and C.M.G., Minor Children,

D.G., Mother,
Appellant,

W.G., Father,
Appellant.

Appeal from the Iowa District Court for Jackson County, Thomas F. Breuch, Judge.

Mother and father appeal separately from the juvenile court ruling terminating their parental rights. **AFFIRMED.**

Jack E. Dusthimer, Davenport, for appellant mother.

Kyle D. Williamson of Engelmann, Carroll & Williamson, Davenport, for appellant father.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, **and Phillip J. Tabor**, County Attorney, for appellee-State.

Steven J. Kahler of Schoenthaler, Roberg, Bartelt & Kahler, Maquoketa, guardian ad litem for minor children.

Heard by Sackett, C.J., and Vogel and Hecht, JJ.

VOGEL, J.

Wayne and Dody appeal separately from the juvenile court ruling terminating their parental rights. Because we find there was clear and convincing evidence to terminate their parental rights, we affirm.

Background facts. Wayne and Dody are the natural parents of two children, Aaron, born January 31, 1992, and Chenell, born May 7, 1993. A child in need of assistance petition was filed on April 10, 1996. Wayne was not in the home at this time. The children were adjudicated CINA¹ and services were established to facilitate reunification of the children with Dody. Dody admitted to using marijuana to relieve her stress. While hospitalized for mental problems and on other occasions, Dody left the children in the care of an inappropriate male babysitter who was purportedly snorting cocaine in front of the children and leaving them unattended. These actions combined with Dody's inability to adequately supervise and control her children's behavior created an unsafe environment in the home. The children were removed from Dody's care on July 17, 1996. This marks the beginning of a roller coaster ride of placing and removing Aaron from the home. Chenell remained in foster care from this date through the termination.

Dody was offered several services to help her learn to provide for her special needs children, including in-home counseling, psychiatric evaluation, individual counseling, financial counseling, protective day care, and inpatient family therapy. Wayne was an absent father for more than a year of this three-

¹ Iowa Code section 232.2(6)(b) (1997).

~~year period, having no~~ contact with his children or DHS. He was included for the first time ~~on the~~ February 12, 1998, case plan.

Scope of review. We review the evidence in termination proceedings de novo. *In re J.R.H.*, 358 N.W.2d 311, 317 (Iowa 1984). We give weight to the trial court's findings of fact, especially those regarding the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

The welfare and best interest of the children are the governing concerns. *In re J.R.H.*, 358 N.W.2d at 317; *In re Henderson*, 199 N.W.2d 111, 120 (Iowa 1972). Although the parents have a legitimate interest in the integrity of the family unit, that interest is not absolute. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). In determining the best interests of the child, we must consider what the future likely holds for a child if he is returned to parental custody. *Id.* As a result, we may look at the parents' past performance of caring for their child, as their past performance is indicative of their future care. *Id.*

Adequacy of services for Wayne. Reasonable efforts to reunite parent and child are required prior to the termination of parental rights. *In re T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994); *see generally* Iowa Code section 232.102 (1997). Generally, the DHS must make reasonable efforts to provide services to eliminate the need for removal. *See* Iowa Code section 232.102(10)(a) (1997). Wayne contends he was not offered adequate reunification services. However, this issue must have been preserved for appeal by being raised before the termination hearing. "While the State has the obligation to provide reasonable reunification services, the Mother had the obligation to demand other, different or

additional services prior to the termination hearing." *In re S.R.*, 600 N.W.2d 63, 65 (Iowa App. 1999). When this burden has not been met by the parents, they are **barred from** appealing the termination on this ground.

Wayne contends he was not even included in the permanency case plan until February 1998. He also alleges that during the period from July 1996 through February 1998, while he was absent from contact with his children, DHS did not attempt to get in touch with him. Therefore, DHS did not provide adequate services to reunite him with his children.

Wayne, however, did attend a hearing on April 30, 1996, and was aware of the ongoing proceedings. He had an obligation to demand appropriate services to allow him to regain custody of his children. During his extended absence, he did not contact DHS to make them aware of his custody wishes or to demand any type of service that would allow him access to his children. In February 1998, he was included in the services provided by DHS. He had the goals and services of the case plan explained to him several times and admitted at trial that he thought they were reasonable overall. Unfortunately, he failed to meet the expectations that would allow him to retain his parental rights. We find Wayne failed to preserve error on the issue of adequate services. Therefore, he is **barred from** raising this issue for the first time on appeal.

In addition to his failure to preserve error, the record reflects Wayne's failure to make progress and comply with the services provided to him. He failed to attend both individual and joint counseling sessions. He also failed to re-establish his parental involvement with Aaron and Chenell by refusing to attend

~~school conferences~~ or medical appointments. Wayne failed to accept responsibility for the position his children were in. He continued to blame their foster care status on "the system" while failing to make the progress necessary to facilitate the return of his children to his care.

Wayne also complains that because of his late involvement with his children and DHS, he did not have an adequate period of time in which to meet these expectations. "The legislature has statutorily determined the interval for which patience with parents may last." *In re A.J.*, 553 N.W.2d 909, 913 (Iowa App. 1996). The statute requires the children to be out of the physical custody of the parent for the last twelve consecutive months. Iowa Code section 232.116(1)(e). Here, Aaron and Chenell were out of Wayne's physical custody prior to the initial removal date in July 1996. The fact that Wayne did not take any action or assert his parental rights with DHS, despite his knowledge of their involvement, does not relieve him of his parental obligation to these children during this period. The children were out of Wayne's care for more than three years before his rights were terminated. The statutory period was generously met. Therefore, we find Wayne was given adequate time to allow for a reunification with his children. We affirm the termination of Wayne's parental rights to Aaron and Chenell.

Evidence to terminate Dody's parental rights. The burden of proof necessary to terminate parental rights is clear and convincing evidence. *In re K.L.C.*, 372 N.W.2d 223, 228 (Iowa 1985). Dody alleges the State did not meet this burden of proof at the termination hearing. We find, however, that they did.

The period of DHS involvement with this family extended from April 1998 through the termination hearing in January 1999. During this near three-year period, many services were offered to Dody. Aaron was shuffled between in-patient hospital treatment, foster care and return to the home in an attempt to reunite this family. The plan was to return Chenell to the home when Aaron was stabilized. However, each time Aaron returned home, the adjudicatory harm would resurface. Dody had problems dealing with the special needs of her children, providing boundaries and positively enforcing them and providing adequate supervision for her children. She continually made little or no effort to take advantage of the services provided for her or to learn how to overcome these problems to allow for the permanent return of her children.

Dody also failed to provide random UA's as she agreed to in the case plan. She had one UA which tested positive for marijuana. The dirty UA combined with her refusal to comply with random requests indicated she may have a substance abuse problem. She refused, however, to seek evaluation or treatment for this issue. Dody was also diagnosed with a mental illness. She failed to follow through with treatment for this problem as well. These conditions, until addressed and managed, prevent her from developing the skills necessary to effectively parent her children.

Dody was not cooperative with service providers but was hostile and resistant to change. She refused to accept responsibility for the current situation facing her family and maintained that she did not need to change because she was not the problem. Although she had an opportunity to receive extensive family

~~therapy to learn new~~ methods of dealing with her ADHD son, she refused to cooperate and was discharged from the program for a volatile and threatening episode with the hospital staff.

Dody, rather than learning effective parenting skills, repeatedly asserted her belief that her son only needed more medication. Each time Aaron was returned to her care, his behavior regressed and his violent tantrums increased. Again, Dody blamed this on DHS and his placement in foster care. However, when he was returned to foster care, he would show signs of improvement with less aggressive behavior. The trial court stated:

It appears to the Court the risk of further physical abuse or neglect is high due to the fact that these parents recognize neither the need for change nor are they motivated to change. Due to the parents' failure to recognize or perceive the problems these children have or the need for change, the parents' ability to rectify the situation is severely impeded.

Testimony by the social worker involved in this case, Anne McDermott, was that she felt the adjudicatory harm was still present because of the failure of Dody to make any progress with the goals established in this case.

We find the record reflects clear and convincing evidence that these children cannot be returned into Dody's care. Therefore, the statutory elements set out under Iowa Code section 232.116(1)(e) have been met. We also find that it is in the best interests of the children to terminate Wayne and Dody's parental rights and allow them to have stability and permanency in their lives. Accordingly, we affirm.

AFFIRMED.

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