IN THE COURT OF APPEALS OF IOWA

No. 3-217 / 92-2080

FILED
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CLERK SUPREME COURT

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IN THE INTEREST OF

R.T., C.M., A.M. and A.M.,

Minor Children.

S.T., f/k/a S.M., Natural Mother,

Appellant.

Appeal from the Iowa District Court for Johnson County, John R. Sladek, Judge.

The mother appeals the district court's judgment terminating her parental rights to her four children. **AFFIRMED AND REMANDED.**

Sally A. Wyer of Bergen & Wyer, Iowa City, for appellant mother.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Deborah F. Minor, Assistant County Attorney, for appellee State.

Thomas H. McMurray, Iowa City, guardian ad litem for minor children.

Heard by Oxberger, C.J., Schlegel, J., and McCartney, S.J.*

*Senior judge from the 2nd judicial district serving on this court by order of the Iowa Supreme Court.

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SCHLEGEL, J.

The mother appeals the district court's judgment terminating her parental rights.[1] She contends: (1) insufficient evidence existed in the record to terminate her parental rights; (2) termination of her parental rights would be detrimental to the closeness of the parent-child relationship; and (3) her request to revoke the releases of custody should be granted.

S.M. is the mother of four children: R.T., a girl born on June 5, 1987; C.M., a girl born June 5, 1989; A.M., a girl born on May 22, 1990; and Ad. M., a boy born on July 30, 1991. On June 29, 1990, S.M. called the Johnson County Sheriff's Office wanting to place her children in foster care. S.M. told the sheriff that she was under so much stress that she was afraid she would harm the children. Her husband, D.M., was in jail on an OWI charge. The children were placed in foster care. Six days later, S.M. requested that one of the children, C.M., be brought back home. However, four days later, C.M. was placed back in foster care since S.M. was afraid that D.M. would harm the child as a result of his drinking. The children were returned home on July 24, 1990.

On August 15, 1990, D.M. again went to jail where he was expected to remain until October 1990. S.M. kept the

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1. The parental rights of the fathers of these children were all terminated, and the fathers have not appealed.

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children at home, but again talked about placing the children in foster care. Day-care services were provided at this time. The Iowa Department of Human Services (DHS) commenced in-home services, but S.M. missed a number of her appointments. On August 24, 1990, the children were adjudicated as children in need of assistance.

On September 28, 1990, the children were ordered to remain with their parents with protective supervision. On November 2, 1990, the parents requested that the children be placed in foster care because the parents did not believe they could care for the children. S.M. stated she was concerned that she was disciplining the children too harshly. D.M. was also drinking heavily again. D.M. stated he could not care for the children as a result of his unemployment and lack of income.

Over the next several months, S.M. and D.M. attempted to comply with the case permanency plan. The children were found to be doing well in foster care. Both parents were making progress in their attempts to end their substance abuse. On February 13, 1991, S.M. filed an application for a hearing, seeking the return of her children. However, S.M. later withdrew her application. Later progress reports indicate D.M. had begun to abuse alcohol again and illustrate that many of the same problems that resulted in the initial placement of the children into foster care still existed.

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On May 21, 1991, DHS recommended the children be returned to their parents, even though DHS was concerned with S.M.'s ability to parent the children alone. In July 1991 Ad. M. was born. On June 21, 1991, the district court ordered a trial home placement under DHS's supervision. On September 20, 1991, the district court ordered the custody of the children be returned to S.M. and D.M. However, on November 27, 1991, S.M. again voluntarily requested that the children be placed in foster care, since D.M. had been arrested on another OWI charge. Ad. M. was voluntarily placed by S.M. into foster care.

At the hearing on January 3, 1992, S.M. stated she wished to revoke her voluntary placement agreement with respect to Ad. M. DHS sought an emergency removal of Ad. M. on January 7, 1992. The request by DHS was denied, but the district court determined that Ad. M. was a child in need of assistance. On March 17, 1992, S.M. requested that Ad. M. be placed with his siblings. S.M. also stated she was considering placing her children up for adoption.

The case progress report filed in June 1992, reveals S.M. had not kept her counseling appointments, had not taken her medication, and generally had not taken responsibility for her actions. The report also reveals that S.M. did nothing for her children's birthdays. The report indicates S.M. had been maintaining a relationship with another man; an assault charge had been filed against this man. The report recommended that S.M.'s parental rights be terminated.

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The progress report of September 2, 1992, revealed the two oldest children were exhibiting signs of abandonment. S.M. signed papers voluntarily terminating her parental rights on September 2, 1992. S.M. called the foster parents and asked them to adopt two of her children. She then called DHS and revoked her release as to the other two children. On September 8, 1992, S.M. again signed termination papers. On September 30, 1992, S.M. filed a revocation of her previous releases. Pursuant to a termination hearing on November 5, 1992, the district court ordered that S.M.'s parental rights be terminated. S.M. appeals. We affirm.

S.M. argues the district court should have permitted her to revoke her releases of custody signed in September 1992 since she was not represented by legal counsel when she signed them. She also contends she signed these releases under duress from the DHS.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92. The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

> We look to the child's long-range, as well as immediate, interests. We consider what the future

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> 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).

In the present case, the district court terminated the mother's parental rights to R.T. pursuant to Iowa Code section 232.116(1)(e) (1991) and terminated the mother's parental rights to C.M., A.M., and Ad. M. in accordance with Iowa Code section 232.116(1)(g) (1991). In addition, the court based its decision to terminate parental rights on Iowa Code section 232.116(1)(a) (1991), finding the mother "voluntarily and intelligently consent[ed] to the termination of parental rights and the parent-child relationship and for good cause desire[d] the termination." Id.

Having reviewed the record and having carefully considered the parties' arguments, we conclude the district court's order terminating the mother's parental rights to the four children is supported by clear and convincing evidence. On numerous occasions, the mother has voluntarily placed the children in foster care as a result of her concern regarding her inability to properly care for the children and her concern for the children's safety and well-being if the children remained with the mother. The

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mother has voluntarily taken such action because she continually becomes "overwhelmed" with the stress resulting from the responsibilities of tending to the children's physical, mental, emotional, and medical needs while, at the same time, coping with her personal relationships, her job, and her household.

The record reflects that extensive efforts have been expended to assist the mother's ability to cope with her children and to improve her parenting skills. During the periods of time when the children have been outside the home, the mother has been offered and has received ongoing counseling in an attempt to reunite the family. While the children have been present in the home, numerous in-home services have been provided, along with protective day-care services and weekend assistance to help the mother. However, as the district court correctly observed, the mother's parenting skills have not progressed sufficiently to return the children to her care.

Despite the district court's attempts, throughout the children's lives, to return the children to the mother's care, the mother has consistently and voluntarily returned the children to foster care as a result of her inability to deal with stress and effectively minister to the children's needs. As late as February of 1992, the court placed one of the children in the mother's care. However, after only five weeks, the mother again returned the child to foster care. All previous efforts to educate and train the mother

were insufficient for the mother to effectively parent one child, rather than four children. This evidence, clearly and convincingly indicates to this court the mother's inability to provide the level of care necessary for the well-being of the children--even with the array of services which have been provided to her.

We agree with the district court's conclusion that "[the mother's] [d]esire to care for her children, especially in light of family pressure that the mother has incurred, is not sufficient for the [c]ourt to subject the children to more delays in obtaining a permanent home and stability." Our legislature has determined the interval for which patience with parents may last. "This period must be reasonably limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children." In re R.J., 436 N.W.2d 630, 636 (Iowa 1989).

A child should not be forced to endlessly suffer the parentless limbo of foster care. In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990); Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977). The child need not endlessly await the maturity of the child's natural parent. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." In re A.C., 415 N.W.2d 609, 613 (Iowa 1987). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off

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Lastly, we direct the district court's attention to the Iowa Supreme Court's order, filed June 28, 1993, authorizing Attorney Thomas H. McMurray (attorney and guardian ad litem for these minor children) to submit a claim for attorney's fees exceeding the guidelines promulgated by the supreme court. The order provides that "the reasonable amount of attorney's fees shall be determined upon completion of this matter, at which time the Court will determine whether or not reasonable attorney's fees should exceed the guidelines promulgated by the Iowa Supreme Court." We affirm this case and remand it to the district court for the limited purpose of carrying out this order of the supreme court.

In accordance with the above discussion, we affirm the district court's decision to terminate the mother's parental rights to the four children, R.T., C.M., A.M., and Ad. M. We have considered the remainder of the mother's arguments on appeal and find them to be without merit.

AFFIRMED AND REMANDED.