



308

IN THE COURT OF APPEALS OF IOWA

IN THE INTERESTS OF M.A.K., J.J.B., AND S.K.B., CHILDREN;

J.J.B. and S.K.B., Natural Parents,	)	Filed February 23, 1983
Appellants.	)	<u>2-387</u> <u>3-67946</u>

Appeal from Pottawattamie District Court, Dan R. McTaggart, Judge.

The natural parents of three children appeal from the trial court order terminating the parent-child relationships pursuant to Iowa Code section 232.116(5), and transferring guardianship and custody of the children to the department of social services. **AFFIRMED.**

Gregory L. Waggoner of Waggoner & Walters, Council Bluffs, for appellants.

Thomas J. Miller, Attorney General, and Brent D. Hege, Assistant Attorney General, for appellee State of Iowa.

Heard en banc.

OXBERGER, C.J.

The natural parents of three children born in 1976, 1977, and 1978, respectively, appeal from the trial court order terminating the parent-child relationships pursuant to Iowa Code section 232.116(5), and transferring guardianship and custody of the children to the Department of Social Services. On appeal, the natural parents assert that the trial court should not have terminated their parental rights because (a) there was not sufficient evidence that the children could not be returned to their custody, and (b) there was not sufficient evidence that the harm to the children consequent upon allowing the parent-child relationship to continue would be more severe than the consequences of termination. The natural parents also assert that the trial court should have transferred guardianship and custody to the children's maternal grandmother. We affirm.

The Department of Social Services originally became involved with J.J.B. S.K.B., and their three children (M.A.K., J.J.B. and S.K.B.) after receiving several reports of child neglect. In November 1979, the children were adjudicated to be in need of assistance; they were, however, left with their parents, under the supervision of the Department of Social Services. In March 1980, the children were placed in foster care at the parents' request because the parents had separated and neither parent alone was able to provide proper care for them. In October 1981, the State filed a petition for termination of the parental rights of both parents. This action was taken after a number of other hearings had been held and the Department of Social Services had made diligent efforts to resolve the problems that led to this action.

At the termination hearing, there was testimony indicating that J.J.B. and S.K.B. were unable to provide basic necessities for the children or to attend to their health and hygiene. There was also testimony about the parents' unstable marriage, their unsuitable housing, and their lack of employment. The children's maternal grandmother requested at the hearing that she be given custody of the children if her daughter and son-in-law were denied custody.

In December 1981, the juvenile court found that the children could not be returned to their parents' custody and that there was no evidence that a termination would be detrimental to the children because of close parent-child relationships. Based on these findings, the juvenile court terminated the parental rights of both parents pursuant to Iowa Code section 232.116(5), and transferred guardianship and custody of the children to the Department of Social Services.

I. Standard of Review

Our review of the trial court's findings in cases regarding termination of parental rights is de novo. Iowa R. App. P. 4; In Interest of Voeltz, 271 N.W.2d 719, 722 (Iowa 1978). Although we give weight to the trial court's findings, we are not bound by them. Id.

II. Sufficiency of the Evidence

The natural parents argue that the State has the burden of producing clear and convincing evidence that the children cannot be returned to the custody of their parents as provided in Iowa Code section 232.102 and section 232.116(5)(c), and that the State has failed to carry that burden. In Interest of Adkins, 298 N.W.2d 273 (Iowa 1980); In Interest of Dameron, 306 N.W.2d 743 (Iowa 1981); In Interest of Chad, 318 N.W.2d 213 (Iowa 1982). The parents concede that the State proved that they are unemployed and without steady income. However, there was testimony that they were receiving assistance from the mother's mother and adopted mother. The parents argue that since there is no evidence that they ever refused to accept food, clothing, or shelter when they were unable to provide from other sources, the State has failed to demonstrate that their case falls under section 232.2(5) (g). They argue further that subsection (b) of that provision of the Code, concerning neglect of the children, has not been proved by clear and convincing evidence, since the children have received adequate care during their overnight visits. They argue further that they are being penalized because of their poverty rather than their inability to care for their children when one of the

principal reasons for refusing to return the children to them is their inability to find larger living quarters for themselves and their family. They argue that no other subsection of section 232.2(5) applies to this case.

The record fully substantiates the court's conclusion that the parents of these children are not in a position to take care of themselves, let alone their children. They are unable to provide for their own basic necessities, or to recognize or attend to minimal hygiene and other matters related to health. They have been leading a nomadic existence, moving from one place to another. Their marriage has been unstable, characterized by frequent separations. Neither of the parents is employed. They presently reside in a one-bedroom apartment provided by a relative, who lives with them. It is difficult to conceive of arrangements that might be made to enable three generations to dwell together in this small space. Moreover, the father has not complied at all with the court's order that he attend parenting classes, and the mother has done so sporadically and minimally. Furthermore, two of the children have special medical needs. Upon their return to their foster home following visitations, the children were not infrequently observed to be afflicted with the symptoms of poor hygiene.

We find that there was clear and convincing evidence satisfying sections 232.116(5)(c) and (g) and that if the children were returned to the care of their parents, they would be likely to suffer harmful effects as a result of the failure or inability of their natural parents to exercise reasonable care in supervising them and the failure of their parents to exercise a minimal degree of care in supplying them with adequate food, clothing, and shelter. Iowa Code § 232.2(5)(c)(2) and (g)(1981); Adkins and Dameron, supra.

III. Consequences of Termination

The parents argue that the State failed to meet its burden of proving that continuing the parent-child relationship would be more harmful to the children than terminating it. Alsager v. District of Polk County, 406 F. Supp.10, 23 (S. D.

Iowa 1975), aff'd 545 F. 2d 1137 (8th Cir. 1976).

There is a rebuttable presumption that the best interests of the child are served by custody of the natural parents. This interest "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." Santosky v. Kramer, U.S. , S. Ct. , 71 L. Ed. 2d 599, 606 (1982). See also Alsager; In re Lewis, 257 N.W.2d 505, 510 (Iowa 1977); In interest of Chad, 318 N.W.2d 213, 218 (1982). Citing Santosky, the Iowa Supreme Court recently held that "before a termination of parental rights can occur under section 232.114(5), there must be clear and convincing proof that the child will suffer harm in the manner specified in section 232.2(5)." Chad at 218. We find that the State has met this burden of proof in this case. We have reviewed the salient facts above.

IV. Custody with the Grandmother

The parents argue that the court erred in failing to grant custody of the children to the children's grandmother, who requested custody of them in the event of the termination of parental rights. The grandmother is fifty-five years of age, has been employed as a kitchen worker for about six years, and earns about \$561 per month. She has maintained extensive contacts with her grandchildren, and is willing to provide more adequate housing for them if that should be necessary to care for them properly.

The court has the authority to place the children with the Department of Social Services, a suitable agency, or a relative or other suitable person. Iowa Code § 232.117(3)(1981). However, in this case, the grandmother was not a party, did not file a petition to intervene in the case, and did not formally request guardianship of her grandchildren. In this respect, the case is distinguishable from In Interest of J.R., 315 N.W.2d 750 (Iowa 1982). Indeed, the grandmother in the instant case did not produce a single witness in support of her request, made while she was herself a witness in the case, that the court grant custody of the children to her.

The grandmother is not a party to this appeal, and the natural parents have no standing to raise the custody interests of another person in this appeal. See In Interest of Robbins, 230 N.W.2d 489, 494 (1975).

In any event, there is not sufficient evidence on the record to indicate whether it would be in the best interests of the children to grant custody to the grandmother.

AFFIRMED.