IN THE COURT OF APPEALS OF IOWA

No. 1999-163 (9-380) / 98-1766
Filed September 15, 1999

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF J.B., Minor Child,

C.B., Mother,

Appellant.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile Judge.

The mother of a minor child appeals a juvenile court order terminating her parental rights. **AFFIRMED.**

Jeffrey M. Lipman of Lipman Law Firm, P.C., Clive, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Emily McConkey, Assistant County Attorney, for appellee State.

Nicole Garvis Nolan, Des Moines, guardian ad litem for minor child.

Considered by Sackett, C.J., and Mahan, and Zimmer, JJ.

ZIMMER, J.

Charlene, the mother of two minor children appeals the juvenile court order terminating her parental rights to her son, Joel. She claims the State (1) failed to make reasonable efforts to reunify the family; (2) failed to prove the same conditions existed at the time of trial as at the commencement of CINA proceedings; (3) failed to prove her mental disability had seriously affected her son's health; and (4) failed to prove she had been hospitalized repeatedly or was continuously under treatment for chronic mental illness. We affirm the termination of Charlene's parental rights.

Glen and Charlene are the parents of Joel, born in 1989, and Hannah, born in 1996. The children first came to the attention of the Department of Human Services in October 1996 when Charlene made allegations Glen and other strangers had sexually abused the children.[1] Although the allegations were unfounded, DHS concluded Charlene was psychologically disturbed, and the children were removed from the family home. In December 1996 the court adjudicated Joel and Hanna in need of assistance based on a denial of critical care and proper supervision. The children remained in foster care throughout the pendency of the CINA case.

A series of psychological examinations revealed Charlene suffered delusional disorders, adjustment disorders, and personality disorders. At a dispositional hearing in March 1997, Charlene agreed to cooperate with medication and therapy. The court

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[1] Charlene's claims included "that they are pushing children up through the drain, and then the children unlock the door for them to get into the residence" and that Glen, dressed as George Washington, abused Joel in a bathroom at Kmart.

allowed supervised visitation at the discretion of DHS. By June 1997, DHS recommended all visitation cease because of the extreme reactions of the children to the visits. Joel, in particular, exhibited aggressive behavior, nightmares, uncontrolled fits of crying, and sexual acting out. Charlene had stopped taking her medication or attending therapy on a regular basis. By August Charlene became convinced she heard her children being murdered while speaking with them on the phone.

At a review hearing in September 1997, the court continued prior orders except it ordered that visitation remain suspended until the children's therapist recommended reinstating it. The therapist recommended establishing permanency for Joel as soon as possible. Also in September, Charlene moved out of her father's home and into her own three-bedroom apartment, began cooperating with therapy, medical professionals, and DHS. After Charlene resumed therapy, she exhibited consistent progress, especially in her personal growth. She gained more understanding of her mental illness. In December 1997 Joel's therapist notified DHS that Joel was finally feeling safe enough to begin to speak about how frightened he was of Charlene. He was described as suffering from psychosis and depression with severe psychotic symptoms which might develop into schizophrenia. In June 1998 DHS reported,

> . . . Charlene continues to lack insight into the seriousness of the impact this illness had, and continues to have on Joel's mental state. Charlene believes that many of Joel's problems are a result of his separation from her, and from people putting ideas into his head that frighten him. She explains the acting-out behavior which took place after visits as a reaction to having to leave her.
> ***
> Charlene has been consistently cooperative with services since September, 1997 a period of nine months, and believes that she is ready

> to take custody of her children. She often states that the system is using her mental illness against her, without acknowledging the progress she has made, and is keeping her children from her because she made "a few mistakes."
> ***
> Regardless of any information she receives, Charlene continues to downplay her past actions, and refuses to believe that Joel is afraid of her.

In March 1998, the State filed a petition to terminate Charlene's parental rights, claiming that Joel's mental health was jeopardized by continued contacts with his mother. The petition alleged termination was proper under sections 232.116(1)(c), (e), (g), and (j). The district court concluded all allegations of the petition had been proven and terminated Charlene's parental rights to Joel and Hannah. Charlene has appealed the termination of her parental rights to Joel.

We review proceedings to terminate parental rights de novo. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The grounds for termination must be proven by clear and convincing evidence. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997); *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995).

Our primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d at 275. We determine those best interests by looking at the child's long-range as well as immediate interests. We consider what the future likely holds for the child if returned to his or her parents. Insight may be gained from evidence of the parent's past performance, which may be indicative of the quality of future care the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re Dameron*, 306 N.W.2d at 745; *In re T.T.*, 541 N.W.2d 552, 555 (Iowa

App. 1995). Case history records are entitled to much probative force when a parent's record is being examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

The juvenile court did not specify which sections apply when ordering termination. The petition alleges sections 232.116(1)(c), (e), and (j) as grounds to terminate Charlene's parental rights to Joel. The court's conclusion "all the allegations of the petition have been proven by clear and convincing evidence" must mean Charlene's parental rights to Joel were terminated under those sections. The termination will be upheld on appeal if proper under any of these sections. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996); *In re R.R.K.*, 544 N.W.2d at 276.

Charlene first claims the State did not make reasonable efforts to reunite the family, arguing visitation should have been resumed when she began making progress in fall 1997. Visitation between a parent and child is an important ingredient to the goal of reunification. *See In Interest of S.W.*, 469 N.W.2d 278, 280-81 (Iowa App. 1991). However, the nature and extent of visitation is always controlled by the best interests of the child. *See In re Augustus*, 158 N.W.2d 625, 629 (Iowa 1968). In September 1997 the court made reinstatement of visitation discretionary, to be resumed when recommended by the children's therapist. Charlene did not appeal that order. She did request visitation between the September 1997 hearing and the June 1998 termination hearing. Charlene was not allowed visitation with Joel between May 1997 and the termination hearing. In December 1997 Joel told his therapist how frightened he was of Charlene. When telephone visitation was suggested to Joel in February 1998, he resisted, stating she could not take care of him because she would

just get sick again. He threatened to kill himself and Charlene if he were returned to her care. Challenges to the plan for reunification should have come when the plan was entered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). It is too late to challenge the service plan at the termination hearing. *See In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). Charlene did not preserve this issue for our review.

Charlene next claims the State did not prove the elements of section 232.116(1)(c)(2).[2] She argues she no longer has delusions, has gained steady employment, has obtained suitable housing, and no basis exists for finding the injuries leading to the adjudication continued to exist. Charlene's mental health problems and their effect on her children led to their CINA adjudication. Charlene made progress in addressing her mental health problems when she began cooperating with services in the fall of 1997, but she continues to lack understanding of how her mental problems affected Joel. The impact of her mental problems on Joel has been dramatic and ongoing. In early 1998 when telephone visits with his mother were suggested to Joel, he again began to have serious behavior problems, including threatening to stab his foster parents. As the district court noted, Joel was afraid visits would lead to him being returned to his mother. He was so fearful he stated he would kill himself and his mother if forced to go back to her home. We find Charlene's lack of insight into the effect of her mental health problems on Joel would place him at risk if he were

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[2] Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

returned to her care. Although Charlene has made progress, some of the circumstances which led to the adjudication continue to exist. We find clear and convincing evidence to terminate Charlene's parental rights under section 232.116(1)(c) and affirm the juvenile court.

Charlene next claims the State did not prove Joel could not be returned to her care at the time of the termination,[3] because there had been no contact between Charlene and Joel for more than a year. Therefore, Charlene argues any claim Joel could not be returned to her care would be based either on outdated evidence or speculation. She asserts her mental condition and other circumstances had improved, as had Joel's condition. Therefore, she argues there is not current evidence Joel could not be returned to her care. The court cited Charlene's lengthy psychiatric history, her current lack of insight into the effect her mental condition had on Joel, and Joel's fragile mental state in determining Joel could not be returned to Charlene's care. We find clear and convincing evidence Joel could not be returned to Charlene's care at the time of the termination hearing. Accordingly, we affirm the termination under section 232.116(1)(e).

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[3] Iowa Code section 232.116(1)(e)(4) provides:
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.

Finally, Charlene claims there was not clear and convincing evidence to terminate her parental rights under section 232.116(1)(j)(2).[4] She argues she has not been institutionalized repeatedly and she is not a danger to herself or others when medication compliant. Charlene's mental illness has obviously been a long-standing problem; however, the record does not support the conclusion she has been repeatedly institutionalized for mental illness. We do not find clear and convincing evidence to terminate under this section.

Having carefully considered all of Charlene's claims, whether or not expressly set forth in this opinion, we affirm the termination of her parental rights under Iowa Code sections 232.116(1)(c) and (e).

AFFIRMED.

[4] The parent has a chronic mental illness and has been repeatedly institutionalized for mental illness, and presents a danger to self or others as evidenced by prior acts.