IN THE COURT OF APPEALS OF IOWA

No. 0-368 / 99-954
Filed June 28, 2000

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CLERK SUPREME COURT

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

C.A., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

Mother appeals from the termination of her parental rights. **AFFIRMED.**

Richard Kallsen, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Dewey P. Sloan, Assistant County Attorney, for appellee-State.

Marchelle Denker of the Juvenile Law Center, Sioux City, for minor child.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

STREIT, J.

Chanele appeals the termination of her parental rights, claiming the State failed to prove the statutory elements for termination were met by clear and convincing evidence and termination was not in her daughter's best interests. We affirm, finding no merit to her claims.

I. Background Facts & Proceedings.

Jesse, born November 1, 1997, is the daughter of Chanele. Chanele was nineteen at the time of her daughter's birth, unemployed, and was receiving social security benefits due to her low mental capacity. The Iowa Department of Human Services (DHS) became involved with Jesse after it was learned that the home Chanele, the child, and the child's maternal grandparents resided in was unsanitary and unsafe. The home was completely filthy and dilapidated, with raw sewage in the basement, broken windows, broken electrical outlets, cockroaches, and garbage and dirty laundry piled two feet high. A home health nurse assigned to the case could not find a single surface in the house clean enough to change the child's diapers. Chanele and her siblings had been previously adjudicated to be in children in need of assistance (CINA) due to the squalor of the family home. Because Chanele continued to subject her daughter to an unsafe and filthy home, she was adjudicated CINA in January of 1998.

In February of 1998 DHS asked Chanele to move from her parent's home or face removal of Jesse. Chanele cooperated with DHS and attained an apartment with the help of an emergency assistance grant. Family preservation services were implemented to assess and improve Chanele's ability to care for

Jesse. Additionally, a public health nurse was sent to further assist in teaching Chanele parenting techniques. A worker was in the home five days a week. The family preservation worker also encouraged Chanele to seek her GED, some type of employment, or apply for vocational rehabilitation. She never followed through with these recommendations.

By May of 1998 Chanele missed sixty-six of the one hundred scheduled appointments she had with various service providers. She also had failed to get Jesse her immunizations, submit to a psychological examination, and remedy a series of safety hazards in her home (leaving stairway doors open, leaving windows open, having a fan without its protective grate in the home, and candles within the child's reach). In July of 1998 Jesse was removed and placed in foster care. Supervised visitation was initiated, and Chanele took full advantage of the visits. Although Chanele appeared for every visitation, she still failed to grasp the degree of care and attention necessary to raise a toddler. By January of 1999, Chanele was again living with her parents. DHS once again demanded she move as the squalid conditions of the home further intensified when a dog that Chanele got defecated throughout the home and no one would clean it up.

In February of 1999 Chanele submitted to a psychological examination. The examination concluded she was in the third percentile regarding intelligence, with extremely limited abilities to read or spell. The psychologist further concluded:

> [Chanele] may be able to care for her own daily needs in an autonomous living environment, but it is very questionable whether she can attend to the needs of another, namely her child. It is very likely that even to care for herself she would need some guidance

> from outside sources. If left to her own devices as a parent, she is likely to have poor monitoring skills which would ultimately cause her to neglect the needs of her child.

In May of 1999 the juvenile court terminated Chanele's parental rights pursuant to Iowa Code sections 232.116(1)(b), (d), (f) and (g) (1999).

Chanele appeals, claiming clear and convincing evidence did not support termination and termination was not in Jesse's best interests.

II. Standard of Review.

Appellate review of proceedings to terminate a parent-child relationship is de novo; thus, "it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us." *In re O'Neal*, 303 N.W.2d 414, 422 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom the court heard and observed firsthand, but we are not bound by those findings. *Long v. Long*, 255 N.W.2d 140, 143 (Iowa 1977).

III. Clear and Convincing Evidence Supports Termination.

Chanele claims the State failed to show the statutory elements for termination were met by clear and convincing evidence. Although she professes error as to each statutory ground found by the trial court, "we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm." *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999) (citation omitted). We will therefore limit our analysis to Iowa Code section 232.116(1)(g).

Iowa Code section 232.116(1)(g) (1999) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The child is three years of age or younger.
>
> (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 six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
>
> (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

Chanele does not dispute the first three elements are supported by clear and convincing evidence. Rather, she focuses her attention on whether Jesse can be safely returned to her care under subsection four.

The court has long recognized there exists a parental interest in the integrity of the family unit, but such interest is not absolute and may be forfeited by certain conduct. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State has the duty to see that every child within its borders receives proper care and treatment and must intercede when parents abdicate that responsibility. *In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1988). The State must act to prevent probable harm to children and need not delay until actual physical harm has occurred. *Id.* The threat of probable harm will justify termination of parental rights, and the perceived harm need not be the one that supports the child's initial removal from the home. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992).

Our primary concern in a termination proceeding is the best interests of the child. Iowa R. App. P. 14(f)(15); *In re Dameron*, 306 N.W.2d at 745.

Returning Jesse to Chanele would expose her to a threat of identifiable harm. We can gain insight into a child's prospects for remaining safe and healthy by reviewing evidence of the parent's past performances, for it may be indicative of the parent's future capabilities. *See In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1980). Chanele simply does not possess the ability, mental capacity, dedication, foresight, sense of responsibility, or willingness to raise Jesse to healthy maturity. She barely possesses the ability to care for herself, let alone a child. She is low functioning, refused to appear at scheduled appointments, and cannot seem to grasp the many dangerous situations she placed her daughter in due to poor parenting. Additionally, her housing arrangements have been pockmarked with instability. Although each problematic area outlined above may not be worthy of termination in isolation, in the aggregate the problems are overwhelming and endangered Jesse's future health and safety. The juvenile court, based on clear and convincing evidence, correctly terminated Chanele's parental rights under Iowa Code section 232.11(1)(g).

IV. Termination Is in Jesse's Best Interests.

Chanele next claims termination was not in Jesse's best interests. Even if the statutory requirements for termination are met, the decision to terminate must still be in the best interests of the child. *In re N.H.*, 383 N.W.2d 570, 574 (Iowa 1986); *In re D.W.K.*, 365 N.W.2d 32, 34-35 (Iowa 1985). The best interests of the child are the paramount considerations in determining whether to terminate

parental rights. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re N.H.*, 383 N.W.2d at 574. We give primary consideration to the physical, mental, and emotional condition and needs of the child. *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990). With regard to those primary considerations, a child should not be forced to endlessly await the maturity of a natural parent. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983).

Termination of Chanele's parental rights is in Jesse's best interests. Chanele may love her daughter, but her inability to care for her daughter's needs countermand even the most steadfast love. She lacks the ability to raise Jesse in a safe and nurturing environment. Jesse cannot wait for a safe and stable home. She needs a parent now. The juvenile court is affirmed.

AFFIRMED.

Sackett, C.J., and Vaitheswaran, J., concur specially.

SACKETT, C.J. (specially concurring)

I concur specially. Chanele loves her daughter and has never physically or sexually abused her. She has very limited mental capabilities which have substantially hindered her ability to parent her child. She does not claim she should have been provided special accommodations because of her mental disability. Consequently that issue is not before us and need not be addressed. I question, however, whether this family was served by scheduling Chanele for 100 appointments.

VAITHESWARAN, J. (specially concurring)

I concur specially. In terminating Chanele's parental rights, the majority cites Chanele's failure to obtain employment as an example of her non-compliance with the treatment program. I believe the Department of Human Services inappropriately conditioned return of her child on securing employment. The record reflects Chanele was receiving Supplemental Security Income disability benefits. To receive such benefits, a person must have been found unable to work. *See Brown v. Apfel*, 174 F.3d 59, 62 (2d Cir. 1999). Therefore, I would discount this basis for termination, as well as any missed employment-related appointments. I concur in the result, however, because I believe there is sufficient evidence to support termination, even if Chanele's failure to secure employment is not considered.