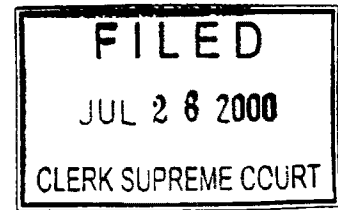


IN THE COURT OF APPEALS OF IOWA

No. 0-199 / 99-1814
Filed July 26, 2000



IN THE INTEREST OF A.R. AND A.R., Minor Children,

L.R., Mother,
Appellant,

G.C., Father,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott,
Associate Juvenile Judge.

The mother and father of two minor children appeal a juvenile court order
terminating their parental rights to their daughter. **AFFIRMED.**

Suzan E. Boden of Vriezelaar, Tigges, Edgington, Rossi, Bottaro & Boden,
L.L.P., Sioux City, for appellant mother.

Carol J. Chase, Sioux City, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, and Rhoda M. Tenuta, Assistant County Attorney, for appellee
State.

Teresa O'Brien of Forker & Kanter, Sioux City, guardian ad litem for minor
children.

Heard by Sackett, C.J., and Huitink, Streit, Vogel, Mahan, Zimmer, Miller,
and Vaitheswaran, JJ. Hecht, J., takes no part.

HUITINK, J.

1. Background Facts and Proceedings.

Louri is the mother of the two children, Anthony and Amanda, whose interests are implicated in this termination of parental rights action. Gordon is Amanda's father. On February 11, 1998, the Iowa Department of Human Services (department) received a child abuse referral concerning Amanda. The referral alleged that Gordon struck Amanda and she was allowed to watch Gordon take nude photographs of his older son's girlfriend. Amanda also told investigators Gordon struck Louri and Anthony. An ex parte removal order was issued based on these investigatory findings, and Anthony and Amanda were placed with the department pending an adjudicatory hearing.

At the combined adjudicatory/temporary removal hearing in April 1998 both children were adjudicated children in need of assistance pursuant to Iowa Code sections 232.2(6)(b) (parent physically abused or neglected child or likely to), (c) (parent fails to reasonably care for child), and (n) (parents have mental or drug or alcohol problems or are incarcerated), and their foster care placement was extended. Following a July 7, 1998, dispositional hearing, the court determined both children would suffer harmful effects if returned to parental custody, and their placement with the department was accordingly continued.

The State initiated termination proceedings on June 1, 1999. The State's termination petition was heard in July and August of 1999. In an order filed October 25, 1999, the court terminated Louri's parental rights to Amanda pursuant to Iowa Code sections 232.116(1)(c) (physical or sexual abuse or neglect), (e) (child cannot be returned to parent), and (h) (physical or sexual

abuse or neglect posed significant risk to child's life) and terminated Gordon's parental rights pursuant to Iowa Code sections 232.116(1)(c) and (h). The court found there was clear and convincing evidence the parental rights of both parents should be terminated because, despite a wide variety of services, both had failed to correct those circumstances necessitating Amanda's adjudication as a child in need of assistance. The court also found Amanda could not be safely returned to Louri's custody.

The court, however, declined to terminate Louri's parental rights concerning Anthony because the court found Anthony's prospects for adoption were remote. Anthony was instead placed in long-term foster care.

On appeal, both parents argue the juvenile court erroneously denied their motion for additional services. In addition, they argue the State's evidence fails to support termination of their parental rights to Amanda.

II. Standard of Review.

Our review of juvenile matters is de novo. *In re N.W.E.*, 564 N.W.2d 451, 453 (Iowa App. 1997). We review the facts as well as the law and adjudicate the parents' rights anew. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa App. 1998). We accord weight to the findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

III. Additional Services.

A. Preservation of Error. We initially note the State's assertion that Gordon failed to preserve error on this issue because the district court did not address this argument in its termination order and Gordon failed to file a 179(b)

motion. By failing to file a 179(b) motion in juvenile court, we find Gordon waived any statutory construction argument. *In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1994). However, we will address Louri's argument on its merits.

B. Merits. Our primary concern is the best interests of the child. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). The future can be gleaned from evidence of the parents' past performance and motivations. *Id.* The supreme court stated in *In re Dameron*:

Central to a determination of this nature are the best interests of the child. In this connection, we look to the child's long-range as well as immediate interests. Hence, we necessarily consider what the future likely 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 that parent is capable of providing.

In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981) (citations omitted). A child's rights and needs are paramount in parental termination proceedings. *In re S.A.*, 502 N.W.2d 23, 25 (Iowa App. 1993).

Louri argues the juvenile court incorrectly denied her motion for additional services. We disagree. Louri requested additional services through the University of Iowa therapy program and Home Care Services and Family Services. The juvenile court denied these services stating:

Gordon and Louri both acknowledged that they do not feel that there is any problem. They do not understand why the children were removed. They do not see the children's developmental delays as being significant. They do not want the children involved in activities. Ms. Nissen-Tjarks indicated that if the parents are not compliant, there is little chance of success in her "therapy" program.

...

While the Court acknowledges that the Villa and Therapy are not identical programs, the Court does believe that they are sufficiently similar that it would not be reasonable to require the

Department of Human Services and the State to offer both services to the family, especially in light of the distance to and cost of the Theraplay program. In addition, the additional time that would be required and Amanda's need for permanency causes it not to be in her best interest at this time to delay these proceedings further to require the implementation of this program. The State and the Department of Human Services are not required to exhaust all services that are requested by the parents. The Department and the State are required to provide those services which constitute reasonable efforts to achieve reunification. The State and the Department of Human Services have done this.

Our review of the record discloses abundant evidence supporting the juvenile court's findings of fact. We are convinced the services offered were more than adequate to address Louri's needs and were only unavailing because of her failure to cooperate. There is no reason to believe that extending Louri the accommodations she now demands would have the desired remedial effects. We have repeatedly held that children in these circumstances should not be required to endlessly await parental improvements. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). We affirm the juvenile court on this issue.

IV. Termination of Parental Rights.

A. Louri's Parental Rights. Louri claims the juvenile court improperly terminated her parental rights to Amanda pursuant to Iowa Code sections 232.116(1)(c),(e), and (h). We disagree.

Terminations pursuant to Iowa Code section 232.116(e) requires clear and convincing proof of the following:

1. the child is at least four years of age;
2. the child has been adjudicated a child in need of assistance;
3. the child has been removed from parental custody for twelve of the last eighteen months;
4. the child cannot be returned to the parents' custody as provided in Iowa Code section 232.102.

Concerning element four, we have said:

Subsection 232.102 of the Iowa Code governs the transfer of custody and placement of children. Subsection (4)(b) requires the court to find by clear and convincing evidence that the child cannot be returned to parental custody because the child would be exposed to "some harm which would justify the adjudication of the child as a child in need of assistance" and "reasonable efforts have been made to prevent or eliminate" the harm. If custody is transferred to foster care authorities, subsection (6) requires "every effort" be made "to return the child to the child's home as quickly as possible consistent with the best interest of the child."

In re J.V., 464 N.W.2d 887, 890 (Iowa App. 1990). The only element subject to dispute is whether Louri's children can be safely returned to her custody.

These children were originally removed from parental custody and adjudicated because both parents emotionally and mentally abused and neglected them. As a result, both children have suffered significant developmental delays that necessitate continuing professional intervention. Our review of the termination record discloses abundant evidence that Amanda would be exposed to continuing risk if she were returned to Louri's custody.

While we acknowledge Louri's faults are not acts of malfeasance, the record indicates she simply does not have the ability to properly care for her children. We accordingly affirm the juvenile court's order terminating Louri's parental rights concerning Amanda. We do not reach the merits of the court's disposition concerning Anthony because it is not an issue on appeal. We also need not address the merits of other grounds on which the juvenile court's termination order is based because the foregoing determination is dispositive. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999).

The juvenile court is affirmed on this issue.

B. Gordon's Parental Rights. Gordon claims the juvenile court erred in terminating his parental rights pursuant to Iowa Code sections 232.116(1)(c) and (h). We disagree.

Iowa Code section 232.116(1)(c) provides:

c. The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(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.

In its findings of fact and conclusions of law, the juvenile court stated:

Likewise, Gordon's brain injury apparently makes him unable to make any changes either. In these situations the Court cannot be influenced by sympathy. The only influencing factor that the Court can consider is what is in the best interests of the child. The Court feels that it is in Amanda's best interest that she be given a chance to form an appropriate parent/child relationship in a caring, nurturing and supportive environment. Louri and Gordon simply cannot do this. "While the law demands a full measure of patience with a troubled parent who attempts to remedy a lack of parenting skills, a child need not endlessly await the maturity of his or her natural parent." *In Interest of B.K.J. Jr.*, 483 N.W.2d 608, 611 (Iowa App. 1992). In this case we are not waiting for the natural parents to mature, we were waiting to see if they had the ability to parent the child. Unfortunately it appears clear that they do not.

Our review of the record discloses abundant evidence supporting the juvenile court's findings of fact. Despite the department's best and reasonable efforts, Gordon has failed to cooperate and comply with the services required. We further find Gordon has been allowed sufficient time and services to address those parental deficiencies resulting in Amanda's adjudication. We find the

juvenile court correctly terminated Gordon's parental rights concerning Amanda.

As noted earlier, we need only find grounds to terminate parental rights under one of the sections cited by the juvenile court to affirm. S.R., 600 N.W.2d at 64.

For these reasons, the judgment of the juvenile court is affirmed.

AFFIRMED.