IN THE COURT OF APPEALS OF IOWA

No. 1999-36 (9-147) / 98-1713

FILED
APR 30 1999

IN THE INTEREST OF A.P., N.P., and K.P.,
Minor Children,

L.P., Mother,
Appellant.

Appeal from the Iowa District Court for Winneshiek County, Alan D. Allbee, Associate Juvenile Judge.

The mother of three minor children appeals a district court order terminating her parental rights. **AFFIRMED.**

Kevin E. Schoeberl of Story, Schoeberl & Kowalke, Cresco, for appellant.

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

Karl G. Knudson of Knudson Law Office, Decorah, guardian ad litem for minor children.

Considered by Vogel, P.J., Zimmer, J., and Peterson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

PETERSON, S.J.

Linda and Lauren are the parents of Ashley, born in June 1991; Nathan, born in August 1993; and Kendra, born in August 1995. Linda appeals the decision of the juvenile court terminating her parental rights to the children. We affirm on appeal.

The family came to the attention of the Department of Human Services (DHS) in August 1994, due to a report the parents were leaving Ashley and Nathan alone for short periods of time and the DHS issued a founded report of denial of critical care. In October 1995, DHS issued a founded report of denial of critical care because Linda was not supervising Ashley, then four years old, and Nathan, then two, when they played outside. Later that month, DHS issued another founded report of denial of critical care because Linda fell asleep without hooking Kendra to her sleep apnea monitor. The family voluntarily accepted services.

In January 1996, DHS issued a founded report of physical abuse because Linda had spanked Nathan, leaving a small bruise. The children were adjudicated to be children in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (e). The juvenile court found there was insufficient evidence to show Nathan was physically abused, but determined the incident was evidence of Linda's inability to control the children. The children remained in the custody of Linda, under the supervision of DHS.

Linda has a history of depression and trichotillomania (hair pulling). At times she has been resistant to taking medication for her condition. She was initially

resistant to providing information for a social history, and cooperated only after the juvenile court ordered her to do so. She then participated in family centered services.

In April 1996, the parents separated. Linda stated she had been physically abused by Lauren. She moved to Wisconsin with the children. DHS was unable to obtain the cooperation of Wisconsin agencies to provide services to the family. The juvenile court agreed to concurrent jurisdiction to allow the district court to proceed with the parents' dissolution action and they were divorced in July 1996.

In January 1997, Linda requested the children be placed in foster care because she was being evicted from her home and had no place to take the children. They were placed in a foster home in Iowa. DHS requested Linda participate in individual counseling, provide a stable home, obtain a job and participate in supervised visitation.

In April 1997, Linda again began to participate in family centered services, but was inconsistent in attendance and was often late. She had a psychological evaluation, and was diagnosed with an adjustment disorder and histrionic personality disorder. A second psychological evaluation found no evidence of a disorder, but determined she was not ready to parent her children because of her poor coping and decision-making skills. She did not obtain a stable home or a job, and missed some visitation time with the children.

Linda moved back to Iowa in August 1997 and in October 1997, reunited with Lauren and obtained employment. She became more cooperative with services. Due to her progress, in February 1998, the juvenile court proposed a home-trial placement

of Kendra in April 1998, provided she exercised appropriate supervision, maintain employment, obtain a driver's license, established a budget, and developed an appropriate support system. The reunification plan provided for the other two children to be placed with her in May 1998.

The same day as the court hearing in February 1998, however, Linda quit her job. She did not obtain new employment, and was unable to obtain an apartment. She refused to work with social workers on budgeting. Because she did not meet the conditions in the February 1998 order, the children were not returned to her care. In May 1998, Kendra had a bruise on her buttocks after an unsupervised visit and Linda admitted spanking Kendra. Later, Lauren stated he had been the one to spank Kendra.

The children have done well in foster care. Kendra had some health problems, and was considered to be developmentally delayed and mildly spastic. But is presently doing well. The foster family is interested in adopting the children.

In June 1998, the State filed a petition to terminate the parental rights of Linda and Lauren. The juvenile court terminated the parents' rights to Ashley and Nathan pursuant to section 232.116(1)(e), and their rights to Kendra pursuant to section 232.116(1)(g). The court concluded the children could not be returned to Linda's care because of the risk of neglect or failure to adequately supervise the children. Linda has appealed.

I. The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our

primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Linda contends the State did not present sufficient evidence to show the children could not be returned to her care at the present time. This requirement is an element of sections 232.116(1)(e) and (g). She points out that in February 1998, the State was considering returning the children to her care. She testified she believed she could obtain a job and an apartment if she made a greater effort. She stated she became discouraged in April 1998 when she learned DHS was proposing to terminate her parental rights.

We find the State presented sufficient evidence to show the children could not be returned to Linda's care at the present time. She had not progressed in disciplining the children, and in May 1998 spanked Kendra causing a bruise. She voluntarily quit her job and was without income. Her housing situation with Lauren was not stable as both parents agreed Linda was only living with Lauren until she could afford a home of her own. She had refused to work with social workers on budgeting issues, which could have solved many of her problems. Due to her own decisions, she remained in a situation where she was unable to parent her children. The children remained at risk for neglect and inadequate supervision.

III. Linda claims termination of her parental rights is not in the best interests of the children. She asserts she has a close bond with the children. She also asserts she has the ability to care for the children.

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must still be in the best interests of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the best interests of children, a court looks to the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The court must consider the physical, mental, and emotional condition and needs of the children in deciding whether to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996).

We determine termination of Linda's parental rights is in the best interests of the children. This case has been on-going for quite some period of time. Linda, however, has made little progress since the case began. In February 1998, the mother was given the opportunity to have the children returned to her care, but she did not take the necessary steps to make this happen. At the termination hearing she admitted she could have made a better effort. Linda's lack of effort to reunite with the children brings her commitment to the children into question. It is not in the children's best interests to wait any longer for Linda to become a better parent. *See In re A.Y.H.*, 508 N.W.2d 92, 96 (Iowa App. 1996) (We must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children).

We affirm the decision of the juvenile court to terminate Linda's parental rights to Ashley, Nathan, and Kendra.

AFFIRMED.

No. 98-1713. [1999-36 (9-147)] IN RE A.P., N.P., and K.P.

Appeal from the Iowa District Court for Winneshiek County, Alan D. Allbee, Associate Juvenile Judge. **AFFIRMED.** Considered by Vogel, P.J., Zimmer, J., and Peterson, S.J. Opinion by Peterson, S.J.. (6 pages $2.40)

Linda and Lauren are the parents of Ashley, Nathan and Kendra. The family came to the attention of the Department of Human Services (DHS) in 1994, when they voluntarily accepted services after two founded reports of denial of critical care. In January 1996, DHS issued a founded report of physical abuse and the children were adjudicated children in need of assistance. There was insufficient evidence to show physical abuse, but the children remained under the supervision of DHS because of Linda's inability to control the children. After the parents separated in April 1996, Linda and the children moved to Wisconsin. In January 1997, Linda requested the children be placed in foster care. They were placed in foster care in Iowa and Linda was required to participate in the services offered by DHS. She had inconsistency problems with her visits and counseling, and then in October 1997, she reunited with Lauren and obtained employment. At this time she became cooperative with the services and a home-trial placement was scheduled. This did not occur; Linda did not meet the conditions set out by the DHS. There was also evidence of some abuse of the children during visitation. Linda and Lauren's parental rights were terminated for Ashley and Nathan pursuant to section 232.116(1)(e) and for Kendra pursuant to section 232.116(1)(g). Linda appeals. **OPINION HOLDS: I.** Linda contends the State did not present sufficient evidence to show the children could be returned to her at the present time. There was sufficient evidence presented to show the children could not be returned to Linda. She had not made progress in the disciplining the children; she had refused to work with the social workers and she did not have a job or a source of income. The children remained at risk for neglect and inadequate supervision. **II.** Linda claims termination of her parental rights is not in the best interest of the children. She asserts she has a close bond with the children and that she has the ability to care for them. In determining the best interest of the children, we considered the physical, mental, and emotional conditions and needs of the children both now and in the future. This case had been going on for a long period of time and Linda made very little progress. She had been given ample opportunity to have the children returned to her care, but did not take the necessary steps to make it happen. The children are thriving in foster care. It is not in the children's best interest to wait any longer for Linda to become a better parent. We affirm the decision of the juvenile court to terminate Linda's parental rights to Ashley, Nathan, and Kendra.