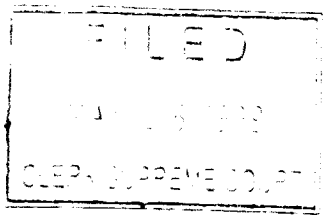
IN THE COURT OF APPEALS OF IOWA

No. 1999-111 (9-298) / 98-2255
Filed May 26, 1999



IN THE INTEREST OF B.W. and M.W., Minor Children,

E.W., Mother,
Appellant.

Appeal from the Iowa District Court for Scott County, Nancy Tabor, Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her two children.

AFFIRMED.

Carrie E. Long of the Carrie E. Long Law Offices, P.C., Davenport, for appellant.

Thomas J. Miller, Attorney General, and Chris Odell, Assistant Attorney General, for appellee-State.

Lauren M. Phelps of Phelps & Phelps, Davenport, guardian ad litem for minor children.

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

VOGEL, J.

Elizabeth (Beth) is the mother of Marissa, born in 1991, and Braison, born in 1994. She appeals the termination of her parental rights. She claims the court erred in finding clear and convincing evidence under Iowa Code sections 232,116(1)(c), (d), (e), and (f) to terminate her parental rights. The children have different fathers whose parental rights have been terminated and are not at issue in this appeal. We affirm.

Factual setting: This family came to the attention of DHS in January 1995 through a sexual abuse investigation. Marissa, then age three and one-half, told several people her maternal uncle was touching her improperly. The Family Preservation program began less than a week later. Beth continued to allow contact between Marissa and the uncle. Braison, who was seven months old, weighed just over thirteen pounds and was not being fed or given his medication regularly. The children were removed from Beth's care by temporary removal order in early February.

CINA proceedings: Following an adjudicatory hearing in April 1995, the court found Braison to be in need of assistance under Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2) (1995), because of underdevelopment and low weight. The court also adjudicated Marissa under section 232.2(6)(d) because her maternal uncle had sexually abused her. Marissa was placed with her paternal grandmother. Braison first was placed in foster care, then later with his paternal grandparents.

The juvenile court adopted the case permanency plan at a dispositional hearing in May 1995, finding the plan was "a reasonable effort to resolve the adjudicatory harm in the least restrictive means available." After a review hearing in November 1995 the court found Beth "remains immature, impulsive, and unstable." Following a permanency hearing in May 1996, the court found Beth had not "cooperated with the case plan nor shown any real interest [in] providing appropriate nurturance or care for the children." The juvenile court appointed the children's paternal grandparents as their guardians and custodians.

Guardianship review hearings were held in January 1997 and February 1998. In June 1998 the children's guardian ad litem petitioned to terminate Beth's and the fathers' parental rights to Marissa and Braison. The court held a termination hearing concerning the fathers in September 1998 and terminated their parental rights. After a continuance, the court held a termination hearing concerning Beth in November 1998 and terminated her parental rights to Marissa and Braison by order filed in December 1998. Beth appeals.

Scope of review: We review proceedings to terminate parental rights de novo —we review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995); Iowa R. App. P. 14(f)(7).

Our primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). Those best interests are determined by looking at the child's long-range as well as immediate interests. We consider what the future likely holds for the child if that child is returned to his or her parents. Insight for that determination may be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that 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 743, 745 (Iowa 1981); *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).

Beth first claims the court erred in terminating her parental rights under Iowa Code sections 232.116(1)(d) and (e).[1] When the juvenile court terminates a parent's

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[1] These sections require:

d. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, "significant and meaningful contact" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

rights on more than one statutory ground, we only need to find grounds to terminate parental rights under one of the sections cited by the district court in order to affirm the district court's ruling. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996); *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa App. 1995). Beth is a low functioning mother of two who has a history of unstable living conditions, mistreatment by friends and family concerning finances, manipulation by friends and family, difficulty making decisions, and past physical abuse. She was unable to establish a stable residence for herself or the children, living with friends and family throughout the pendency of the CINA proceedings. She participated in parenting services, but has been unable to apply the skills she has been shown during visitation with the children. Beth moved to Mason City two years before the termination hearing and did not have any regular contact with Marissa and Braison during that time. She last visited Braison about one year before the hearing and visited Marissa about five months before the hearing. She did not provide financial support or celebrate birthdays or holidays with her children. Clear and convincing evidence supports a finding Beth did not maintain significant

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e. The court finds that all of the following have occurred:

(1) The child is four years of age or older.

(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 twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) 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.

and meaningful contact with her children or establish and maintain a place of importance in their lives. We also find clear and convincing evidence the children could not be returned to her custody and care at the time of the termination hearing.

Beth challenges whether grounds exist to terminate her parental rights under Iowa Code section 232.116(1)(c), which requires the court to find "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." Marissa was adjudicated in need of assistance because of sexual abuse by her uncle, Beth's younger brother. Beth claims the State did not make reasonable efforts to reunite her with her children, especially given her low mental functioning. Reasonable efforts to reunite parent and child are required prior to the termination of parental rights. *In Interest of T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994). *See generally* Iowa Code § 232.102. Generally, DHS must make reasonable efforts to provide services to eliminate the need for removal. *See* Iowa Code § 232.102(9)(a).[2] The reasonable efforts concept would broadly include a visitation arrangement designed to facilitate reunification while protecting the children from the harm responsible for the removal. *Id.* While the State has the obligation to make reasonable efforts, the parents have a responsibility to demand services prior to the termination hearing. *In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). Challenges

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[2] The Department provided counseling and support concerning Beth's unstable life circumstances and her abusive relationships; counseling, therapy, and skill development to help her become able to care for her children; and supervised visitation.

to the plan for reunification should come when the plan is 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. *In re C.D.*, 508 N.W.2d at 101. Beth did not challenge the case permanency plan when it was entered, or at any point throughout the several hearings in this case.

In addition, Beth denied her brother sexually abused Marissa throughout the proceedings. Beth has not demonstrated that she could adequately protect Marissa from sexual abuse by a family member. We find clear and convincing evidence the circumstances which led to the CINA adjudication continue to exist despite the offer and receipt of services.

At the time of the termination hearing, the children had been out of Beth's care and custody for nearly four years. At some point, the rights and needs of the child rise above the rights and needs of the parents. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). That point has been reached in this case. "Children simply cannot wait for responsible parenting." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990).

AFFIRMED.

No. 98-2255. [1999-111 (9-298)] IN RE B.W. AND M.W.

Appeal from the Iowa District Court for Scott County, Nancy Tabor, Associate Juvenile Judge. **AFFIRMED.** Considered by Sackett, C.J., and Vogel and Mahan, JJ. Opinion by Vogel, J. (7 pages $2.80)

Elizabeth (Beth) is the mother of Marissa was born in 1991 and Braison, born in 1994. In early 1995, Marissa, then age 3 ½ told several people her maternal uncle was touching her improperly. Braison, who was seven months old weighed just over thirteen pounds and was not being fed or given his medication regularly. Marissa was placed with her paternal grandmother. Braison eventually was placed with his paternal grandparents. Beth claims the court erred in terminating her parental rights under Iowa Code sections 232.116(1)(d) and (e). **OPINION HOLDS:** Clear and convincing evidence supports a finding Beth did not maintain significant and meaningful contact with her children or establish and maintain a place of importance in their lives. We also find clear and convincing evidence the children could not be returned to her custody and care at the time of the termination hearing. Beth challenges whether grounds exist to terminate her parental rights under Iowa Code section 232.116(1)(c). Beth did not challenge the case permanency plan when it was entered, or at any point throughout the several hearings in this case. It is too late to challenge it now. At the time of the termination hearing, the children had been out of Beth's care and custody for nearly four years. At some point, the rights and needs of the child rise above the rights and needs of the parents.