

IN THE COURT OF APPEALS OF IOWA

No. 8-598 / 98-0061
Filed November 30, 1998

IN THE INTEREST OF A.W., E.W., K.W., and B.W.,
Minor Children,

E.W., Mother,
Appellant.

Appeal from the Iowa District Court for Butler County, Gerald W. McGee,
Associate Juvenile Judge.

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

Kellyann M. Lekar of Roberts & Stevens, P.L.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Chris C. Odell, Assistant Attorney
General, and Martin M. Petersen, Assistant County Attorney, for appellee State.

Bruce M. Toenjes of Nelson & Toenjes, Shell Rock, guardian ad litem for
minor children.

Heard by Sackett, C.J., Huitink, J., and McCartney, S.J.*

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

HUITINK, J.

E.W. (Elaine) appeals a district court order terminating her parental rights. We affirm.

I. Background Facts and Proceedings.

Edward and Elaine are the parents of four minor children: Alisha, age nine; Elona, age eight; Kayla, age five; and Breanna, age four. The Department of Human Services (DHS) was first alerted to the children's circumstances in 1993, after several complaints alleging sexual abuse and deplorable living conditions had been filed against their parents.

On March 17, 1994, the State filed a CINA petition on behalf of Elona, Alisha, and Kayla following two founded child abuse reports for denial of critical care. Following an adjudicatory hearing, the district court concluded, and Elaine stipulated, that the children were in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (1993).¹ The children remained in parental custody subject to the protective supervision of DHS. Elaine was ordered to participate in family therapy and homemaker services.

In June 1995, the children's guardian ad litem filed a request for a review hearing based on the parents' failure to make progress toward reunification. The juvenile court subsequently issued an ex parte order removing all four children from

¹ In July 1994, the State filed another CINA petition on Breanna's behalf. Elaine stipulated that Breanna was in need of assistance, and the children's cases were consolidated.

the home and placing them in the custody of DHS. The children were placed in foster care.

The children in this case have been the subject of several review hearings. At each of the review hearings, the juvenile court expressed concern and disappointment over the parents' lack of progress and commitment to the various remedial measures offered by the State. The juvenile court ordered the parents to undergo and complete counseling, substance abuse treatment, and parenting-skills training as a condition precedent to the reunification of the family. The juvenile court repeatedly found both Ed and Elaine failed to seriously dedicate themselves to the services it had mandated.

On June 17, 1997, the State filed a petition to terminate both parents' rights. Following trial, the juvenile court entered its decree terminating the parental rights of Elaine and Edward pursuant to Iowa Code sections 232.116(1)(d), (e), and (g) (1997).

Elaine appeals.² She maintains the State failed to prove by clear and convincing evidence she failed to maintain significant contact with her children. She contends she only missed one visitation in the six months prior to trial. She argues that even if the juvenile court was correct in concluding she failed to maintain significant contact with the children, she was not given an opportunity to maintain such contact. She claims the State failed to provide her with reasonable services.

² Edward does not appeal the termination of his parental rights.

II. Standard of Review.

Termination proceedings are reviewed de novo. Iowa R. App. P. 4. Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. P. 14(f)(7); *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998).

The controlling standard applied in cases involving the termination of parental rights is the best interests of the children involved. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

We look to the child's long-range, as well as immediate, interests. We consider what the future 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 the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.K.B., 572 N.W.2d 600, 601 (Iowa 1998)(quoting *In re C.M.W.*, 503 N.W.2d 874, 875 (Iowa App.1993)). The grounds alleged for the termination of parental rights must by statute be proven by clear and convincing evidence. See Iowa Code section 232.114(5)(c).

It is well-established that there exists a parental interest in the integrity of the family unit; nonetheless we also are cognizant that this interest is not absolute, but rather may be forfeited by certain parental conduct. *In re Dameron*, 306 N.W.2d at 745. The State has the duty to assure that every child within its borders receives

proper care and treatment and it must intercede when parents abdicate that responsibility. *Id.*

While the district court terminated the parental 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 juvenile court in order to affirm the district court's ruling. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996).

III. The Merits.

The juvenile court terminated Ed and Elaine's parental rights based in part on Iowa Code section 232.116(1)(d). Section 232.116(1)(d) permits the juvenile court to terminate the parent-child relationship if the child has been adjudicated in need of assistance, has been placed out of the parent's custody for more than six consecutive months, and there is clear and convincing evidence the parent has not maintained significant and meaningful contact with the child and has made no reasonable effort to resume care of the child.

Elaine contends the State did not establish by clear and convincing evidence that she failed to maintain significant and meaningful contact with her children. We disagree.

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

Elaine and Edward [W.] have been provided with a myriad of services since at least 1994 and have not demonstrated a commitment to those services, have not availed themselves of all of the services, and neither have taken the initiative to benefit from services in order to be reunified. Neither parent has taken affirmative action to assume the

duties of being a parent. Although the mother has been more consistent in visitation, there have been no genuine efforts by either parent to maintain communication, maintain a place of importance, or comply with the requirements of the Case Permanency Plan, which at various times has noted the parents' responsibilities to be: maintaining a safe and secure home, cooperating with services, discuss progress and concerns, develop daily living skills, certify an appropriate support system, avoid substance abuse and law violations, make appropriate and consistent decisions, stay chemically free, attend all staffings and Court Hearings, complete all counseling, and keep all visits.

Our review of the entire record supports the juvenile court's findings. The record is clear that DHS was very patient with Ed and Elaine. Despite its best efforts, DHS could not convince the parents to fully dedicate themselves to the goal of reunification.

Elaine points to her attendance record at visitations over the six months prior to termination as evidence of her renewed interest in assuming her parental obligations. We find the record does not support Elaine's contention. In examining efforts made by parents at maintaining substantial contact, we are not bound to look only at the six months preceding termination. *In re A.J.*, 553 N.W.2d 909, 913 (Iowa App. 1996).

Regardless of her attendance record at visitation, Elaine fails to show any other attempts at affirmative parenting. For the two years her children were in foster care, she never called them on the telephone, never visited them at the foster home, and never sent them cards or gifts, except for items exchanged at scheduled visitation. Elaine did not contribute financial support to any of the children, except for a brief

time when her wages were garnished. All of these factors are indicators of a parent's commitment to meaningful contact with her children. Parental responsibilities include more than subjectively maintaining an interest in a child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996). The concept requires affirmative parenting to the extent it is practical and feasible. *Id.*

Merely attending scheduled visitation on a semi-regular basis, standing alone, does not satisfy Elaine's obligation to "maintain a place of importance" in her children's lives. We find clear and convincing evidence exists demonstrating Elaine has failed to maintain significant and meaningful contact with her children, as defined in Iowa Code section 232.116(1)(d).

IV. Reasonable Efforts.

In an effort to excuse her inability to demonstrate she maintained significant and meaningful contact with her children, Elaine contends the State did not make reasonable efforts to assure reunification of her family. *See* Iowa Code § 232.102(5). We find her position to be wholly without merit. These children have been under protection of DHS for almost five years. During the same time period, the State has offered numerous opportunities for Elaine to receive substance abuse treatment, parenting-skills training, sexual abuse counseling, and psychotherapy. She has avoided her case permanency plan at every opportunity. She admits as much by pledging to finish her permanency plan if we were to reverse the juvenile court.

The State has been very patient with Ed and Elaine, all the while their children's stability and best interests hanging in limbo. We feel these children have waited long enough for stability in their lives. The record reflects the State has not failed in its duty to offer reasonable efforts at reunifying this family.

V. Conclusion.

We find clear and convincing evidence that Elaine has not maintained significant and meaningful contact with her children and has not made reasonable efforts to resume care of her children. We find the State has made reasonable efforts at reunifying Elaine with her children. Finally, we find the children's best interests will be furthered by terminating the parent-child relationship between them and their mother. We therefore affirm the juvenile court.

AFFIRMED.