IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 1999-243 (9-467) / 99-0587
Filed November 10, 1999

IN THE INTEREST OF C.M. and X.M., Minor Children,

J.M., Mother,
Appellant,

D.M., Father,
Appellant.

Appeal from the Iowa District Court for Dubuque County, Jane Mylrea, Associate Juvenile Court Judge.

Mother and father appeal separately from a juvenile court order terminating their parental rights. **AFFIRMED.**

Jennifer A. Clemens-Conlon of Reynolds & Kenline, L.L.P., Dubuque, for appellant-mother.

Dan McClean of McClean Law Office, Dyersville, for appellant-father.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Jean [redacted]er, Assistant County Attorney, for appellee-State.

Monica L. Ackley, Dubuque, guardian ad litem for minor children.

Heard by Streit, P.J., and Vogel and Vaitheswaran, JJ., but decided by Streit, P.J., and Mahan and Vaitheswaran, JJ.

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STREET, P.J.

Jessica and Dale appeal the termination of their parental rights claiming inadequate services, insufficiency of the evidence, and violation of their right to due process. We affirm finding no merit to their claims.

I. Background Facts & Proceedings.

Jessica M. and Dale M. had two children during their marriage, Xena, born November 4, 1996, and Clarence, born October 23, 1997. The children were removed from the home on June 18, 1998, because of filthy and cluttered conditions in the home and Clarence's failure to thrive. The parties stipulated to the adjudication of Clarence and Xena as children in need of assistance (CINA) pursuant to Iowa Code sections 232.2(6)(b), 232.2(6)(c)(2), and 232.2(6)(g). Jessica immediately cleaned and child-proofed the apartment, and the children returned home.

The children were again removed in August 1998, due to unexplained and rather serious injuries to Clarence. Clarence had multiple bruises, varying in age, about his face. The parents had sole custody of the children at the time of abuse. The court found one parent committed the abuse and one failed to protect the child from the abusive parent and subsequently denied the child treatment for his injuries. At the removal hearing the court ruled the children would not be returned to their parents until Jessica and Dale took responsibility for their abuse and neglect. Both parents sought the district court's reconsideration, which was denied. In December the court denied Jessica's request for placement in the Family Empowerment Program, an

independent parenting facility, as she continued to deny any knowledge of the abuse and failed to show any substantial change in her behaviors.

On February 19, 1999, the State filed a termination petition. The juvenile court terminated Jessica's and Dale's parental rights pursuant to Iowa Code section 232.116(1)(g). The court found neither parent had taken responsibility for the abuse or denial of critical care; both parents admitted they were currently unfit to regain custody of their children; and neither parent progressed in stability, individual therapy, or responsibility. The court further ruled stability, structure, nurturing, and a proper environment were critical to the children and termination was in their best interests.

Jessica and Dale appeal claiming a host of errors. Jessica's individual claims of error include: (1) the State failed to give her an opportunity to demonstrate her parenting skills, and (2) the court improperly denied her placement in the Family Empowerment Program. Dale's individual claims of error include: (1) the State failed to provide him with reunification services, and (2) the conditions of his probation improperly restricted his interaction with the children. Their joint claims include: (1) the State failed to prove by clear and convincing evidence any risk of harm to Xena, (2) the court improperly demanded the parents take responsibility for either the denial of critical care or abuse allegations, and (3) termination was not in the children's best interests. Because Jessica's claim of denied opportunity to parent, and Dale's claim of denied reunification services can be disposed of on procedural grounds, we will address those claims jointly.

II. Preservation of Error.

Jessica and Dale both claim they were denied adequate services. While the State has an obligation to provide adequate services, Jessica and Dale have a responsibility to challenge or object to the services provided at the removal or review hearing. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). It is too late to challenge the adequacy of services at the termination hearing. *See id.* Jessica claims the State never granted her unsupervised visitation with the children, thus stripping her of the ability to demonstrate her parenting skills. While true, Jessica did not at any point in time request unsupervised visitation. Dale likewise claims the State never provided him reunification services, but he too never requested them. Both these claims come too late; the State is not unilaterally responsible for conjuring up the perfect reunification recipe. The parents must make their needs known; failure to do so bars appellate review.

III. 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 [redacted] propositions properly preserved and presented to us." *In re O'Neal*, 303 N.[redacted]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).

IV. The Parents' Individual Claims.

Jessica claims the trial court failed to ensure reasonable efforts for reunification by denying her request for placement in the Family Empowerment Program. Dale claims the condition of his probation that prohibited interaction with children improperly hindered his ability to seek reunification.

With regard to Jessica, the court denied her placement based on noncompliance with other services, failure to be honest regarding the abuse of Clarence, and failure to take responsibility. The court concluded she had not made sufficient progress to warrant independent parenting. The court's rationale for denying Jessica's placement in the Family Empowerment Program was sound. Jessica's minimal progress, her failure to comply with reunification services, and her adamant denial of responsibility for the abuse and neglect of Clarence indicated Jessica was ill prepared for any program employing independent parenting. The children's safety was of paramoun concern, and Jessica did nothing to alleviate those well-founded fears. Furthermore, simply denying placement in one program does not constitute inadequate services. During the pendency of the case, Jessica was offered countless services. Regardless of the propriety of the court's decision denying placement in this particular program, Jessica received adequate services. Her claim is denied.

Dale's claim regarding his condition of probation is without merit. Dale's commission of a criminal offense hindered his opportunities for reunification; the

State's penal response to his actions are of his own making. *See In re M.M.S.*, 502 N.W.2d 4, 8 (Iowa 1993). His claim is denied.

V. The Parents' Joint Claims.

In addition to their individual claims, Jessica and Dale jointly claim: (1) the State failed to prove by clear and convincing evidence any risk of harm to Xena, (2) the court improperly demanded the parents take responsibility for either the denial of critical care or abuse allegations, and (3) termination was not in the children's best interests.

A. Xena Could Not be Safely Returned to Either Parent. 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.

The only element of section 232.116(1)(g) the parents dispute is the final element regarding clear and convincing evidence the child cannot be safely returned to the parents.

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 (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 Xena to either one of her parents would expose her to an identifiable threat of harm. We can gain insight into Xena's prospects for remaining safe and healthy by reviewing evidence of the parents' past performances, for it may be indicative of the parents' future capabilities. *See In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1980). Both Dale and Jessica present a threat to Xena's safety. One of them physically abused Clarence, demonstrating poor anger management. The other did nothing to protect him from abuse, demonstrating a disregard for the child's safety. To compound the already harmful situation, neither parent sought medical attention for Clarence's obviously severe injuries. Simply because Xena was not the target o this specific instance of abuse does not insulate her from future harm. The parer inability to control their anger or to act responsibly caused injuries to one child. ' could likely become a target. The threat to Xena is further exacerbated

parents' refusal to take responsibility for their actions. These denials prevented the parents from receiving any services designed to address the abuse, the failure to protect, and the refusal to seek medical treatment. The parents both admit Xena should not be returned to their care. The evidence is clear and convincing that Xena would probably suffer harm if returned to either parent. The termination is affirmed.

B. Requiring Admissions of Abuse Do Not Violate Due Process. Before parents can begin the process of acquiring proper parenting skills and mending broken relationships with their children, past shortcomings must be acknowledged. *In re K.M.R.*, 455 N.W.2d 690, 691 (Iowa App. 1990). A district court may require a parent to recognize abuse and the role they played in perpetuation of that abuse without constitutional entanglement. *Id.* The parents claim such a demand is inapposite to this case because the court did not make specific findings as to a perpetrator. The reason for the court's inability to make such a concrete determination, however, lies at the feet of the parents. Both parents refused to take responsibility or implicate the other in the abuse. Both parents were responsible for the abuse. One actually abused Clarence, the other failed to protect him, and both denied him treatment for his subsequent injuries. The parents suffered no deprivation of their constitutional rights, and the termination is affirmed.

C. Termination Was in the Children'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 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). The parents claim termination is not in the children's best interests as they may suffer from a genetic disorder, thus making adoption potentially more difficult. We do not find the potential difficulty in finding an adoptive home for children with potential health problems to be a sufficient reason for refusal to terminate the parent-child relationship. *In re S.O.*, 483 N.W.2d 602, 604 (Iowa App. 1992). The likelihood of harm if the children were returned to the parents far outweighs any potential difficulty in the adoption process. Termination of Jessica's and Dale's parental rights was in the children's best interests.

Having addressed all claims, the termination of Jessica's and Dale's parental rights as to Clarence and Xena is affirmed.

AFFIRMED.