IN THE COURT OF APPEALS OF IOWA

No. 1999-113 (9-300) / 98-2190
Filed June 23, 1999

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CLERK SUPREME COURT

IN THE INTEREST OF J.R. and D.R., Minor Children,

R.C., f/k/a R.R., Mother,
Appellant.

Appeal from the Iowa District Court for Washington County, Lucy J. Gamon, Judge.

Mother appeals the termination of her parental rights to her two youngest children. **AFFIRMED.**

Lars G. Anderson of the Holland Law Office, Iowa City, for appellant.

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

Chad Thomas of the Bordwell Law Office, Washington, Iowa guardian ad litem for minor children until withdrawal and then Steve Carter of Washington, Iowa.

Decided by Huitink, P.J., Mahan, J., and Hayden, S.J.*

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

HAYDEN, S.J.

Mother appeals the termination of her parental rights to her two youngest sons. We affirm the termination.

R.C. is the mother of B.R., born January 1994; B.R., born June 1992; J.R., born February 1996; and D.R., born February 1997. The family came to the attention of the Department of Human Services (DHS) in December 1997, when DHS received a referral from the University of Iowa Hospitals and Clinics regarding D.R.'s diagnosis of failure to thrive. R.C. voluntarily accepted services. She did not keep all of her appointments with the assigned in-home worker, Jennifer Gilliland, and on the in-home visits, Ms. Gilliland noticed the home was not clean. J.R. and D.R. would only be wearing diapers, and D.R. was always in a car seat or swing.

On January 7, 1998, Ms. Gilliland stopped at the home for a drop in visit to find the children home alone. The mother did not return for approximately five minutes; she had been at the grocery store across the street. This incident led to a child abuse report investigation by the DHS. When the mother was interviewed the next day, the investigator found her home was in very bad condition. The home had been condemned on prior occasions. There was a large hole in the bathroom floor. The upstairs rooms had mold on them and the floor was rotting to the point there was a fear of falling through. The basement had a foot of water in it. The heat was going to be turned off the next day. When the children had been left alone the night before, there were no locks on the doors or gates on the stairs to prevent any of the children from coming into contact with the dangers of the home. R.C. voluntarily placed the

children in foster care. She withdrew the placement agreement later in January. A removal order was eventually obtained to keep the children in foster care. The four children were adjudicated in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) and Iowa Code section 232.2(6)(g) in February 1998. At the dispositional hearing held on April 9, 1998, the court continued the placement of the children in foster care and the mother was ordered to continue to cooperate with the services being offered. An April 1998 DHS progress report listed several concerns with the mother. She had been employed at four different jobs in two months and she had not obtained appropriate housing. She had difficulty during visitations providing the basic needs of the children. She had difficulty in managing their behavior. She did not follow the modeling offered by the supervisors. Also, she often failed to interact with the children.

A supplemental dispositional order in May 1998, placed B.R. and B.R. with their maternal grandparents and D.R. and J.R. remained in a foster home. Following a focus family assessment, which recommended the children not be returned to the mother, the State filed a Petition to Terminate Parental Rights in August 1998. On September 29, 1998, R.C's parental rights to D.R. and J.R. were terminated pursuant to Iowa Code section 232.116(1)(c) and (g). The mother appeals the termination on several grounds.

We review proceedings to terminate parental rights de novo. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We will give weight to the findings of the juvenile court, particularly with respect to the credibility of the 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).

I. Meaningful Services. The mother contends she has complied with the expectations set out in the Case Permanency Plan. Further, if she failed to meet any of the objective criteria of the plan it was due to events beyond her control or due to a lack of support from the DHS. We do not agree R.C. has met every expectation. From the time the children were removed from the home she missed several appointments. She had four different jobs in two months and until recently she had not secured proper housing. She was to learn effective parenting skills, yet she testified there was nothing else she needed to learn in order to care for J.R. and D.R. The mother argues the AEA did not model the behavior she was to use with the children. All of the therapists who worked with the family throughout the case testified they showed R.C. how to work with the kids. They stated there were times when R.C. ignored the suggestions or did not interact with the children at all. There is nothing in the record to show the mother requested better services prior to this appeal. We have long held parents have the obligation to demand services prior to the termination hearing. *In re B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993); *In re C.D.*, 508 N.W.2d 904, 807 (Iowa App. 1993). R.C. should have challenged the services when the case plan was entered. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997); *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). At no point did the mother ask for any additional services other than those which she was already

receiving. It is evident the mother has not followed through with the case plan. DHS provided her meaningful services.

II. Return of J.R. and D.R. R.C. contends she has achieved a certain degree of stability. There are services available to her. She would have two children instead of four children to care for. She contends this is sufficient for J.R. and D.R. to be returned to her. At the time of the hearing, R.C. had recently been married and was living in a suitable apartment. She also had been with a temporary employment agency working for various companies. The stability in her life arose approximately two months prior to the termination hearing. J.R. and D.R. are severely developmentally delayed. J.R. has a history of failure to thrive and his development is not appropriate for his chronological age. He is delayed in all developmental areas of fine and gross motor skills, as well as speech and language. Dr. Randell Alexander was the doctor who examined the children as part of the focused family assessment. Dr. Alexander stated J.R. "has probably inherently got some limitations that in the right environment he will or he could move to the top end of his range of possibilities." D.R. also has a history of failure to thrive and is more developmentally delayed than J.R. Dr. Alexander believes the boys' problems are a combination of their genetic potential worsened by the care they received prior to foster care. We are concerned the mother does not fully understand the care her two young children are going to require. The parental concerns are not temporary ones. They have been chronic. All of the children have severe dental problems and malnourishment. She had been told to take one of the older boys to the dentist for bottle rot, but she did not

do this. She does not acknowledge the boys have any problems. She testified she already knew parenting and did not need to know anything else to care for J.R. and D.R. A parent must recognize the presence of abuse before any meaningful change can occur. *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa App. 1988). J.R. and D.R. will need calories and they will need more than average stimulation. It is quite likely they will need special education and the services of a physical therapist, an occupational therapist and a speech and language therapist. It will be the job of their primary caretaker to ensure the boys are receiving the services and therapy they will need. There is nothing in the record to indicate the mother will be able to offer the boys what they need.

The various therapists and workers who have worked with R.C. and the children are in full agreement the boys should not be returned to their mother. Roberta Sloat, the family therapist who supervised the visits with all four children, stated "they [the boys] all have an increased need for safety, nurturing, stability and stimulation, and that requires above-average parenting to meet their special needs. They need an above-average parent. And while R.C. has improved in some areas of care of the boys it has been very minimal. It's certainly not enough to warrant placing the boys back in her home without putting them in imminent danger . . . " Karen Dennler is a social worker with DHS who worked with the family. She does not recommend placing the children with their mother. She is concerned with "several problems within her [R.C.] problem solving skills and her decision making." Jennifer Gilliland is the family therapist who supervised the visits between the mother and the

two younger boys. She described the mother's parenting from December 1997 until the time of trial as "no consistency for any length of time." It was in her opinion the mother will be unable to care for the boys and their special needs. Members of the focused family assessment conducted in June 1998, concurred with the concern of returning the boys to R.C. Beverly Saboe, a clinical nurse specialist who met with the family as part of the assessment, does not believe the children should be returned to the mother. She believes there is a "potential that the children would be at imminent risk of denial of critical care, based upon lack of proper supervision and shelter and failure to provide proper medical and dental care." She further stated R.C. "has not taken care of any of these children and concerns about the children have increased with each subsequent child that she has had." Dr. Randell Alexander, a pediatrician who participated in the assessment does not believe J.R. and D.R. should be returned to their mother. He stated the children would be exposed to an adverse environment and "it was a chronic sustained environment which was not remediated despite a variety of efforts and at least as the time we saw the mother, there had been just nothing to suggest that it was going to change in the foreseeable future." Given the needs of the children and R.C.'s lack of acknowledgment to these needs, we determine the children cannot be returned to her.

The mother also contends the court erred in terminating her parental rights pursuant to Iowa Code section 232.116(1)(g). She claims there is not clear and convincing evidence the boys cannot be returned to her at the present time. As we discussed earlier, there is sufficient evidence the boys cannot be returned to R.C. at

the present time. R.C., herself, testified she is asking for more time and is not ready to have the boys in her home immediately. She believes it should be a gradual move, so as not to uproot the boys. The mother did not state how long she thought it would take for her to be ready to have the boys in her home. The legislature has determined the interval for which patience with parents may last. "This period must be reasonably limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children." *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). The children have waited long enough, and it is not necessary to provide R.C. with more time to learn how to care for the special needs of J.R. and D.R..

III. Best Interests. The mother contends termination would not be in the best interests of her children. She claims the uncertainty of adoption and the breaking of the family bond would be detrimental to J.R. and D.R. We are aware the termination of the parental rights "is a drastic step which improvidently employed can be fraught with danger." *In re H.H.*, 528 N.W.2d 675, 677 (Iowa App. 1995). However, our primary concern in a termination proceeding is the best interests of the children. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). Iowa Code section 232.116 contains no requirement the court must find a child adoptable before terminating parental rights. *In re T.C.*, 522 N.W.2d 106, 109 (Iowa App. 1994). Even without the requirement, there is no showing in the record the children would not be adopted or would be separated. There was testimony at the hearing to the contrary. Even with the special needs of the boys, the likelihood of the boys being adopted into the same

home is good and there were at least ten families in the three surrounding counties willing to adopt siblings with mild to moderate delays.

R.C. argues the boys should not be separated from their two older brothers. However, there is testimony from Roberta Sloat stating it is not in the best interest of J.R. and D.R. to be placed in the same home as B.R. and B.R. The boys all have different special needs because they are at different age levels. Even if the parents were the best trained people, it would be expecting too much to parent all four of the special needs' children. Dr. Alexander believes placing all four boys together would "end up collectively worse" for the boys. Siblings may be separated when it is in their best interests. *In re L.S.*, 483 N.W.2d 836, 840 (Iowa 1992).

In light of the special needs of J.R. and D.R. taken together with their mother's lack of parenting and nurturing in the past, we determine it would not be in the best interests of the children to be placed in their mother's care. These boys are going to require special care for most if not all of their childhood, and they need not wait for R.C. to become a responsible parent. *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987).

We affirm the termination of R.C.'s parental rights. Unfortunately, these two boys are faced with a harder battle than most children their age as they will require continued treatment and care. Although she has shown some progress recently, it is not enough to effectively be a parent to J.R. and D.R.

AFFIRMED.

No. 98-2190. [1999-113 (9-300)] IN RE J.R. and D.R.

Appeal from the Iowa District Court for Washington County, Lucy J. Gamon, Judge. **AFFIRMED.** Considered by Huitink, P.J., Mahan, J., and Hayden, S.J. Opinion by Hayden, S.J. (9 pages $3.60)

Mother appeals the termination of her parental rights to her two youngest sons. R.C. is the mother of B.R., born January 1994; B.R., born June 1992; J.R., born February 1996; and D.R., born February 1997. The family came to the attention of the Department of Human Services in December 1997, when it received a referral regarding D.R.'s diagnosis of failure to thrive. In January 1998, R.C. voluntarily placed the children in foster care after a social worker found the four children home alone. She later withdrew the placement agreement, but the children remained in foster care under a court order. The children were adjudicated in need of assistance in February 1998. DHS was concerned with R.C.'s lack of employment, housing instabilities, and her failure to interact with the children during visits. B.R. and B.R. were placed with their maternal grandparents, while D.R. and J.R remained in foster care. In September 1998, R.C.'s parental rights to D.R and J.R were terminated. **OPINION HOLDS: I.** R.C. contends she complied with the case plan expectations and any failures were due to a lack of support from the DHS. R.C. failed to follow parenting suggestions and was inconsistent in her interaction with the children. R.C. should have challenged the services when the case permanency plan was entered. **II.** R.C. argues J.R. and D.R. could be returned to her care. The two boys are severely developmentally delayed and will require continuous care and therapy. The therapists and workers who have assisted the family are in full agreement the boys should not be returned to the mother. Given the special needs of J.R. and D.R. and R.C.'s lack of acknowledgment to these needs, we determine the children cannot be returned to her. **III.** R.C. contends termination is not in the best interests of her children. She claims the uncertainty of adoption and separating them from their older brothers would be detrimental to them. There was testimony to show the likelihood of the boys being adopted into the same family was very good. Testimony showed it would not be in the boys' best interest to be placed in the home with the two older boys due to the special needs of the two younger children. We affirm the termination of R.C.'s parental rights to her two youngest sons.