IN THE COURT OF APPEALS OF IOWA

No. 4-407 / 94-621

IN THE INTEREST OF A.R.N., J.R.S, AND A.K.S., Minors,

D.N., Mother,

Appellant,

J.N., Father,

Appellant.

FILED
OCT 25 1994
CLERK SUPREME COURT

Appeal from the Iowa District Court for Des Moines County, Gary J. Snyder, Judge.

Mother appeals the district court's order terminating her parental rights to A.R.N., J.R.S., and A.K.S. Father appeals the order terminating his parental rights to A.R.N. **AFFIRMED.**

Ronald D. Ellerhoff, Burlington, for appellant father.

Andrew B. Prosser, of Dailey and Riley, Burlington, for appellant mother.

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, Judy A. Sheirbon, Assistant Attorney General, and Ronald Robertson, Assistant County Attorney for appellee.

Robert J. Todd, Burlington, attorney and guardian ad litem, for minor children.

Considered by Sackett, P.J., and Habhab and Cady, JJ.

CADY, J.

Diana appeals the district court's order terminating her parental rights to Josh, Amber, and Amy. Jim appeals the order terminating his parental rights to Amy. We affirm the district court's order.

Diana and Jim are the biological parents of Amy, born February 8, 1990. Diana is also the mother of Josh, born October 21, 1984 and Amber, born December 21, 1986. James Lee is the father named on Josh's birth certificate; however, Bruce has signed child support recovery papers stating he is Josh's father. No father is named on Amber's birth certificate; however, Bruce has also signed child support recovery papers stating that he is Amber's father.

Diana and Jim both suffer from mental illness. Diana has been diagnosed with depression and paranoid schizophrenia. Jim has been diagnosed with paranoid schizophrenia and abuses drugs and alcohol. Both Diana and Jim have been hospitalized numerous times because of their mental illnesses. They were married in 1989 but have not lived together since 1990.

Due to severe postpartum depression Diana was unable to care for Amy when she was born and Amy was placed in the custody of the Department of Human Services (DHS) for temporary placement in a foster home. At this time, Diana hired a baby-sitter to care for Josh and Amber. In May 1990, because of Diana's admitted inability to care for Amy, the court found Amy to be a child in need of

assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2) (1989). The court ordered that Amy return to Diana's custody under the protective supervision of DHS. Further, the court ordered Diana and Jim to attend a day treatment program and for Homemakers to daily monitor Amy's care.

On May 30, 1990, Diana reported that Jim sexually abused Josh, and Amber. In addition, Diana indicated to the DHS that she could no longer cope with having the children in her custody and had thoughts of killing them. A CINA petition was filed in respect to Josh and Amber. Josh, Amber, and Amy were placed in the custody of DHS for placement in temporary foster care. The court also imposed a no contact order between Jim and the children. After investigation, the report of sexual abuse was deemed founded and Jim pled guilty and was convicted of indecent contact with a child.

In July 1990, Josh and Amber were adjudicated CINA pursuant to Iowa Code section 232.2(6)(d) and with Diana's agreement. The juvenile court ordered that Josh be returned to Diana's custody and Amber and Amy remain in foster care. After review hearings in September 1990 and March 1991, the court returned custody of Amber and then Amy to Diana. Family services were ordered to be provided for each child.

In August 1992, the family was evaluated at the University of Iowa Child Development Clinic (C.D.C.)

pursuant to court order. The evaluators found that Diana could not adequately care for the children due to her mental illness and recommended that they again be placed in the custody of DHS for temporary foster care. The court agreed with this recommendation.

The children were still in temporary foster care in December 1993 when the State filed a petition for termination of parental rights of Bruce, James Lee, Jim, and Diana to Josh, Amber, and Amy.

During the course of the March 1994 hearing Bruce and James Lee consented to the termination of their parental rights to Josh and Amber. Diana testified that she was now living with her mother and believed that with her mother's help she could provide adequate care to the children. Jim stated that he knew he could not provide care for Amy but wanted to continue to have a relationship with her.

The court found that due to their mental illnesses neither Diana nor Jim could provide proper and adequate care for Amy and that Diana could not provide proper and adequate care for Josh and Amber. The court ordered Diana's and Jim's parental rights terminated and placed guardianship and custody of Josh, Amber and Amy with the DHS.

Both Diana and Jim appeal the court's order. Diana argues that the district court erred in finding the children could not be returned to her custody. See Iowa Code §§ 232.116(1)(e) and 232.102 (1993). She contends

that the children would not meet the CINA definition if they lived with Diana and her mother. Diana also argues that the court erred in finding, pursuant to Iowa Code section 232.116(1)j, that there was clear and convincing evidence that the children would not be able to return to her home in a reasonable amount of time because the option of co-parenting with her mother was not explored. Jim argues that if the appellate court restores Diana's parental rights then it should also restore his parental rights.

I. Scope of Review

We review termination proceedings de novo. Iowa R. App. P. 4. Accordingly, we review both the facts and the law and adjudicate rights anew. In re T.A.L., 505 N.W.2d 480, 492 (Iowa 1993). Although we give weight to the factual findings of the juvenile court, especially when considering the credibility of witnesses, we are not bound by them. Id.

Our preeminent concern in termination cases is the best interests of the child. In re L.L., 459 N.W.2d 489, 493 (Iowa 1990). The child's best interests include both long range and immediate interests. In determining the child's long range interests, we must consider what the future holds for the child if returned to the parent. Id. at 493-94. The parents past performance may provide insight into the quality of future care the parent is capable of providing. Id. at 494.

We recognize a parental interest in "preserving the integrity of the family unit. In re M.M., 483 N.W.2d 812, 814 (Iowa 1992). This parental interest, however, is not absolute; it may be forfeited by certain parental conduct. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). The State has a duty to ensure every child within its borders receives proper care and treatment. Id.

II. Termination of the Mother's Parental Rights

The district court terminated Diana's rights to Josh, Amber, and Amy pursuant to Iowa Code sections 232.116(e) and (j) (1993). These sections provide:

> 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.
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> . . . .
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> j. 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 and custody has been transferred from the child's parents for placement pursuant to section 232.102
> (2) The parent has chronic mental illness and has been repeatedly institutionalized for mental illness, and presents a danger to self or others as evidenced by prior acts.

A. Section 232.116(e)

After reviewing the record, we agree with the district court that there is clear and convincing evidence to terminate Diana's parental rights to Josh, Amber, and Amy. The children's lives with Diana have been characterized by instability and denial of critical care.

While in her care, the children suffered from sexual and emotional abuse. Diana was unable to prevent the sexual abuse perpetrated by her husband, Jim. She also desires to continue her relationship with Jim despite the threat he poses to the children.

All of the children have been removed from Diana's care several times. The most recent separation occurred August 27, 1992 and is ongoing. Reunification efforts have been unsuccessful. Despite several years of parenting skills instruction, Diana has made little progress. The homemaker reported Diana was unable to practice parental techniques demonstrated to her, was resistant and uncooperative, and often spent the visitation time chain-smoking in another room.

Diana suggests co-parenting the children with her mother, Delores, would resolve her previous problems and achieve the legislative goal of maintaining the family unit. The record presents contrary evidence. Dr. Lori Frasier and the homemaker, Pat Weiland, both testified co-parenting was not workable. Pat had witnessed Delores' behavior during Diana's visitation with the children and determined Delores could not handle the children.

Furthermore, Diana withdraws in Delores' presence and allows Delores to completely take over the care of the children. Delores also helps care for her other adult daughter who is mentally ill. Moreover, Diana did not suggest co-parenting until the termination hearing and presented no evidence that a co-parenting arrangement would be viable.

B. Section 232.116(j)

Diana has suffered from paranoid schizophrenia and depression since 1977. She has been hospitalized four times between 1988 and 1994 as a result of her illness. The most recent hospitalization occurred in February 1994, one month prior to the termination hearing. Although, impaired mental ability standing alone is an insufficient basis for terminating parental rights; it can, however, be a contributing factor to the inability to perform essential parental duties. In re E.B.L., 501 N.W.2d 547, 551 (Iowa 1993). Termination is appropriate when the parent lacks the capacity to meet the child's present and future needs. Id.

All of the expert testimony indicated Diana's mental illness prevents her from meeting the children's most basic needs. The C.D.C. report stated Diana was unable to recognize the needs of her children and the risk of physical and sexual abuse if the children remained in her care was high to imminent. Moreover, Diana's condition prevents her from handling stressful or unpredictable situations typical to a home with three young children.

III. The Father's Parental Rights

Jim's argument that the court erred in terminating his parental rights to Amy is dependent on Diana's contention that her rights were wrongfully terminated. Jim argues that if we restore Diana's parental rights, we should also restore his. Because we have determined it is in the best interests of the children to terminate Diana's parental rights, we also terminate Jim's rights.

Jim admits that he is unable to parent Amy due to his mental illness and lack of parenting training, but still wants to maintain a relationship with her. Jim's past performance indicates he is unfit to parent Amy in any capacity. He has been convicted of sexually abusing the children and has not completed sexual perpetrator's treatment. Jim also has ongoing alcohol and substance abuse problems. He testified he has been hospitalized at least fifty times due to his mental illness and is required to live in a supervised setting.

In summary, the State has proven by clear and convincing evidence that Josh, Amber, and Amy cannot be reunited with their mother now or in the foreseeable future. Reunification would subject them to harm justifying adjudicating them children in need of assistance. A co-parenting arrangement with Diana and her mother is not a viable option. Also, Diana's and Jim's mental illness prevents them from performing essential

parental duties. We affirm the district court's order terminating Diana and Jim's parental rights.

AFFIRMED.

Habhab, J., concurs; Sackett, P.J., specially concurs.

SACKETT, J. (specially concurring)

I concur with the majority opinion. The evidence indicates the children will have a better chance after termination. While they are separated in three different foster homes, two foster parents are committed to adoption and the third is committed to long-term foster care.