IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

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IN THE INTEREST OF I.L.G.R., C.L.G.R., and E.V.G.R., Children,

R.G.R., Mother,

Appellant.

8-413
88-142

Appeal from the Iowa District (Juvenile) Court for Polk County (J6872-14), Vincent M. Hanrahan, Judge.

The mother of three children appeals the juvenile court's order terminating her parental rights. **AFFIRMED.**

Larry M. Blumberg, Des Moines, for appellant mother.

Thomas J. Miller, Attorney General of Iowa, and Valencia Voyd McCown, Assistant Attorney General, for appellee State.

Mary Wickman, West Des Moines, guardian ad litem for the children.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J.

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R.G.R., mother of three children, appeals the juvenile court's order terminating her parental rights. She challenges the sufficiency of the evidence to prove that she had abandoned the children. She also contends the juvenile court erred by failing to consider less restrictive alternatives than termination. She also contends the termination order was erroneous because the Iowa Department of Human Services (1) permitted improper bonding between the children and the foster parents, and (2) failed in its statutory obligation to work with R.G.R. in an attempt to preserve her relationship with her children.

Our review of proceedings to terminate a parent-child relationship is de novo. We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses the court has heard and observed first hand, but we are not bound by them. Our primary concern is the best interests of the child. We look to the child's long-range, as well as immediate, interests. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). We affirm.

I. As a threshold matter, we are presented with the question of whether this court lacks appellate jurisdiction to entertain this appeal. The termination order and final judgment in this case was entered on July 28, 1987. On August 7, 1987, R.G.R. filed a combined motion for new

trial and a 179(b) motion to enlarge or amend the judgment. No ruling had been made on this motion when R.G.R. filed a notice of appeal in January 27, 1988, from the July 28 termination order.

Iowa Rule of Appellate Procedure 5(a) provides in relevant part:

> [A]ppeals to the supreme court must be taken within, and not after, thirty days from the entry of the order, judgment or decree, unless a motion for new trial . . . or a motion as provided in R.C.P. 179(b), is filed, and then within thirty days after the entry on the ruling on such motion. . . .

Although R.G.R.'s notice of appeal of January 27, 1988, is well beyond the thirty days for taking appeal from the termination order filed July 28, 1988, we hold we have jurisdiction to entertain this appeal, pursuant to the supreme court's decision in Lemke v. Albright, 383 N.W.2d 520 (Iowa 1986). In Lemke, final judgment was entered on June 19, 1984, a motion for new trial was filed on June 29, 1984, and notice of appeal was filed August 6, 1984. Plaintiff in that case failed to wait for a ruling on her motion prior to filing her notice of appeal. In holding that jurisdiction was proper, the supreme court stated:

> A compelling argument can be made that we lack jurisdiction to entertain the appeal. It can be argued that plaintiff, having abandoned her motion, can no longer rely on it to extend her time for appeal beyond the thirty-day period following judgment. On the other hand we can find no gap in plaintiff's right to appeal. It existed from entry of judgment until it was taken. The crux of the matter is that it was only by perfecting this appeal that the posttrial

> motion was abandoned. It would be illogical to hold that an appeal was abandoned by being perfected. We believe and hold we have jurisdiction.

Id. at 522.

II. R.G.R. first contends that the trial court erred in finding that she had abandoned her children and in thus terminating her parental rights, pursuant to Iowa Code section 232.116(2) (1987). That section provides that the court may order termination of parental rights if the court finds that there is clear and convincing evidence that the child has been abandoned. Section 232.(1) defines "abandonment of a child" as:

> [T]he permanent relinquishment or surrender, without reference to any particular person, of the parental rights, duties or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

The identical statutory definition of abandonment is found in a similar section of the Iowa Code, section 600A.2(16). The Iowa Supreme Court interpreted this definition of abandonment as the giving up of parental rights and responsibilities accompanied by an intent to forego them. In Interest of Goettsche, 311 N.W.2d 104, 106 (Iowa 1981).

We will refer to as much of the record as convinces us that the statutory standard for abandonment has been met.

R.G.R. and K.R., the children's father, were married in June of 1983. Prior to their marriage they had a son, I.L.G.R., born December 10, 1981, and twin daughters,

C.L.G.R. and E.V.G.R., born February 16, 1983. R.G.R. and K.R. had a difficult and turbulent marriage. Both parties suffered from emotional and physical problems for which they were hospitalized, both prior to and during the marriage. R.G.R. and K.R. separated in October 1984 and have since divorced.

On November 14, 1984, K.R., who was left to care for all three children, voluntarily entered the mental health unit at Lutheran Hospital in Des Moines and asked the court that the children be placed in foster care, as he claimed he was having difficulty handling the children by himself. On January 3, 1985, the children were returned to K.R., only to be removed again on February 21, 1985, and placed in emergency foster care, based upon reports that K.R. was again suffering from emotional problems and that the children were exhibiting extreme behavioral problems. The children have remained in foster care since.

On August 3, 1985, all three children were adjudicated to be children in need of assistance within the meaning of Iowa Code section 232.2(5)(c)(2). The parents were ordered to be afforded the opportunity to demonstrate their desire and ability to regain custody of the children by complying with the terms of a parent contract. Review hearings were held on February 7, 1986, October 27, 1986, and February 12, 1987. At each hearing, the court found the children could not be returned to their parents, confirmed

the CHINA status of the children, and continued custody in the Iowa Department of Social Services.

The State filed a petition for termination of parental rights on February 26, 1987. Upon hearing, the juvenile court terminated the parental rights of both R.G.R. and K.R. With respect to R.G.R., the court relied on the ground of abandonment. With respect to K.R., the court found that the harm and consequences of returning the children to his custody would be greater than any consequences of termination.(1)

The record shows that R.G.R. left the home prior to October 1984, and moved into the YMCA. She testified at trial that she moved out due to marital difficulties, and that she left the children because she didn't know where she could take them to live. When R.G.R. left, K.R. requested help from the Iowa Department of Human Services and they began providing homemaker services in October 1984. The homemaker worked with K.R. through February 1985, when the children were removed from the home and placed in foster care. According to the homemaker's

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1. K.R. appealed the termination order and on July 27, 1988, the Iowa Court of Appeals reversed and granted K.R. custody of all three children. The State subsequently applied for further review, and the case is currently before the Iowa Supreme Court.

report, R.G.R. was reported to have been at the house only once during that time.

The record further shows that, initially, R.G.R. indicated to a caseworker that she did not desire a parental contract with the DHS because she did not plan on fighting for custody, but she indicated that she did want visitation. When threatened with termination of her parental rights, R.G.R. had a change of heart, and on May 20, 1985, contacted the caseworker and indicated that she wanted a contract and would seek joint custody of the children. At this point, R.G.R. alleges that the DHS intentionally ignored her repeated requests for a parental contract. The State responds that R.G.R.'s desire and motivation to follow through with the contract was ambiguous, and that, at one time, when asked whether she really wanted a contract, responded that she would have to "think about it and let her know." In any event, the record is devoid of any evidence that R.G.R. ever signed a written parental contract.

The record further shows that since December 5, 1985, R.G.R. had only had two visits with her children at the time of the termination hearing on May 18, 1987, and, during the time that the children were in foster care, they did not receive cards or gifts from their mother, or any other indication that she was thinking of them or had attempted to contact them. "Parental responsibilities

include more than subjectively maintaining an interest in a child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances." In Interest of Goettsche, 311 N.W.2d at 106. Here, the only explanation R.G.R. offered for her behavior was that visitation once every two weeks for an hour or so was "hard" on the children. She stated she desired further contact with the children, but thought it would be easier for her to visit the children once a year, rather than once every two weeks.

Despite R.G.R.'s stated desire for custody of the children, we believe that her conduct meets the clear and convincing standard necessary for a finding that R.G.R. has abandoned her children. We believe the record clearly shows that R.G.R. has failed to maintain a parental relationship with the children and has shown only minimal interest in providing physical or emotional support for them.

III. R.G.R. also claims that reasonable efforts were not made by the DHS to reunite her with her children, pursuant to Iowa Code section 232.102(6). She argues the DHS failed to explore the least restrictive alternative by failing to make reasonable efforts to work with her. She also argues that because of DHS's unwillingness to work with her, she decided not to seek custody of the children through the Department, but decided instead to seek custody

through divorce. She further argues the DHS failed to attempt to work with her because she is white, and the DHS has a policy to keep mixed children such as hers, in a black environment.

We do not believe the record shows that the DHS failed to make reasonable efforts to work with R.G.R. The record indicates R.G.R. was given the opportunity, on many occasions, to demonstrate her desire to be reunited with her children. Colleen Reinhardt, a DHS caseworker, testified that after the children were removed, she met with both parents to discuss parental contracts. K.R. showed an immediate interest. R.G.R., on the other hand, said she "would get back to her" and indicated approximately one month after the children's removal that she did not want custody of the children, although she wanted to be able to visit them. She further testified she wanted to remarry and start a family. She was granted supervised visitation.

On May 20, 1985, when R.G.R. changed her mind and requested a contract, Reinhardt referred her to Broadlawns Hospital in order to obtain a psychological evaluation. According to Reinhardt, she spoke with Broadlawns and they requested releases from R.G.R., which she never provided, because she "wasn't sure she wanted to do it." Reinhardt testified she did discuss with R.G.R. what the parental contract entailed, although no contract was ever executed

due apparently to R.G.R.'s failure to undergo a psychiatric evaluation.

The record indicates that throughout the DHS's involvement in the matter, R.G.R. was ambivalent about obtaining custody of her children. At the termination hearing, she testified that, despite her "wild" behavior, she now believes she is ready to assume her parental responsibilities with an appropriate transition period. We disagree. As our supreme court stated in Interest of T.D.C., 336 N.W.2d 738, 744 (Iowa 1983), "Children must not be made to wait their parents' maturity." Nor should they be required to endlessly suffer the parentless limbo of foster care. Long v. Long, 255 N.W.2d 140, 146 (Iowa 1977). The record demonstrates R.G.R. failed to demonstrate much in the way of a true regard for the welfare of her children despite repeated efforts on the part of DHS.

We find R.G.R.'s allegations concerning race to be unsubstantiated by the record and without merit. Moreover, although Colleen Reinhardt testified at trial that the DHS does favor foster care placement of "mixed" children--children born of an interracial marriage--in a black environment, the policy of foster care placement is not at issue here. We note parenthetically, however, that we do not condone such a policy and find this practice to be distressing.

We also find that it was not error for the district court to overrule R.G.R.'s motion to restrain the children's foster parents from moving the children out of state.

The district court's termination order is affirmed.

AFFIRMED.