IN THE COURT OF APPEALS OF IOWA

No. 8-122 / 97-1699

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF E.C.C., C.J.G.A., C.M.A., and P.E.A., Minor Children,

L.L.A., Mother,
Appellant.

Appeal from the Iowa District Court for Audubon County, Gary K. Anderson, District Associate Judge.

A mother appeals from the termination of her parental rights. **AFFIRMED.**

Robert D. Nelson of Rasmussen & Nelson, Exira, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Francine O'Brien Andersen, County Attorney, for appellee State.

Lance D. Levis, Audubon, for minor children.

Considered by Cady, C.J., and Sackett and Mahan, JJ.

CADY, C.J.

Lori is the mother of Edna, born March 16, 1986, Christian, born December 14, 1987, Cassandra, born January 4, 1989, and Peggy, born September 5, 1990. In November, 1994, after separation from her husband, Lori contacted the Department of Human Services (DHS) requesting foster care for her children because she was unable to provide for them. In December, 1994 the court adjudicated the children in need of assistance (CINA) under Iowa Code section 232.2(6)(k) (parent for good cause desires to be relieved of the child's care and custody). The court ordered the parents to undergo mental and substance abuse evaluations and participate in any recommended treatment. The court also ordered the parents to inform DHS of their progress toward acquiring suitable housing and employment.

At a review hearing in June, 1995, the court found an attempted reconciliation between the parents had failed. Lori had undergone the mental and substance abuse evaluations. She had not obtained employment, but was seeking SSI disability payments. At the time, she was living with an abusive man, which caused DHS concern for the safety of the children if returned to the home. The court ordered Lori to participate in parent skill training and relationship counseling, with DHS to attempt to integrate the children into Lori's home. The court continued the foster placement of the children.

At a review hearing in January, 1996, the court found Lori continued to live her chaotic lifestyle, had not accomplished the plan goals for her, and ordered her to

participate in 1) family-centered services for parent skill instruction, 2) individual therapy with a qualified mental health professional, and 3) a family crisis support group. The court continued the children in foster care and set a permanency hearing for March, 1996.

At the permanency hearing the court continued foster placement and outpatient mental health counseling for the children. The court ordered that visitation not occur unless directed and supervised by the children's therapist. The therapist testified at the termination hearing he was against reunification of the family when he was given control of visitation and continued to be against reunification at the time of termination. Consequently, no visitation occurred between the permanency hearing and termination.

At a review hearing in September, 1996, the court continued the children's foster placement and therapy. In addition, it ordered Lori to obtain mental health and domestic violence counseling, to secure full-time employment, to earn her GED, to maintain suitable housing, and to keep DHS informed of her current address.

The State filed a petition to terminate parental rights in January, 1997. The hearing took place in March and the court terminated all parental rights in its order filed August 21, 1997. Lori's parental rights were terminated pursuant to Iowa Code sections 232.116(1)(d) (parent did not maintain significant and meaningful contact nor make reasonable efforts to resume care despite the opportunity to do so) and 232.116(1)(e) (child has been out of home for 12 consecutive months and cannot

safely be returned to the parent's custody). The court noted Lori's failure to comply with prior court orders and her continued choice of abusive relationships and instability in housing and employment.

On appeal, Lori makes two primary arguments. 1) Because she was not permitted visitation for over a year before the termination hearing, it is not possible to find she was given the opportunity to resume care of her children or maintain significant and meaningful contact with them. 2) Because she now has sufficient housing, people to help her care for the children, access to medical facilities, and sufficient educational opportunities for the children, they *could* safely be returned to her care, but the State did not give her any opportunity since it withheld visitation for more than a year.

The State responds 1) Lori was given ample opportunity to maintain a relationship and to resume care before visitation was stopped in 1996, because the children had been out of the home for over one year before that time. Lori didn't make the effort while she had visitation, and that is enough to terminate under section 232.116(1)(d). 2) If any of the grounds for CINA adjudication listed in section 232.2(6) exist, there is sufficient basis for termination, even if the original grounds no longer exist. Because of Lori's "chaotic lifestyle" the children could not safely be returned to her custody.

Appellate review of proceedings to terminate a parent-child relationship is *de novo* -- the reviewing court may review the facts as well as the law and adjudicate

the parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). However, weight is to be accorded the findings of the juvenile court, particularly with respect to the credibility of witnesses. *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).

The primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). Those best interests are to be determined by looking at the child's long-range as well as immediate interests. The court is to consider what the future likely holds for the child if that child is returned to his or her parents. Insight for that determination is to be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d 489, 493-94 (Iowa 1990); *In re Dameron*, 306 N.W.2d at 745; *In re T.T.*, 541 N.W.2d 552, 555 (Iowa App. 1995). Case history records are entitled to much probative force when a parent's record is being examined. *Id.*

The Iowa Supreme Court has often recognized there exists a parental interest in the integrity of the family unit, but that such interest is not absolute but may be forfeited by certain conduct. *In re Dameron*, 306 N.W.2d at 745. 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). At a minimum, this care includes proper food, clothing, discipline, and supervision. "Every child deserves a safe, healthy, and stimulating

environment in which to grow and mature." *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990).

"[T]he general assembly has carefully crafted a legislative framework for State intercession into the parent-child relationship while protecting wherever possible the integrity of the family unit." *In re I.L.G.R.*, 433 N.W.2d at 689. Under those statutes the State must act to prevent probable harm to a child and need not delay until harm has actually occurred. The termination statutes are preventative as well as remedial. *In re Dameron*, 306 N.W.2d at 745. "So the statutory presumption that a child's best interest will be served by leaving the child with the child's parent is not conclusive." *In re L.L.*, 459 N.W.2d at 494. The requirement of Iowa Code section 232.116(1)(e)(4) is met when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance under section 232.2(6) exist. *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988); *In re R.R.K.*, 544 N.W.2d at 277. If any one of the grounds listed in section 232.2(6) can be proven by clear and convincing evidence, there is a sufficient basis for termination. *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d at 277.

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). A child should not be forced to endlessly suffer the parentless limbo of foster care. *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990);

Long v. Long, 255 N.W.2d.2d 140, 146 (Iowa 1977). He or she need not endlessly await the maturity of his or her natural parent. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d at 495. To continue to keep children in temporary or even long-term foster homes is not in their best interests, especially when the children are adoptable. *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989); *In re T.T.*, 541 N.W.2d at 557-58.

Lori presents an appealing argument that withholding visitation for over a year prior to terminating her parental rights denied her any opportunity to maintain a significant and meaningful relationship or to make any attempt to resume parental care of her children. Although the State is required to use reasonable efforts to reunify parent and child following an out-of-home placement, this is not a strict prerequisite to termination. Instead, the actions or inaction by the State impacts their burden to establish termination. *See In re B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993). In this case, the State did not provide visitation not because it failed to use reasonable efforts, but because of the problems the visitation caused and Lori's indifference. The decision to restrict visitation was supported by expert opinion. In the end, the ultimate failure of the State to reunite Lori with her children was due to Lori' failings,

not those of the State. The juvenile court correctly terminated her parental rights under Iowa Code section 232.116(1)(D).

In addition, Lori's failure to participate in counseling, her repeated choice of abusive relationships, her failure to obtain employment, her constant moving around the state, and her lack of any consistent provision of suitable housing for her children demonstrate at least one of the statutory grounds for CINA adjudication still exists. Consequently the court properly terminated her parental rights under section 232.116(1)(e).

AFFIRMED.

Mahan, J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent. I would reverse and remand.

In November 1994, nearly three and one-half years ago, Lori, the appellant mother, turned to the Iowa Department of Human Services for assistance in caring for her four children then aged eight, six, five, and four. At the time, Lori's husband, the father of three of the children, had left her and sold their furniture. Lori was being evicted from HUD housing.

Lori had lost her own mother when she was sixteen. She never finished high school, had few job skills, and was overwhelmed with the hand life dealt her. She had no strong advocate. Lori, recognizing she needed help, asked the Department to take custody of her children so she could find a job and the resources to obtain a place where she and the children could live together. Lori loved her children and was never shown to have physically or sexually abused them. Lori's cry for help resulted in the children's placement in a series of foster homes, therapy, and ultimately termination of Lori's parental rights by the juvenile court, which today the majority of this court has affirmed.

The majority opinion advances that the primary concern in a termination proceeding is the best interest of a child. Unlike the majority, I labor under no assumption that we have any opportunity to serve the best interests of these children. Any such opportunity was lost long before this case arrived in our court. The most we can do is seek the better or best of alternatives available to us, hoping to give these

children a fair chance for the balance of their childhood years and the necessary tools for adulthood.

I commend the majority for characterizing Lori's argument she was denied visitation for over one year as "appealing." I am disappointed though how quickly they dismiss this argument and hold, "Although the State is required to use reasonable efforts to reunify parent and child following an out-of-home placement, this is not a strict prerequisite to termination." I find the State failed in its directive to use reasonable efforts. I further find the children's problems became worse after Lori's visitation was completely cut off.

At this stage of the proceeding, the alternatives available for these children are pretty grim. While I recognize that a finding children are adoptable is not a necessary prerequisite to termination of parental rights, I believe the State, in intervening in the intangible relationship between parents and biological children and ultimately severing those relationships, bears a heavy burden and a responsibility to assure those children a life after termination better than they could have experienced with their biological parents. In assessing these cases, I feel obligated to critically analyze the care the children received and will receive after termination by the State.

Though one of a child's very basic needs is love, we find it is difficult to factor this consideration in assessing how society should proceed to help children born into disadvantaged families. When the State becomes involved, as here, we begin scrutinizing and dissecting the inadequacies of parents by undefined standards. The

majority finds support for termination because this uneducated mother was overwhelmed by the sole care of four young children, was unable to obtain housing and stability of location, and turned to male figures in hopes of finding love and security.

My review of the record tells me the children have not fared well in State care. After more than one year in foster care, the children were exhibiting a pattern of extremely disruptive behavior which appeared to be growing in intensity and severity. Peggy was removed from the foster home where she had lived with her sisters because of what was termed "extremely and continual disruptive behavior." Cassandra suffers from major adjustment disorders with concomitant behavioral and depressive symptoms. She presents symptoms of anxiety, depression, oppositional type behaviors, and acts out physically in inappropriate manners, tending to temper outbursts and physical fights. She also had diagnostic features of attention deficit hyperactivity disorder and was on medication. Chris is on ritalin and exhibits insomnia and intermittent nocturnal enuresis. He suffers severe self-esteem problems, gender identification problems, and has intermittent suicidal ideation. He consistently displays exaggerated episodes of anger and gross infantile responses, including curling in a fetal position and screaming when angry. He has begun displaying feelings of total rejection and has attention deficit hyperactivity disorder. Cariesa is a half-sibling of the others and multi-cultural. She suffers from depression and anxiety and has major self-esteem and identity problems. She has severe and

exaggerated mood swings and has been placed on lithium. She is extremely possessive and domineering, yet intelligent and talented.

Because of the children's ages and behavioral problems, their chances for adoption, particularly as a sibling group, appear very slim. They will be advertised for adoption in catalogs, yet their profiles suggest these children will present such incredible challenges to prospective adoptive parents that the possibility they will remain in foster or institutional care through their childhood years is painfully real.

The time the State has isolated Lori from her children and failed to provide reasonable services makes reuniting Lori with her children difficult. The children's behavioral problems also present a serious challenge for Lori. My unanswered question is why the justice system is not structured to better serve parents such as Lori who ask for help with their children's care. This case should have a chilling effect on parents who voluntarily seek help from the Department of Human Services when the duties of parenting become overwhelming.

I would remand to structure a program to direct Lori be given hands-on assistance to become involved in her children's lives. Lori has love to give them. From the record, I find this is the best of available opportunities.