IN THE COURT OF APPEALS OF IOWA

FILED
JUL 27 1988
CLERK SUPREME COURT

IN THE INTEREST OF C.I., A Child;

C A , Mother,

Defendant.

8-249
87-1491

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Appeal from the Iowa District Court for Wapello County (No T 3-7) - Gene W. Glenn, Juvenile Referee.

Mother appeals the juvenile court's termination of her parental rights. **AFFIRMED.**

Stephen Gardner, of Kiple, Kiple, Denefe & Beaver, Ottumwa, for appellant.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; Charles K. Phillips, Assistant Attorney General; and R. T. Starken, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

OXBERGER, C.J.

Mother appeals the juvenile court's termination of her parental rights. The mother concedes the first two requirements of Iowa Code section 232.116(5). However, she contends the juvenile court erred in finding clear and convincing evidence that the minor child, C.I., could not be returned to her custody. We affirm.

Appellate review of the termination proceedings is de novo. In re D.G., 349 N.W.2d 487, 491 (Iowa 1984). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

C.I. was adjudicated a child in need of assistance within the meaning of Iowa Code section 232.2(6)(b) and (c)(2). As a result of that proceeding, C.I. was placed in foster care on or about May 23, 1986.

C.I. was born on January 13, 1978. Her parents were subsequently divorced and the mother was awarded custody of C.I. The mother began living with Marlin Coram in 1982. One child, R.C., was born of this relationship. The natural father of C.I. lost his parental rights pursuant to the underlying hearing. He did not appeal.

Parental rights may be terminated if the court finds that the child has been adjudicated a child in need of assistance, that custody of the child has been transferred

from the child's parents to the Department of Human Services for at least twelve of the last eighteen months, and that there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in Iowa Code section 232.102. Iowa Code § 232.116(5) (1987). The mother only disputes the third prong of these requirements.

We find there is clear and convincing evidence that C.I. cannot be returned to her mother's custody because the mother cannot protect the child from further physical abuse and neglect.

C.I. has been the victim of several founded circumstances of physical abuse perpetrated by both the mother and Marlin Coram. At one time the child had emotional problems as a result of her relationship with her mother and Mr. Coram. Since C.I.'s placement in foster care, her school performance has improved dramatically due to the stability this new environment provided her. C.I.'s mother and "step-father" have a history of verbal and physical abuse toward one another. It is clear from the record that not only has C.I.'s mother been physically abusive toward her daughter, but that the mother has been unable to prevent Mr. Coram's abusive acts. Additionally, several services were offered to the family in order to help them remedy their problems, none of which were satisfactorily pursued by the parents despite the Department of Human Services' many attempts to assist them.

The mother contends that the department did not make an effort to adequately assess the home environment because of a "personality conflict" between Mr. Coram and the social worker. The record reflects otherwise. Numerous services were offered to this family. The mother and Mr. Coram chose not to take advantage of them. Mr. Coram threatened the social worker. As a result of that the social worker asked for additional manpower upon entering the home. We find nothing unreasonable about this. The mother made little effort to see her daughter while she was placed in foster care. It should be noted that the mother did not testify herself at the juvenile proceeding, nor did she place any evidence before the court in her behalf.

The mother contends that one psychological report found that C.I. could safely return to her care. This is true. However, two additional psychological reports contradict this. Further, it was the social worker's recommendation that the child not be returned home.

Finally, the mother argues that the fact that the second child, R.C., has not been removed from the home is indicative that the home is safe. She also argues that C.I. does not want to be separated from her younger stepbrother. The record reflects that the Department of Human Services continues to categorize this home as "high risk." The record reflects that C.I., the stepchild of Mr. Coram, has been treated differently than R.C., his

natural child. The cinderella analogy unfortunately is appropriate to this case. The type of care R.C. has received from his parents, denied to C.I., indicates continued problems between C.I. and her mother and Mr. Coram Past behavior is an important factor to be considered by the court in terminating parental rights. In re M H , 367 N.W.2d 275, 278 (Iowa App. 1985).

Therefore, we affirm the juvenile court's order terminating the mother's parental rights in C.I. because the child cannot be protected from physical abuse without transfer of custody and the definitional grounds of "child in need of assistance" still exists.

Costs are taxed to the appellant.

AFFIRMED