IN THE COURT OF APPEALS OF IOWA

No. 1-727 / 00-1011
Filed December 12, 2001

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF A.S., Minor Child,

S.D., Mother,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

Mother appeals from a juvenile court order terminating her parental rights. **AFFIRMED.**

Mary Kennedy, Waterloo, for appellant.

Thomas J. Miller, Attorney General, and Tabitha Gardner, Assistant Attorney General, for appellee-State.

Tim Baldwin, Assistant Public Defender, Waterloo, guardian ad litem for minor child.

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

HECHT, J.

Mother appeals the juvenile court's order terminating her parental rights. We affirm.

I. **Factual Background and Proceedings.** Satiria is the mother of Azayshe, born March 17, 1998. Azayshe's biological father, Michael, is deceased. Azayshe suffers from bronchomalacia, asthma, an allergy to cow's milk, and a heart murmur. Caring for Azayshe requires identification of respiratory distress and knowledge of proper procedures and medication to prevent serious illness or death. Satiria's cognitive ability has tested in the borderline intellectual range and her verbal comprehension index is near the mild mental retardation range.

On October 13, 1998, the Iowa Department of Human Services (DHS) was contacted after Satiria failed to refill Azayshe's medication, requiring a ten-day hospital stay. On November 16, 1998, family preservation services began, including monitored supervised visitation. Service providers expressed concern regarding Satiria's ability to comprehend the severity of Azayshe's medical conditions and provide appropriate care.

On December 1, 1998, a child in need of assistance petition was filed alleging a denial of critical care. On December 11, 1998, a temporary removal order was entered, and custody was transferred to DHS for placement in foster care. The order noted Satiria's failure to take Azayshe to twelve of seventeen scheduled medical appointments. On three occasions, Azayshe's condition required immediate hospitalization, and in one instance the child was so ill she nearly died.

On January 7, 1999, an order was entered finding Azayshe a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c)(2), and (e) (1997), custody remaining with DHS. A petition to terminate Satiria's rights was filed on January 13, 1999, and a hearing was held on March 30, 2000, and continued on March 31, 2000. The juvenile court terminated Satiria parental rights pursuant to Iowa Code section 232.116(1)(g) (1999). On appeal, Satiria contends the juvenile court erred in finding clear and convincing evidence to terminate her parental rights under section 232.116(1)(g), and the State failed to engage in reasonable services to reunite her with her child.

II. **Standard of Review.** The standard of review in termination cases is de novo. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa Ct. App. 1998). Accordingly, we review both the facts and the law and adjudicate rights anew. *In re T.A.L.*, 505 N.W.2d 480, 482 (Iowa 1993). We give weight to the factual determinations of the juvenile court, especially when considering the credibility of witnesses, but are not bound by them. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997). Our primary concern is the best interests of the child; we look to both the child's long-range and immediate interests. *In re M.T.*, 613 N.W.2d 690, 691 (Iowa Ct. App. 2000).

III. **Discussion.**

A. **Sufficiency of the Evidence.** Satiria challenges the juvenile court's findings as to the last requirement under Iowa Code section 232.116(1)(g), that there be "clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102

at the present time." Iowa Code § 232.116(1)(g)(4). The requirement under subsection (4) is met when it is shown by clear and convincing evidence that the child cannot be returned to the parent because the child remains in need of assistance as defined by section 232.2(6). *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995); *see also In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990).

Based on our de novo review of the record, we agree with the juvenile court's determinations. We find clear and convincing evidence several of the factors enumerated under section 232.2(6) are present demonstrating Azayshe remains a child in need of assistance and thus custody cannot be given to Satiria at the present time.

We agree with the juvenile court's concern regarding Satiria's cognitive functioning level and ability to provide appropriate care and supervision of Azayshe. *See* Iowa Code § 232.2(6)(c)(2). Test results placed her in the borderline range of intellectual functioning and her verbal compensation index was near the mild mental retardation range, limiting her ability to learn and grasp things that are taken for granted by others. Service providers expressed serious concern regarding Satiria's ability to process information regarding Azayshe's illness or understand the seriousness of her medical needs. Service providers noted Satiria feeding Azayshe cereal that had been in milk, despite her allergy and staff directions to the contrary.

Azayshe is a special needs child with serious medical problems. *See* Iowa Code § 232.2(6)(e). Her physical well-being requires constant attention and care, including recognition of respiratory distress and knowledge of appropriate medication and treatments. Azayshe's doctor, Dr. DuClous, testified the child is

at serious risk of death if necessary treatments are not provided. Furthermore, Dr. DuClous concluded Satiria lacked the necessary knowledge or ability to appropriately care for Azayshe. Dr. DuClous also noted Azayshe's significant improvement when under the care of foster parents.

Based on the evidence in the record, we agree with the juvenile court's determination that Satiria cannot provide the reasonable care and supervision necessary for Azayshe's medical conditions. For the reasons set forth above, we find the State met its burden of proof under Iowa Code section 232.116(1)(g)(4) by proving by clear and convincing evidence Azayshe could not be placed in her mother's custody at the time of the termination hearing.

B. Reasonable Efforts. Satiria contends the State did not engage in reasonable efforts to reunite her with Azayshe. In particular, Satiria argues her service provider lacked experience with low cognitive functioning individuals.

The State must make "every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interest of the child." Iowa Code § 232.102(7); *see also In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). The State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent. *Id.* The focus is on services to improve parenting. *Id.*

We find Satiria's contention reasonable services were not provided to reunite her family is without merit. Several services were provided to the family, including family therapy and skill developmental services, family preservation services, and visiting nurses. Moreover, we find the services provided to Satiria were meaningful and appropriately suited for her cognitive difficulties. Numerous

techniques were used to teach Satiria parenting skills, including videotapes, handouts, and modeling. Therefore, we find the services offered to Satiria were reasonable under the circumstances of this case, and we affirm the order terminating the parent-child relationship between Satiria and Azayshe.

AFFIRMED. Sackett, C.J., concurs specially.

SACKETT, C.J. (concurs specially).

I concur specially. This child was removed because her mother was not able to assimilate the skills to function at a level to meet her child's special needs.

There are two questions. One is what obligation the State has to assist this handicapped parent retain the legal rights to her child, and the other is how do we balance the needs of the child for adequate care and nurturing with the parent's rights to parent.

Legal procedure to terminate the parental rights of parents who wish to retain their legal ties to their children are procedures of recent origin. We, therefore, go forward with little historical direction. The fragmentation of the American family has thrust upon the State responsibilities for families that in prior times were frequently assumed by extended family members. Termination of parental rights is being implemented as a solution to these problems. When a handicap such as this mother suffers renders her incapable of adequately caring for her child, what responsibility does and should the government have to assist her in providing services to allow her to enjoy the same rights and privileges of parenting a normal person enjoys.

The mother in this case raises no constitutional challenges. A parent's mental disability is a proper factor to consider in determining whether a child is neglected and his or her welfare requires termination. *In re J.W.D.*, 456 N.W.2d 214, 218 (Iowa 1990; *In re A.M.S.*, 419 N.W.2d 723, 733-34 (Iowa 1998). Following the precedent set by these decisions, I too would affirm the termination.