IN THE COURT OF APPEALS OF IOWA

No. 0-135 / 99-1736
Filed June 14, 2000

IN THE INTEREST OF
D.J., K.J., and E.J.,
Minor Children,

J.D., Mother,
Appellant.

FILED
JUN 14 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Clinton County, Arlen J. Van Zee, District Associate Judge.

The mother of D.J., K.J. and E.J. appeal a district court order terminating her parental rights. **AFFIRMED.**

Marsha J. Arnold, Davenport, for appellant.

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

Bert Watson of Bert Watson Law Office, Clinton, guardian ad litem for minor children.

Considered by Mahan, P.J., and Zimmer, J., and Peterson, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

PETERSON, S.J.

Jamie and Max are the parents of Danielle, Keisha, Eric, and Kelsey. Jamie appeals the juvenile court's decision terminating her parental rights in Danielle, Keisha, and Eric. She contends the State failed to use reasonable efforts to preserve the family and termination of her rights was not in the best interests of the children and clear and convincing evidence was not presented that showed grounds existed for the termination of her parental rights under Iowa Code section 232.116(1)(3). We affirm.

Jamie and Max, who have never been married, are the parents of Danielle, born on July 21, 1989; Keisha, born on October 8, 1990; Eric, born on February 15, 1992; and Kelsey, born on October 3, 1998. Kelsey is not subject to these proceedings. They lived together as a family unit until Max moved out of the family home in the Fall of 1996. Jamie and Max, however, continued their relationship until Max married another individual in April of 1998, and moved out of the area. During their relationship, Max physically assaulted Jamie. This included not only striking her, but stabbing at her with a pencil and stabbing her in the leg with a knife. At times, Max and Jamie engaged in sexual activity in the presence of the children. Max also physically and sexually abused Danielle and Eric.

The department of human services became aware of the situation in August of 1996. Jamie had left the children at home with a babysitter and that babysitter, with Jamie's consent, went to his own apartment to sleep leaving the children alone in Jamie's apartment. At that time, Jamie became involved with

the Family Preservation Program, however, that ceased approximately a month later. In January of 1997, Jamie agreed to in-home services and the department offered protective day care services.

In June of 1997, Jamie voluntarily placed the children in foster care because she had been evicted from her place of residence. On July 31, 1997, the children were adjudicated as children in need of assistance. The basis for that adjudication was neglect by Jamie, leaving the children home alone, and emotional injury to the children based upon the domestic abuse by Max. On September 9, 1997, an order of disposition was entered and the custody of Danielle, Keisha, and Eric was placed in the department of human services for placement in family foster care.

Jamie had visitation for two hours, two times a week. It was initially unsupervised and was changed to drop-in type supervision, then changed to supervised visitation, then changed to drop-in type supervision, and then changed back to supervised visitation. The changes to supervised visitation were based on deterioration in the structure and safety of the visitation and inappropriate comments made by Jamie to Danielle and Eric.

Some of the visitations were satisfactory, while others were not. During the visitations Jamie would take the children to visit with her friends and, at other times, would have the friends come over to her residence during the visitations. When this occurred, Jamie paid attention to the friends instead of paying attention to the children. During the times covered by the visitations, Jamie also

would have a male friend come over which would take her attention away from the children.

Jamie would attempt to impose limitations on the activities of the children, however, would not enforce the limitations in an appropriate manner. On one occasion during a visitation, Jamie took the children to a bowling alley where the foster family was and indicated to them she and her current companion had things to do and left the children with the foster family.

On an occasion, Jamie advised the children she did not have sufficient funds to provide food for the children during the visitation. She made inappropriate comments to Danielle concerning the effect of Max's abuse upon her. Jamie made inappropriate comments to Eric pertaining to his resemblance to Max physically and emotionally. She requested the visitations be reduced which was refused.

Various services have been provided Jamie and the children. Initially they were involved in the Family Preservation Program from Family Resources, Inc. This program concerned discipline of the children, money management, and domestic abuse situations. Family-centered services were provided by Families of Northeast Iowa. This involved individual family therapy and parent skill development. Foster care services were provided by Families of Northeast Iowa. This involved visitation supervision as well as individual parenting sessions. Danielle, Keisha, and Eric underwent trauma assessment by Mississippi Valley Counseling. Jamie was referred to the Domestic Abuse Program sponsored by the Women's Resource Center. Play therapy of Danielle, Keisha, and Eric was

provided by Mississippi Valley Counseling and Associated Clinical Therapists. Jamie also attended some of the sessions. An evaluation was done of Eric by the University of Iowa Psychiatry Department. A psychological examination of Jamie was completed by Dr. McEchron from Psychology Associates Limited. Individual counseling for Jamie was provided by the Heartland Center, however, she only attended one session.

Jamie participated in a psychological evaluation by Dr. McEchron from Psychology Associates Limited. He found Jamie was free of significant emotional problems, however, there were evident personality and character problems having to do with her attitude toward authority figures. He found she projects a hostile and oppositional front and diagnosed her as having an adjustment disorder with mixed emotional features and a personality disorder. He found she appeared to possess average intelligence but may have some mild difficulty in organizing her life. He felt she had not gained any insight and met her needs rather than considering the needs of her children. He concluded her problems were chronic in nature.

Jamie has had difficulty maintaining employment and adequate housing. She does not understand the impact of Max's conduct with respect to Danielle and Eric.

Danielle has significant emotional problems. She has a tendency to ignore directions and has been destructive of property. She has engaged in inappropriate sexual activity and has been accused of stealing. Danielle does not feel safe with Jamie when men are around. Although she has bonded with

her mother, the relationship appears to be a role reversal with Danielle acting as a caretaker of Jamie.

Eric shows a great deal of anger. He also has been accused of stealing and is destructive of property and has been cruel to animals. He has been diagnosed with a major depressive disorder and does not trust Jamie and shows a great deal of anger toward her. Eric has refused to go on some visitations.

Keisha is less aggressive than Danielle and Eric but has been accused of stealing. She does encounter some problems with respect to rules and boundaries. She does not crave much attention from Jamie nor does she get much attention from her. Returning to Jamie is not that important to her and she would rather stay in the foster home.

Discussion. We review proceedings to terminate parental rights de novo. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We review the facts as well as the law and adjudicate the parents' rights anew. *Id.* We give weight to the findings of the juvenile court, particularly with respect to credibility of witnesses, but are not bound by them. Iowa R. of App. P. 14(f)(7). A primary concern in termination proceedings is the best interest of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). Those interests are determined by looking at the child's long range as well as immediate interests. We consider what the future likely holds for the child if that child is returned to his or her parents. Insight for this determination may be gained from evidence of parents' past performance, for their performance may be indicative of the quality of the future care the parent is capable of providing. *In re T.T.*, 541 N.W.2d 552, 555 (Iowa

App. 1995). There must be proof by clear and convincing evidence of one of the types of harm in Iowa Code section 232.2(6) to support the termination. *In re K.L.C.*, 372 N.W.2d 223, 228 (Iowa 1985). If the statutory requirements for termination are met, the decision to terminate must still be in the best interest of the child. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990).

Jamie initially contends the State failed to use reasonable efforts to preserve the family. Reasonable efforts may include intensive family preservation services or family-centered services. In determining whether reasonable efforts have been made, consideration can be given to the type, duration, and intensity of the services or the support offered and the relative risk of the children remaining in the home versus removal. Iowa Code § 232.109(9)(a) (1997).

The services provided in this situation began in August of 1996, and continued for the family through July of 1999. In considering the efforts made by the department to provide these services, we note Jamie told the therapist at Families of Northeast Iowa she does not trust counselors and did not want to participate in therapy. She did participate at times in the play therapy. During one session, Jamie became physically upset with the therapist and refused to comply with the process of the play therapy. On that occasion she assumed control of the activities for the session and explained she was attempting to let the children know how they made her feel by pretending to be a difficult child. The children became visibly upset by Jamie's presentation that day. We

conclude the department, under the circumstances of this case, have made reasonable efforts to preserve the family.

Jamie next contends the court erred in finding clear and convincing evidence the grounds existed for the termination of her parental rights. Jamie has been unable to place her children's desires above her personal desires. This is evidenced by her continued association with male companions and its negative impact upon the children. She has failed to recognize the significant emotional difficulties the children have as a result of the negative conduct of Max upon them.

Jamie has had difficulty in maintaining employment and satisfactory housing. We believe the court did not err in finding clear and convincing evidence grounds existed for termination of her parental rights.

Jamie next contends termination of her parental rights was in error because it was not in the best interest of the children. Danielle's relationship with Jamie is a reverse-type situation. If Danielle were to be returned to Jamie's care, in all likelihood, she would feel responsible for Jamie. Eric, at the present time, has an intense dislike for his mother. Keisha has not received much attention from Jamie and does not look for attention from her.

Danielle and Eric are apprehensive of Jamie's male companions and Jamie places her interests in this respect over the interests of the children.

Jamie, in argument, contends her present male companion, Guy, would be a positive influence on the children and the department did not complete a report upon him to establish this. Jamie, however, when asked for additional

information about Guy declined to provide it. There is nothing in the record to indicate her relationship with Guy is of a permanent nature. She also, in argument, said it would be difficult for the three children to be adopted by one family. The best interest of children does not require there be a showing the children are adoptable. *In re T.C.*, 522 N.W.2d 106, 109 (Iowa App. 1994). We conclude the termination of Jamie's parental rights was in the best interest of the children.

In conclusion, we find the State used reasonable efforts to preserve the family and there is clear and convincing evidence grounds exist for the termination of Jamie's parental rights under Iowa Code section 232.116(1)(3), and termination of her rights are in the best interests of the children.

AFFIRMED.