



IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF W.M.W.,

A Child;

L.W., Natural Mother,

Appellant.

)
)
)

Filed December 29, 1982

2-367
3-66964

385

Appeal from Linn District Court - Paul J. Kilburg, Referee, and Lynne E. Brady, Judge.

The natural mother appeals from the trial court's order terminating the parent-child relationship pursuant to Iowa Code § 232.116(5) (1981). **AFFIRMED.**

John K. Fischer of Fischer & Fischer, Vinton, for appellant.

Thomas J. Miller, Attorney General of Iowa, and Brent Hege, Assistant Attorney General, for appellee State of Iowa.

Thomas B. Read of Crawford, Sullivan & Read, Cedar Rapids, for the child.

Heard en banc.

The natural mother appeals from the trial court's order terminating the parent-child relationship pursuant to Iowa Code § 232.116(5) (1981). On appeal the mother contends that there was not sufficient clear and convincing evidence that the child could not be returned to her custody. We affirm.

Our review of proceedings to terminate a parent-child relationship is de novo. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). While we give weight to the trial court's findings we are not bound by them. Id.

I.

The natural mother and natural father were married in 1977 and have lived together since that time. Their child, W.M.W., was born in October, 1978. The child was initially removed from the custody of her natural parents in November, 1978, after they had been arrested and jailed. The child was removed from their custody again after she was hospitalized for "failure to thrive." In February, 1979, she was adjudicated a child in need of assistance. With the exception of a four-month period in late 1979, the child has lived under foster care since that time. In January, 1981, the State filed a petition for termination of the parental rights of both parents. At the trial to the referee there was testimony about both parents' drinking, their lack of employment, their numerous changes of residence, their unstable marriage, their physical violence to each other, their lack of parenting skills, their continuous neglect of W.M.W., and their violation of department of social services parenting "contracts."

The referee found that W.M.W. had been adjudicated a child in need of assistance, that she had been in foster care for more than twelve months, and that she could not be returned to the custody of her parents. The referee concluded that the parental rights of both parents should be terminated pursuant to Iowa Code section 232.116(5), and that guardianship and custody of W.M.W. should be

transferred to the Department of Social Services. A juvenile court judge approved the referee's findings and conclusions and ordered the decree entered of record. Both parents then applied for a rehearing pursuant to Iowa Code section 231.3. On rehearing, the juvenile court judge reaffirmed the referee's findings and conclusions. The natural mother then instituted this appeal. The natural father is not involved in the appeal.

II.

The mother's only contention is that there is not clear and convincing evidence that the child could not be returned to her custody as provided in section 232.102. In examining the record before us, we are guided by well established principles which were articulated by the court in Dameron:

Central to a determination of this nature are the best interests of the child. [citation] In this connection, we look to the child's long range as well as immediate interest. Hence, we necessarily consider what the future likely holds for the child if returned to his or her parents. Insights for this determination can be gained from evidence of the parents' past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing. [citations]

This court has often recognized that there exists a parental interest in the integrity of the family unit; nonetheless we also are cognizant that this interest is not absolute, but that it may be forfeited by certain parental conduct. [citations] Because the State as parens patriae, has the duty to assure that every child within its borders receives proper care and treatment, it must intercede when parents abdicate that responsibility. [citations]

Furthermore, it is our view that the current statutory termination provisions applicable here, like those they replace, are preventive as well as remedial. The provisions therefore mandate action to prevent probable harm to a child and do not require delay until harm has occurred. [citations]

Finally, as previously noted, the grounds alleged here for the termination of parental rights must by statute be proven by clear and convincing evidence. [citation]

306 N.W.2d at 745.

388

The record reveals that the Benton County juvenile authorities had been involved in W.M.W.'s life since her birth on October 18, 1978. A public health nurse in Vinton, Iowa contacted a child protective worker from the Department of Social Services in Benton County because the mother was preparing to leave the hospital after giving birth to W.M.W. and the parents had no provisions to meet the physical needs of the baby. A crib, clothes, baby formula and \$25.00 were provided to the parents for the care of W.M.W. Shortly thereafter, the police department notified the worker that the mother was at a pool hall with W.M.W. and appeared to be intoxicated. No court action was taken as a result of this incident since the mother and the baby were taken home and no arrests were made.

Around October 24, the child protective worker was again notified that the parents had been drinking excessively. After investigating this complaint, the worker decided against taking any court action but did assist the parents' older daughter, then 16, in being removed from the home. The mother's older daughter had asked to be removed from the home because she could not cope with the fighting of her mother and stepfather.

On November 8, the department received a complaint from a social worker at St. Luke's Hospital that the parents had gone to the hospital in an apparent drunken state. The social worker was concerned that the baby was not being cared for. The parents had taken the baby to a day care facility and did not pick her up until the next day, after the babysitter had made a complaint to the Department of Social Services.

On November 14, the worker was again contacted, this time by the police, and notified that the mother was again at the pool hall in an intoxicated state. It appears that she had left W.M.W. and her three-year-old grandson in the car

unattended. The worker went to the pool hall and found the mother being arrested for public intoxication. She was taken to the Mental Health Institute in Benton County. The children were found in the car which was parked outside the pool hall. W.M.W. was returned to her home to stay with her father. The following day, however, he was arrested and jailed for nonpayment of fines so the child was placed in a foster home. The mother remained in the Mental Health Institute until January of 1979. The care of W.M.W. was entrusted to the father when he was released on November 27. Shortly thereafter, the public health nurse observed that W.M.W. was in poor physical condition and had her admitted to the hospital. The diagnosis was that the baby was suffering from child neglect and "failure to thrive." She remained in the hospital for eleven days and was then placed in foster care. It was at this time that the Department of Social Services began the CHINA proceedings.

The child protection worker prepared a 'contract' between the Department of Social Services and the parents of W.M.W. regarding steps they needed to take before W.M.W. would be returned to them. The plan included that they were to maintain their sobriety, attend meetings and parenting programs, and attend adult education classes. W.M.W. was placed back in the home of her parents for a four-month period in 1979. During this time, the parents failed to comply with the terms of the plan. The social worker had frequent contact with them and urged them to follow through with the agreement. The worker told them that she would recommend termination of parental rights if they did not abide by their agreement. On September 13, 1979, the father was arrested and jailed for driving without a license. On September 18, 1979, the mother was arrested for public intoxication. W.M.W. was then taken to another foster home where she has remained. The termination proceedings were then initiated.

Based on our de novo review of the record, we find that there is clear and

convincing evidence that the child cannot be returned to the mother. Many social services representatives have attempted to help her stabilize her life but she has not responded well. On the contrary, her past performance demonstrates that she is not committed to, or, because of her alcohol problem, is not capable of providing the kind of home and environment appropriate for raising W.M.W. We believe that it is in the best interests of W.M.W. that the parental rights of her mother be terminated. Accordingly, we affirm the trial court's ruling.

AFFIRMED.