IN THE COURT OF APPEALS OF IOWA

No. 6-687 / 96-1088 000205

IN THE INTEREST OF D.L., II, R.L., and M.L., Minor Children,
D.L., Father,,

Appellant,

J.L., Mother,

Appellant.

Appeal from the Iowa District Court for Scott County, Michael A. Woods, Associate Juvenile Court Judge.

On appeal from the termination of their parental rights, the parents allege the juvenile court should have considered Iowa Code section 232.116(3)(a), (c), and (e) (1995). **AFFIRMED.**

John M. Carroll, Davenport, for appellants.

Thomas J. Miller, Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee State.

David R. Treimer, Davenport, for minor children.

Considered by Habhab, C.J., Huitink, J., and McCartney, S.J.* Sackett, J., takes no part.

McCARTNEY, S.J.

D.L. and J.L., the father and mother, respectively, of three children, D.L. II, R.L., and M.L., appeal the judgment and decree of the associate juvenile court judge which terminated their parental rights.

We affirm.

The three children affected by this litigation are D.L. II, a boy born on October 9, 1986, R.L., a girl born August 20, 1988, and M.L., a boy born on January 31, 1991.

This unhappy situation arises out of the inability of the parents to overcome their abuse of drugs and alcohol. The father's abuse of cocaine began prior to 1991, and the mother's use of cocaine began shortly after the birth of the youngest child. The father also suffers from alcohol abuse.

In early February 1994, the Department of Human Services (DHS) concluded, after investigation, that there was a founded report of child abuse, in this case gross neglect. That founded report found an inadequate home and inadequate food in the home. It further found that family funds were being spent to maintain the drug habits of the parents and that the children were dirty and left with others because the parents did not have food for them. School attendance by the children was erratic with many days missed.

As a consequence, the department initiated family preservation services for a period of forty-five days, and an alcohol and drug services program recommended

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that the mother and father receive outpatient treatment and attend AA and NA meetings.

During the forepart of May 1994, family services were provided by still another agency. During this period of time and until late summer of 1994, the parents were able to maintain a home, the children were kept clean, and the parents were cooperative with the various services being provided them. However, the parents were removed from the substance abuse programs because the father continued to abuse alcohol. During this same period of time, the mother and father attended family meetings and related well to the children.

However, during the latter part of July 1994, the parents quit attending meetings with the therapist, and a second child abuse investigation in September found that they had again failed to provide adequate food for the children, all of which led to a placement of the children in foster care on the 4th of October, 1994. This foster care placement was based on the failure of the parents to utilize voluntary services, the continuing and apparently chronic substance abuse problems, and the failure of the parents to provide the basic needs of the children.

Foster care was provided by an uncle of the children.

In November, 1994 the court adjudicated the children to be in need of assistance.

During the period of placement with their uncle until the time of the termination hearing in June of 1996, the children prospered in this home. They

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adapted well to their new surroundings, received appropriate and proper care and affection, and, due to therapy, became aware and understood the nature of their parents' afflictions.

During this same period of time from October 1994, when the children were placed in foster care with their uncle, until the termination hearing in June 1996, the parents continued their pattern of refusing counseling, missing scheduled appointments, and made no real effort to enter into any drug treatment program, whether inpatient or outpatient. They would remain in a program two or three days and then leave.

They lived with known substance abusers leading to a dispositional hearing in December of 1994, when the children were confirmed in their placement with their uncle.

Similarly during the period from October 1994 to the termination hearing in June 1996, the parents failed to maintain any employment record and failed to maintain adequate housing.

A review hearing on this matter was held in July of 1995. A permanency hearing was held in January 1996, at which time the children were placed in long-term foster care. At both hearings, the parents although absent were represented by counsel.

Visitation with the children by the parents during the period of October 1994 to June 1995 was rare and sporadic with the parents arriving late and leaving early.

The foregoing recital is sufficient to reflect the unwillingness of the parents to accept services or to change their lifestyles. The children would not talk about drug issues, were disinclined to discuss their parents or even inquire about them.

These circumstances led to the filing of the petition to terminate parental rights in April 1996. At the hearing held on June 3, 1996, the parents testified they had serious substance abuse problems.

Based upon the foregoing, the lack of employment, the lifestyle of the parents with respect to drugs and alcohol, the willingness of the parents to live on the charity of others and in others' homes, and their refusal to accept services led the associate juvenile judge to terminate their parental rights. Underlying this decision was the continuing inability of the parents to provide a modicum of parental care for the children.

The parties agree that our review is de novo and that while we give weight to the findings of the trial court because of its ability to assess credibility of the witnesses appearing before it, we are not bound necessarily by those findings. Iowa R. App. P. 14(f)(7).

The parents assert that the court did not address Iowa Code sections 232.116(3)(a) (c) and (e). They further assert that the juvenile court did not have sufficient evidence before it to terminate their parental rights.

The first claimed error that the code sections were not followed by the juvenile court is without merit. The language preceding the gist of those subsections of

section 232.116(3) states that "The court need not terminate the relationship . . . if the court finds any of the following:" This prefatory language makes the action of the juvenile court discretionary. *In re J.V.*, 464 N.W.2d 887, 890 (Iowa App. 1990). Section 232.116(3)(a) reflects the situation if a relative has legal custody of the child, and here, an uncle is caring for the children. Subsection (c) of the same section says that the court need not terminate the relationship if it finds there is clear and convincing evidence that the termination would be detrimental to the child due to the closeness of the parent-child relationship. Subsection (e) states that the court need not terminate the relationship if the absence of the parent is due to the parent's commitment or admission to any hospital or health facility and some other situations not relevant here.

In *In re B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993), the supreme court held that the placement with a relative does not in and of itself defeat the termination of parental rights. *See also In re A.B.*, 492 N.W.2d 446, 450 (Iowa App. 1992). We must consider, as always, the best interests of the children.

The children have prospered in their uncle's home and are comfortable in their placement. They are aware that they may be adopted by the uncle. This home has provided stability and structure, which the children badly need.

Insofar as whether a termination would be detrimental to the parent-child relationship, the children have been out of the parental home for more than two years, the parents' visitation of the children has been haphazard and as an afterthought at

best—rare and short visitations. The children have not shown any interest in inquiring about their parents or the need for visitation. This hardly constitutes clear and convincing evidence that the termination would be detrimental to the children because of any closeness of the parent-child relationship.

Finally, the parents' absence because of being hospitalized or in a health facility seems hardly relevant given the parents' revolving-door approach, over a two and one-half year period, to any facility designed to help them with their substance abuse.

The foregoing recital of the lack of care and apparent lack of interest in their children over an extended period of time militates against the position of the appellants that there was insufficient evidence to support termination of parental relationships. Their conduct in absenting themselves from their children, their inability or unwillingness to come to grips with substance abuse problems which in turn led to inadequate nutrition, lack of adequate housing, lack of cleanliness, and lack of attention to schooling needs of the children belies that characterization of the evidence. The evidence is clear and more convincing that the children will continue to gain in their present situation and that to return them to their parents, given the record of unconcern and disregard for the children's welfare as displayed by the parents, would be to subject them to more neglect and would pose a serious probability that the gains the children have made in the past several years would be undone in a short matter of time.

The children cannot wait in limbo or endlessly await the maturity of their parents. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). *See also In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). We are satisfied that the grounds for termination have been met, more than met, and we affirm the decision of the juvenile court.

AFFIRMED.