IN THE COURT OF APPEALS OF IOWA

No. 3-336 / 93-94

FILED
AUG 06 1993
CLERK SUPREME COURT

IN THE INTEREST OF J.L.K. and M.K., Minor Children,

T.L.B., Father,

Appellant,

J.K., Mother,

Appellant.

000329

Appeal from the Iowa District Court for Delaware County, Jane C. Mylrea, Associate Juvenile Judge.

The mother appeals the termination of her parental rights of her two children. The father of the younger child appeals the termination of his parental rights. **AFFIRMED.**

Timothy G. Goen of Jenk & Goen, Dyersville, for appellant T.L.B.

Daniel H. Swift of Swift & Swift, Manchester, for appellant J.K.

Thomas J. Goodman, Dubuque, guardian ad litem for the children.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Charles K. Phillips, Assistant Attorney General, and Lou Walker, County Attorney, for appellee State.

Considered by Donielson, P.J., and Hayden and Habhab, JJ.

HABHAB, 000330

J.K., the mother, appeals the termination of her parental rights of her two children, M.K., born October 3, 1985, and J.L.K., born June 17, 1989. T.L.B., the father of J.L.K., appeals the termination of his parental rights.

T.L.B. and J.K. have lived together for at least the last four years. In September 1989, the court entered an ex parte order for the removal of the children from J.K. and T.L.B.'s home. Subsequently, a founded abuse report was filed. Another abuse report was founded based on T.L.B. shaking J.L.K. when he was ten days old. The children were placed with relatives.

On February 12, 1990, the court found the children were CINA pursuant to Iowa Code section 232.2(6)(c)(2) (1989) (failure to supervise). The court found that specific injuries M.K. had suffered were the result of inadequate supervision. The court specifically found insufficient evidence of abuse but noted M.K. did have unexplained bruises.

In May 1990, there were problems with the placement with relatives, and the children were placed in foster care. Lutheran Social Services ("LSS") was hired to supervise the visits. Several visits were canceled because the apartment was too unsanitary.

After a September 1991 review hearing, the court's findings included: (1) that there was little bonding between the youngest child and mother; (2) the parents had

000331

found stable residence and employment; (3) while the parents were receiving instruction in parenting, they were unable to apply what they had been taught during visitation; and (4) the parents missed several appointments and did not always seem motivated to get the children back.

A December 1991 review hearing found the children still to be CINA, but found it "premature to enter permanency." The court found the parents had demonstrated progress in expanded visitation.

After a review hearing in May 1992, the court found that M.K. had "out-of-control" behavior both in foster care and on home visits. The Department of Human Services ("DHS") recommended that all visits be supervised because of safety concerns and behavioral problems. The May 4, 1992, order set the matter for a permanency hearing on August 17, 1992.

A petition for termination was filed July 20, 1992. After a trial, the court terminated J.K.'s and T.L.B.'s parental rights pursuant to Iowa Code sections 232.116(1)(e) and (g) (1991).

J.K. and T.L.B. appeal. We affirm.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses,

000232

but we are not bound by those determinations. Id. at 491-92.

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

> We look to the child's long-range, as well as immediate, interests. We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing Dameron, 306 N.W.2d at 745).

I. Termination of J.K.'s and T.L.B.'s Parental Rights.

J.K.'s and T.L.B.'s parental rights were terminated pursuant to Iowa Code sections 232.116(1)(e) and (g) (1991).

Iowa Code section 232.116(1)(e) (1991) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The child is four years of age or older.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

000333

> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Iowa Code section 232.116(1)(g) (1991) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The child is three years of age or younger.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

There is no dispute in the record that the first three elements of sections (e) and (g) have been met. T.L.B. and J.K. contend that there is not clear and convincing evidence of the fourth element, that the children cannot be returned to their care.

After reviewing the record, we agree with the trial court that the state proved by clear and convincing evidence that at the present time, the children could not be safely placed with their parents.

Various caseworkers and psychologists stated that despite numerous services, the parents are unable to safely provide for their children and offer necessary supervision. The parents' lack of supervision of their children continues to be a problem. When DHS attempted to

000334

expand visitation and allow unsupervised overnight visitations, numerous safety concerns became apparent. These incidents demonstrate the continued lack of insight on the part of the parents to recognize the dangers to their young children.

The parents also argue the case should be reversed because DHS failed to make reasonable efforts to reunite the family. Specifically the parents argue 1) the foster parents were attempting to terminate their parental rights within the first two months of placement; 2) DHS failed to provide reasonable services; and 3) DHS failed to utilize a more "concretely" worded case plan, as had been suggested in a psychological examination, and set forth in one of the CINA orders.

These children have been placed out of the home since September of 1989. Numerous services have been offered to the family since that time period. Those services include DHS family-centered services, homemaker services, and parent skills development. DHS social worker, Margaret Carlson, testified that the parents were aware of what they needed to work on, and that the FACT Team[1] went over five specific parenting goals with them. Although the foster parents did not always approve of reunification efforts, the record shows that Lutheran Social Services was aware of the problem, and took proper action to correct it.

---

1 The FACT program is a special training program for parents and children with special needs.

The parents also argue it is not in the best interest of the children to terminate their parental rights. They argue that because the father of M.K. was not served with notice, termination will not serve to provide either child with permanency because M.K. is not adoptable at this time and the two children should be adopted together. We find this argument to be without merit. The delay in permanency caused by the lack of service on M.K.'s father should be minimal. We recognize this termination does not carry with it any guarantees for a stable and permanent home for these children. However, we find it is in the children's best interest that the impediments to their forming new family relationships should begin to be swept away. In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990).

II. **Testimony of Social Workers and Other Witnesses.**

J.K. and T.L.B. next claim the trial court erred in allowing a social worker and other witnesses to testify as to the best interest of the children, as to their safety in the parents home, and as to the advisability of termination of parental rights.

The admission of opinion testimony, lay or expert, rests in the sound discretion of the trial court, and the trial court's determination should not be disturbed unless manifest abuse of that discretion causing prejudice to the complaining party is shown. In re O'Neal, 303 N.W.2d 414, 420 (Iowa 1981). "Testimony in the form of an opinion or

inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact. Iowa R. Evid. 704.

We find the trial court did not abuse its discretion in allowing this testimony.

III. Lack of Permanency Hearing Prior to Trial.

The parents also argue it was error for the trial court to schedule a permanency hearing and then cancel it in lieu of proceeding to hearing on the termination matter.

The trial court on its own motion set the matter for permanency hearing on August 17, 1992. The State subsequently filed the petition for termination of parental rights. The court then reset the case for termination proceedings.

If the parents' rights are terminated in the termination proceedings, there is no longer a need for the permanency hearing. A permanency order is issued only when termination is inappropriate. Iowa Code section 232.104 (1993). We therefore find the trial court did not err in choosing to hear the termination proceedings first. We find no merit to the parents' argument that a permanency hearing is a prerequisite to a termination hearing.

IV. Conclusion.

In summary, we find the requirements of Iowa Code section 232.116 (1)(e) and (g) have been met and the

parental rights of J.K. and T.L.B. should be terminated. We hold it is in the best interest of J.L.K. and M.K. to terminate J.K.'s and T.L.B.'s parental rights. Further, we determine any other issues the appellants may have raised are without merit. We affirm the juvenile court.

AFFIRMED.