FILED
APR 26 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-041 / 93-1443

IN THE INTEREST OF J.M. and T.M., Minor Children,

J.M.S., Mother,

Appellant,

T.M., Father,

Appellant.

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

Mother and father appeal from an order terminating their parental rights. **AFFIRMED.**

Stuart G. Hoover of Bauer & Heckmann, P.C., Dubuque, for appellant mother.

Ann M. McDonough of Day, Beacham & McDonough, Dubuque, for appellant father.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Richard E. Ramsay, Assistant Attorney General, for appellee State.

Mary Lynn Neuhaus, Dubuque, for appellees minor children.

Heard by Donielson, C.J., Sackett, J., and Peterson, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

SACKETT, J.

The question in this appeal is whether we should affirm the trial court's decision to terminate the rights of the birth parents of Joshua, born October 1985, and Tommy, born January 1987. Jeannie, the mother of both children, appeals. Ed, Joshua's father, did not contest termination. Tom, Tommy's birth father, appeals. We affirm.

Jeannie has given birth to five children. Her older two children, born in 1979 and 1980, are in a residential treatment facility. Parental rights to her youngest child, born in April 1988, were terminated in 1991. Tom was the father of the youngest child.

A petition to terminate parental rights was filed December 15, 1992, and a hearing was held in January 1993. The juvenile court found the family had extensive services over a four-year period. The court's primary concern had been with Tom who was then incarcerated.

A hearing held in August and September showed Jeannie was making progress but, in September 1993, her rights were terminated and the juvenile court found the children could not be safely returned to her care.

Jeannie contends she has improved her parenting skills, is capable of caring for the children, and has made adequate progress toward their return. She also contends the juvenile court's findings were not an accurate assessment of her ability to parent. Tom contends there

was not clear and convincing evidence supporting the termination. The State and guardian ad litem contend the termination should be affirmed.

There is integrity in the family unit. In re Wall, 295 N.W.2d 455, 457 (Iowa 1980). We review de novo. See In re C.D., 508 N.W.2d 97, 100 (Iowa App. 1993). The state must prove by clear and convincing evidence the grounds for termination. Santosky v. Kramer, 455 U.S. 745, 769, 102 S. Ct. 1388, 1403, 71 L. Ed. 2d 599, 617 (1982).

Jeannie is poor. She has minimal education. Jeannie has had difficulty finding proper housing and employment. The care and discipline of five children have overwhelmed her. Jeannie is at times neurotic, anxious, and depressed. Tests allegedly showed her to have a personality disorder. She had difficulty working with and understanding programs advanced to help her family.

Joshua and Tommy have both been diagnosed as special-needs children. Joshua has been placed on Ritalin. They both have presented challenges, not only to their mother but also to educators and other caretakers. Joshua is very bonded to his mother; Tommy considerably less so.

Jeannie was married to Tom, Tommy's father. Tom, now incarcerated following a conviction on a forgery charge, had a problem with substance abuse and caused innumerable problems for Jeannie and the children while they resided in the same household.

A recitation of all this family's problems would serve no useful purpose. Jeannie's deficiencies focus on her discipline and control of the children. She voluntarily sought assistance from the Department of Human Services social worker and the children's foster mother. She has complied with a number of directives and she clearly loves and is interested in her children. She has devoted a substantial portion of her life to their care.

A number of services have been offered to the parents and children. The testimony at the termination hearing was, despite the services, Jeannie has not reached the level the agency desires for her to reclaim her children. She has made progress but she also falls back. Whether the services failed because Jeannie did not follow directions or if the services failed because those services offered were not tailored to the family's specific needs is far from clear. Whatever the case, they have not corrected the deficiencies to the satisfaction of the service providers.

Jeannie's life currently has stabilized to some degree, and she is in a relationship with a new male companion who has been a good influence. Tom has never been a primary caretaker and was serving a five-year prison term for forgery.

There is disagreement as to what will happen to these children if their parental rights are terminated. The guardian ad litem advances the children are adoptable. The Lutheran Social Services worker testified it could be difficult to place them in the same home.

A Department of Human Services adoption specialist said there were many families willing to take children like these together. They are special-needs children who present a challenge to any caretaker. The children currently are seven and eight and live with a foster mother who does not wish to adopt the children. We recognize there is evidence a very large number of children in Iowa remain in foster care and are not being adopted. We hope, at least as to these particular children, the Department has been forthright and honest with the court. When we sever biological ties, we have a responsibility to assure children will have a better life, have persons with which to bond, and not be moved from foster home to foster home or institution to institution. We can tolerate nothing less than complete honesty from the Department on the probability of these children being adopted.

The Department has sole access to the numbers of children in foster care and institutions freed for adoption but still waiting for adoption. Confidentiality laws designed to protect children preclude the access of others to these records.

The guardian ad litem for the children strongly argues for termination. We cannot, on this record, make any determination as to whether the children will or will not be adopted. We can only trust the Department of Human Services whose personnel testified there are many available adoptive families, and that the guardian ad litem, who has

recommended this termination so the children can be adopted, will continue to monitor the situation and be certain all efforts are made to find the adoptive home she recommended the children have. We can only trust the guardian ad litem will continue with her responsibility and make every effort to see the children have what she refers to as "a stable family life through adoption."

We defer to the judgment of the juvenile court and the guardian ad litem, see In re J.V., 464 N.W.2d 887, 892-93 (Iowa App. 1990), and affirm.

AFFIRMED.