IN THE COURT OF APPEALS OF IOWA

No. 8-308 / 97-2154

IN THE INTEREST OF J.B., C.W., T.W., C.B., and F.B., Minor Children,

J.B., Mother,

Appellant.

FILED
AUG 28 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Juvenile Court Judge.

A mother appeals from the termination of her parental rights. **AFFIRMED.**

Katherine Spencer of the Law Offices of Ta-Yu Yang, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Corey McClure, County Attorney, for appellee State.

Kathryn Miller, Des Moines, for minor children.

Considered by Cady, C.J., and Vogel, and Mahan, JJ. Streit, J., takes no part.

CADY, C.J.

Julie is the mother of Joseph, born in April 1986; Carl, born in May 1988; Teresa, born in March 1989; Chiquita, born in May 1991; and Franceska, born in June 1992. The children's fathers have not been involved in their lives and are not part of this appeal.

In February 1989, the Department of Human Services (DHS) issued a founded report of denial of critical care against Julie because she failed to obtain adequate medical care for Carl when he had a high fever. In December 1992, DHS issued a founded report of denial of critical care against Julie for failure to provide proper supervision which resulted in Joseph being burned. It does not appear Julie received any services due to these incidents.

In August 1993, police officers found the five children home alone with no food. Joseph, Teresa, and Franceska had scars from physical abuse. The children were removed from the home and placed with Julie's aunt and uncle, Glenda and Don. The children were adjudicated to be children in need of assistance.

In February 1995, the parties entered into an agreement the children should be placed in the guardianship of Don, under the supervision of DHS. Julie was allowed to have supervised visits with the children at Don's discretion. DHS was relieved of the responsibility of providing reunification services. The juvenile court incorporated the agreement into a permanency order.

Julie began individual therapy in February 1996. She also participated in a parenting skills class. Julie had a few visits with the children under Don's supervision. These visits did not go well. Julie had some unauthorized visits with the children, which caused the children to have behavioral problems.

In July 1996, the State filed a petition to terminate Julie's parental rights. In October 1996, DHS agreed to supervise Julie's visits. These visits went very well. Julie continued, however, to have unauthorized contact with the children. The parties all live in the same area and have many relatives in common. The unauthorized visits were disruptive to the children and caused them to act out behaviorally.

The visits ended in November 1996. Carl was hospitalized for a period of time due to behavioral problems and placed on medication. Carl's behavior has since improved. In January 1997, Teresa entered an out-patient program for her aggressive behavior. Teresa has been diagnosed with post-traumatic stress disorder and oppositional defiant disorder. Teresa is also on medication. Her condition declined in March 1997 after she had several unauthorized contacts with Julie.

On November 6, 1997, the juvenile court determined Julie's parental rights should be terminated under Iowa Code sections 232.116(1)(d) and (e). The court found Julie was not prepared to take the children and care for them on her own. The court concluded termination was in the best interests of the children. Julie appealed.

I. The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear

and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Julie claims the juvenile court improperly placed the burden of proof on her to show the children should be returned to her care, instead of requiring the State to show the required elements for termination of parental rights.

Due to the prior permanency order, under section 232.104(5), Julie did have the burden to show by a preponderance of the evidence it would be in the best interests of the children to be returned to her care. A court's responsibility in a modification of a permanency order is to look solely at the best interests of the children for whom the permanency order was previously ordered. *In re A.S.T.*, 508 N.W.2d 735, 737 (Iowa App. 1993). We determine the juvenile court properly set forth the burden of proof.

On the issue of termination of Julie's parental rights, we conclude the juvenile court correctly required the State to show the elements of sections 232.116(1)(d) and (e) by clear and convincing evidence. We do not believe the juvenile court applied an improper burden of proof.

III. Julie contends the State did not show, by clear and convincing evidence, the children could not be returned to her care, which is an element of section 232.1116(1)(e). Julie asserts she has made recent progress in developing self-esteem and learning parenting skills. She feels she is now able to care for the five children.

We find there was clear and convincing evidence the children could not be returned to Julie's care at the present time. Julie has made some positive changes in her life. Some progress, however, by a parent is not sufficient. *In re D.A.*, 506 N.W.2d 478, 479 (Iowa App. 1993). A parent must show an adequate overall ability to care in all custodial areas. *Id.* We conclude Julie would not be able to care for the children on a continual basis and meet their special needs. We determine Julie's parental rights were properly terminated under section 232.116(1)(e).

IV. When the juvenile court terminates parental rights on more than one statutory ground, we need only find ground to terminate under one of the sections cited by the juvenile court to affirm. *In re A.J.*, 553 N.W.2d 909, 911 (Iowa App. 1996). Since we have already found Julie's parental rights were properly terminated under section 232.116(1)(e), we need not address her claims regarding section 232.116(1)(d).

V. Julie asserts termination is not in the best interests of the children. She states the children are always happy to see her and often ask the other relatives about her.

We believe termination is clearly in the best interests of Carl and Teresa. Any contact with Julie seems to be too difficult for these children to handle. During periods of unauthorized contact they have needed hospitalization, therapy and medication. They remember Julie and the abuse they suffered at her hands.

The question of whether termination is in Joseph's best interests is more difficult. The parties stipulated Joseph would like to live with Julie and wanted to continue to see her. We find termination is in Joseph's best interests because the stability offered to him in the home of Glenda and Don, with his siblings, is far superior than the sporadic contact he has with his mother. Julie's continued contact is disruptive to the children in general, and Joseph will be better off in the long run in a stable home environment. Joseph needs to know who his family is and where his home is. Even though all contact with Julie will most likely not be terminated, Joseph needs to know his future is with Glenda and Don, not with his mother.

There was not much evidence in the record concerning Chiquita and Franceska. They do not remember living with Julie. They are bonded in their present household, with Glenda and Don. Chiquita and Franceska need the stability of remaining in their present home with their siblings. We find it is in their best interests to terminate Julie's parental rights.

We affirm the decision of the juvenile court to terminate Julie's parental rights to her minor children.

AFFIRMED.