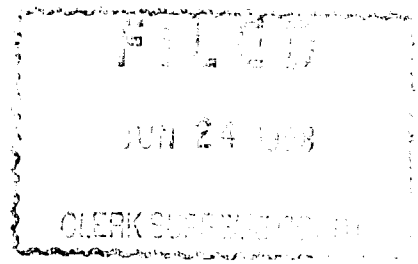
IN THE COURT OF APPEALS OF IOWA

No. 8-252 / 98-0047
Filed June 24, 1998



IN THE INTEREST OF B.M. and M.S., Minor Children,

T.S., Mother,
Appellant,

F.M., Father of B.M.,
Appellant.

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

A mother and father appeal from the termination of their parental rights. **AFFIRMED.**

C. J. May, III, Dubuque, for appellant mother.

Jennifer A. Clemens of Reynolds & Kenline, Dubuque, for appellant father.

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

Dirk J. Hamel of Norman, Gilloon, Wright & Hamel, P.C., Dubuque, for minor children.

Considered by Sackett, P.J., and Huitink and Streit, JJ.

PER CURIAM.

A mother and father appeal from the termination of their parental rights. They contend the juvenile court erred in finding the State met its burden to prove the children could not be returned to their care.

Traci and Francis are the parents of Kelsey, born July 10, 1993, and Brittany, born July 2, 1994. Traci is also the mother of Michael, born October 13, 1992, and Makenzi, born January 9, 1997. Michael is in the care of his father and was not involved in the termination proceedings.

Kelsey was the subject of a founded child abuse report in December 1993 and Traci and Francis were named as the perpetrators. She was again the subject of a founded child abuse report in April 1994 and was removed from her parents' care because of an unexplained fracture of her left arm, unexplained bruises, and a failure to thrive. Contrary to a physician's advice, her parents refused to have her hospitalized. She was adjudicated in need of assistance and placed in foster care. Kelsey was returned to her parents' care in April 1995.

In August 1996 the children were the subjects of a founded report of denial of critical care. At that time, Kelsey had a black eye and large bruise on her leg. An investigator in Traci's home observed broken glass in a window and a nail in a board on the floor of the room where the children were playing unsupervised. In September 1996, Kelsey and Brittany were removed from their parents' care after Kelsey sustained a severe nonaccidental burn on her buttocks. The nature of the burn was

such that it could not have occurred in the bathtub as claimed by the parents. The parents did not seek medical treatment for Kelsey, and treatment was only provided two days later after the burn was discovered by day care providers. Shortly after her birth, Makenzi was removed from the hospital and she has never been in her parents' care.

The children have not been returned to their parents' care and have remained in foster care. A petition to terminate Traci and Francis's parental rights to Kelsey was filed in March 1997, and their rights were terminated in May 1997. The termination was affirmed by the court of appeals. *In re K.S.*, No. 97-1082 (Iowa App. Dec. 29, 1997). A petition to terminate Traci and Francis's parental rights to Brittany and Traci's rights to Makenzi was filed in September 1997. Makenzi's father, S.D., consented to the termination of his parental rights.

In December 1997, the juvenile court terminated Traci's and Francis's parental rights to Makenzi under Iowa Code section 232.116(1)(g) (child three years of age or younger, adjudicated CINA, removed from physical custody of parents for six of the last twelve months, and cannot be returned at the present time to the custody of the parents without risk of adjudicatory harm). The court noted the long family history of abuse and the parents' failure to improve despite the provision of services.

Traci and Francis both appeal. They claim the State failed to meet its burden to prove the children cannot be returned to their care. They claim termination is not

in the children' best interests and reasonable efforts to reunite the family were terminated too soon. The State joins the guardian ad litem's brief.

The primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). Those best interests are to be determined by looking at the child's long-range as well as immediate interests. A parent's past performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d at 493; *Dameron*, 306 N.W.2d at 745; *In re T.T.*, 541 N.W.2d 552, 555 (Iowa App. 1995). Case history records are entitled to much probative force when a parent's record is being examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). Francis has not had contact with his two daughters from a previous relationship for approximately six years. Traci has a long history of abuse and neglect.

The juvenile court placed much weight on both parents' refusal to acknowledge how Kelsey received the serious burn on her buttocks. Their accounts of the incident are inconsistent with each other and with their own accounts at various times. The case workers and service providers all expressed concern the other children remained at risk if returned to the parents without resolution of Kelsey's abuse. Traci and Francis attempt to separate Kelsey's abuse from the termination of their parental rights to the other children.

In *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa App.1988), we rejected a similar contention that involved acknowledging the occurrence of sexual abuse as a

requirement for completing a sexual abuse treatment program. In *In re H.R.K.* we stated, "the best interests of a child in any termination proceeding are of utmost importance ... and the requirement that the parents acknowledge and recognize the abuse before any meaningful change can occur is essential in meeting the child's needs." *Id.* We note the importance of this recognition on the part of the parents as it acknowledges that such parents are more open to treatment. *In re K.M.R.*, 455 N.W.2d 690, 692 (Iowa App. 1990).

Before a parent's rights are terminated, reasonable efforts must be made to reunite the family. *See* Iowa Code § 232.102(9) (1997). However, the State also must act to prevent probable harm to a child and need not delay until harm has actually occurred. The termination statutes are preventative as well as remedial. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The visitation between the Traci, Francis, and the children was supervised. The parents assert they were not given the opportunity to demonstrate the progress they had made in parenting because the visitation was supervised and limited. However, children should not be placed at risk so their parents can experiment with their parenting skills. *In re M.B.*, 553 N.W.2d 343, 346 (Iowa App. 1996); *see In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987).

It is possible, given sufficient time and repetition of services, parents can be taught proper parenting skills such that termination would not be necessary. This certainly is not such a case. The parents' refusal to take responsibility for Kelsey's abuse hinders their progress and constitutes a continuing threat of harm to the other

children. The legislature has determined the interval for which patience with parents may last. "This period must be reasonably limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children." *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987).

Both parents have significant psychological problems which hinder their ability to parent adequately and safely. Francis fails to recognize dangers to the children and does not have appropriate expectations based on the child's age. Francis stated he had no conscience to define right and wrong for him. Traci suffers from clinical depression, yet refuses treatment. She has schizoid personality features and has difficulty empathizing with her children. Persons with similar characteristics have little success in counseling and tend to repeat acts of abuse or neglect toward their children, as Traci has. "Children simply cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable." *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). To keep children in temporary or even long-term foster homes is not in their best interests. *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989); *In re T.T.*, 541 N.W.2d 552, 557-58 (Iowa App. 1995).

The period set forth by the legislature has passed. Clear and convincing evidence exists in the record that the children cannot be returned to their parents' care

at this time. The children have waited long enough for their parents to deal with their problems. Consequently, we affirm the decision of the juvenile court to terminate the parental rights of Traci to Brittany and Makenzi, and of Francis to Brittany.

AFFIRMED.

Huitink and Streit, JJ., concur; Sackett, P.J., concurs specially.

SACKETT, J. (specially concurring)

I concur with the majority's decision to terminate parental rights because I find the State has met the statutory requisite to support this finding. I do not know why, despite the State's resources, the delivery of services failed. The State seeks to blame the parents, and the parents may entirely share the blame. Yet, I am constantly reminded the parents are not on an even playing field. They are poor, disadvantaged, and without the clout and resources to pressure their cause. I do not doubt that they love their children, but the realities of their lives got in the way.

I have no way of gauging what effect the termination of parental rights will have on these children, nor do I know whether they will find an adoptive home or whether the adoptive placements will be successful. We have elected in Iowa to proceed on the course of termination of parental rights with vengeance, with the intent it will provide a brighter future for children. If these children find good adoptive homes, it probably will give them a better chance than they would have had with their parents, although they carry with them unresolved issues with their biological parents.

The State presented the evidence of Dianna Francois, whose title is Department of Human Services Adoption Specialist. She testified the children would be very easily placed and there had been inquiries about these children. I can only trust that the State, in advocating for termination, will be as forceful in seeing the children have stable and nurturing homes, and that the attorney for the children will monitor the situation to assure it happens.