IN THE COURT OF APPEALS OF IOWA

No. 1-403 / 01-0084
Filed July 18, 2001

FILED
JUL 18 2001
CLERK SUPREME COURT

IN THE INTEREST OF E.M.B., Minor Child,

M.B., Mother,
Appellant,

C.B., Father,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson, District Associate Judge.

The mother and father of minor child E.M.B. appeals a district court order terminating their parental rights. **AFFIRMED.**

Drew H. Kouris, Council Bluffs, for appellant mother.

Stephen P. Broghammer, Council Bluffs, for appellant father.

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

Roberta Megal, Juvenile Public Defender, Council Bluffs, guardian ad litem for minor child.

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

000015

HUITINK, J.

I. Background Facts and Proceedings.

Chester and Michelle are the parents of E.M.B. E.M.B. was removed from their care within a week of birth and subsequently adjudicated a child in need of assistance based on findings of failure to exercise reasonable care in supervision and impaired mental condition resulting in E.M.B. not receiving adequate care. *See* Iowa Code § 232.2(6)(c)(2), (n) (1999).

The State initiated termination proceedings on August 9, 2000. The termination petition was heard on October 23, 2000. In an order filed December 12, 2000, the juvenile court terminated Michelle's and Chester's parental rights to E.M.B. pursuant to Iowa Code section 232.116(1)(g). The court found there was clear and convincing evidence the parental rights of both parents should be terminated because E.M.B. could not be safely returned to either parent's custody. The court's order included the following:

> [E.M.B.] has been in foster care since she was one week old. Her parents have been receiving supervised visits, generally one time per week, and neither parent has been consistent enough with those visits to allow the Iowa Department of Human Services to extend the visits or allow them to be unsupervised. Both have mental health diagnoses. Michelle is low functioning. Chester has a record of child sexual assaults. All the professionals, psychologists, psychiatrists, therapists and in-home workers who have been involved with the family have been concerned about [E.M.B.'s] safety if she would be returned to the care of her parents, based upon there being no real progress in the parents' stability or mental status and there is an extremely poor prognosis for any real or lasting change.

On appeal Michelle and Chester contend the State failed to meet its burden to prove by clear and convincing evidence that E.M.B. could not be

returned to either parent's custody. Michelle also argues she was denied adequate time to prepare herself for the return of her child to her home and that termination was not in E.M.B.'s best interest. Chester contends the State failed in its obligation to make reasonable efforts to reunite his family.

II. Scope of Review.

We review termination proceedings de novo; we review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re L.L.* 459 N.W.2d 489, 493 (Iowa 1990).

III. Reasonable Efforts.

The State is required to make reasonable efforts to preserve the family unit. *See In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). Although the State has the obligation to make reasonable efforts, the parents must demand services if they were not offered prior to the termination hearing. *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). The record fails to disclose any pretermination hearing demands for service improvement. Because Chester's complaint is untimely, he has failed to preserve any reasonable efforts issues for appeal. *Id.*

IV. Sufficiency of the Evidence.

Termination pursuant to Iowa Code section 232.116(1)(g) requires proof of the following:

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

Element four is the only element in dispute. It its regard we have said:

> Subsection 232.102 [of the Iowa Code] governs the transfer of custody and placement of children. Subsection (4)(b) requires the court to find by clear and convincing evidence that the child cannot be returned to parental custody because the child would be exposed to "some harm which would justify the adjudication of the child as a child in need of assistance" and "reasonable efforts have been made to prevent or eliminate" the harm. If custody is transferred to foster care authorities, subsection (6) requires "every effort" be made "to return the child to the child's home as quickly as possible consistent with the best interest of the child."

In re J.V., 464 N.W.2d 887, 890 (Iowa Ct. App. 1990). Because there are no reasonable efforts issues remaining, our concern is whether E.M.B. can be safely returned to either parent's custody.

Chester and Michelle both have a history of mental illness. *See In re A.M.S.*, 419 N.W.2d 723, 733-34 (Iowa 1988) (Mental disability, standing alone is not a sufficient reason for the termination of the parent-child relationship, but it is a contributing factor to the inability to perform duties of a parent.). Chester has been convicted three times of sexual assault, two of which were perpetrated against children in his family or in his family's care. Psychological evaluations indicated that neither parent had the traits needed to effectively bond with a child and that it was unlikely that either would be able to put the child's needs ahead of their own on a regular basis. Social workers involved in this case also expressed

concern that Chester and Michelle displayed an inability to control or properly direct anger that constituted a potential risk of harm to E.M.B. The evaluating psychologist opined that neither parent seemed to have the inner resources to effectively change their situation and recommended that E.M.B. not be returned to them.

Furthermore, Chester and Michelle have previously had their parental rights to three and four children respectively terminated due to their inability to effectively parent. *See In re M.Z.*, 481 N.W.2d 532, 536 (Iowa Ct. App. 1991) (parent's past performance relevant to quality of future care parent is capable of providing). Although both parents attended parenting skills sessions, neither made sufficient progress toward the goal of providing E.M.B. with a safe, stable, and nurturing home. The in-home worker noted that Chester and Michelle needed constant supervision in their care of E.M.B. and would require continuous services in their home to teach them to adapt to the child's changing needs. E.M.B. has been in foster care essentially since her birth. Further efforts would be futile and unavailing. We hold the State has met its burden to show by clear and convincing evidence E.M.B. cannot be safely returned to her parents' custody.

Even if the statutory requirements for termination of parental rights are met, the decision of terminate must still be in the best interests of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the best interests of children, the court looks to the children's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The court must consider the

physical, mental, and emotional condition and needs of the children in deciding to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996).

We find termination of Chester's and Michelle's parental rights is in E.M.B.'s best interests. Chester has a history of sexual abuse. Both parents have a history of violence and mental health disorders. Neither parent has the skills or empathy to properly care for a child. Mental health professionals opined that neither parent is likely to be capable of making any real or lasting change. Under these circumstances, we find it is in E.M.B.'s best interest to terminate parental rights.

We affirm the decision of the juvenile court.

AFFIRMED.