FILED
DEC 17 198
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF J.G.B., A Minor Child.	)	
R D , Father,	)	Filed December 17, 1987
Appellant,	)	20
S M B , Mother,	)	7-478 86-1831
Appellant.	)	

Appeal from the Iowa District (Juvenile) Court for Madison County (J-46), Thomas S. Bown, Judge.

The natural parents of a five-year-old boy appeal the decision of the juvenile court to terminate their parental rights. **REVERSED AND REMANDED.**

Susan K. Janssen, Winterset, for appellant mother.

Patrick L. Wilson, Marshalltown, for appellant father.

Thomas J. Miller, Attorney General of Iowa, and Charles K. Phillips, Assistant Attorney General, for appellee State.

G Stephen Walters, Winterset, guardian ad litem, for appellee child.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

HAYDEN, J.

21

The natural parents of a five-year-old boy, J.G.B., appeal the decision of the juvenile court to terminate their parental rights. Both parents, who are now divorced, assert there was insufficient evidence in the record to support the finding of the juvenile court. The court found there was clear and convincing evidence they had received services to correct the abusive situation which gave rise to this proceeding, but the services did not correct the situation. Thus, they contend the final prerequisite for termination in Iowa Code section 232 116(3), under which the State initiated this proceeding, was not met. Separately, the parents raise other asserted errors related to the above contention. The natural mother, S.M.B., asserts the juvenile court erred in admitting into evidence (1) a list of services allegedly provided to her, which was prepared by a juvenile probation officer at the request of the court, and (2) evidence of the termination proceeding, which occurred in 1982, regarding two of her children from previous marriages. The natural father, R.D., asserts he was denied due process by the State's alleged failure to give him proper notice of what was expected of him in order for him to regain custody of J.G.B.

We note at the outset the question of whether J.G.B. can or cannot be returned to the custody of either parent was not before the juvenile court and is, therefore, not before us now. We must decide the narrow, yet difficult, question of whether there is clear and convincing evidence in the record that S M.B. and R.D. "received services to correct the situation which led to the abuse but the services did not correct the abusive situation," as required by Iowa Code section 232.116(3)(c).

Our review of proceedings to terminate parent-child relationships is de novo. In the Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981); In the Interest of L.P., 370 N.W.2d 839, 840 (Iowa App. 1985). We accord weight

to the factfindings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by them. In the Interest of M.H., 367 N.W.2d 275, 278 (Iowa App. 1985). It is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us. In the Interest of Nutt, 383 N.W.2d 570, 573 (Iowa 1986); Dameron, 306 N.W.2d at 745.

This case commenced in September 1985, when J.G.B. was removed from his parents' home after it was discovered he had a bone fracture of the right arm that was more than forty-eight hours old. He also had bruises on his abdomen, buttocks, and lower back, scabs on his abdomen, and some loss of hair due to head lice. J.G.B. was adjudicated a child in need of assistance on January 20, 1986, and was placed in the custody of the Iowa Department of Human Services (DHS) for placement in a foster home on February 25, 1986. Also on February 25th, the juvenile court ordered the DHS to provide the court with a case permanency plan and ordered the parents to cooperate with the case plan and the services provided by the DHS. The juvenile court's order of disposition also provided visitation rights for S.M.B. and R.D.

As the State concedes in its brief, this is not a model case of the organization and filing of a case plan. In fact, although the testimony of Lisa Wood, a social worker with the DHS, refers to a case plan, its provisions are not to be found in the record. S.M.B. testified Ms. Wood had her draft provisions for a "contract" with the DHS, to facilitate regaining custody of J.G.B., but that Ms. Wood never sent her a final "contract" or case plan. Nor did J.G.B.'s father, R.D., ever receive a "contract" or case plan.

In short, the services received by these parents after the removal of J.G.B. from their home were minimal. The provision of services to S.M.B. was necessarily complicated by her incarceration at the Mitchellville Correc-

tional Facility for writing bad checks. This incarceration began shortly after the removal of J.G.B. from her home and ended upon her release to the Fort Des Moines release center on April 12, 1986. She remained at Fort Des Moines until July 1986. During the time in Mitchellville and Fort Des Moines, S.M.B. received counseling which dealt primarily with her personal problems and not her relationship with J.G.B. On her own initiative, she took parenting classes at both locations. Ms. Wood apparently was aware only that S.M.B. was receiving counseling and taking parenting classes, but was not familiar with the content of those programs or S.M.B.'s progress in them. After S.M.B. was released from Fort Des Moines, Ms. Wood suggested she explore counseling possibilities in Des Moines. S.M.B. did so, undergoing an evaluation at the mental health facility at Broadlawns Hospital. The DHS apparently did not follow up on this, and this termination proceeding was initiated shortly thereafter.

After the removal of J.G.B. from the home, R.D. received even fewer services than S.M.B. received while incarcerated. Ms. Wood suggested he obtain counseling at the West Central Mental Health Center in Adel. R.D. did so, and Ms. Wood checked on his progress twice. She has not discussed R.D.'s progress with his counselor since the second check, the date of which does not appear in the record. In essence, this was the only service R.D. received from the DHS after September 1985.

At the termination hearing, the State introduced evidence of the 1982 proceeding, which terminated the parent-child relationship between S.M.B. and two of her children from previous marriages. This evidence consisted primarily of services received by S.M.B., and after July 1980, by R.D., also, until the order of termination was filed on April 6, 1982. On appeal, S.M.B. asserts the juvenile court erred in admitting this evidence. She contends it was extremely prejudicial, and lacked probative value and a foundation sufficient

to provide assurance it was reliable. We disagree. We conclude evidence of services received in relation to previous termination proceedings is relevant to the determination in a later proceeding of whether the parents had received services to correct an abusive situation and whether those services were successful. Cf. In the Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981) (insight for the determination of what the future likely holds for a child if returned to his parents can be gained from evidence of the parents' past performance). However, as the length of time between the past and current termination proceedings grows longer, evidence of past services should be given far lesser weight.

In this regard, we conclude the juvenile court erred. We give little weight to the provision of services to these parents three to five years before the removal of J.G.B. from their home in September 1985. Were we to do otherwise, the termination of one parent-child relationship after the provision of substantial services could be used to justify later termination proceedings without accounting for changes in circumstances or people. Neither S.M.B. nor R.D. was given the opportunity to demonstrate that her or his capacity to benefit from counseling and other DHS services had improved since 1982. We are not persuaded by the response of the State to the absence of a case permanency plan, contrary to the dictates of Iowa Code section 232.102(6), and the paucity of services provided, that S.M.B. and R.D. should be denied this opportunity. In its brief, the State submitted that J.G.B.'s "future should not be predicated upon an evaluation of whether State officials jumped through all the required bureaucratic hoops." We take very seriously our responsibility to insure the best interests of this little boy. We also take very seriously our responsibility to insure children are not taken permanently from their parents unless absolutely

necessary. We do not consider the safeguards the legislature has provided to prevent an unwarranted termination to be mere "bureaucratic hoops."

The juvenile court also erred in its reliance on (1) the conclusion of Dr. Rypma, who examined S.M.B. in late November 1986, that S.M.B. needs long-term, intensive professional counseling and, therefore, should not regain custody of J.G.B. in the near future, and (2) the need of J.G.B. to have a permanent home now. As we stated earlier, the question of whether J.G.B. can or cannot be returned to either S.M.B. or R.D. was not before the juvenile court and is not before us. As such, the perceived best interests of J.G.B. cannot be allowed to relieve the State of its statutory obligation to provide J.G.B.'s parents with services designed to provide them an opportunity to improve their parenting skills.

We conclude the State did not show by clear and convincing evidence S.M.B. and R.D. "received services to correct the situation which led to the abuse but the services did not correct the abusive situation." We therefore reverse the decision of the juvenile court to terminate the parental rights of S.M.B. and R.D. We remand for the provision of appropriate services by the DHS to S.M.G. and R.D., and the dismissal of the termination petition. J.G.B. is to remain in foster care, in the custody of the DHS. This decision does not preclude a future termination proceeding, if warranted.

REVERSED AND REMANDED.