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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF P.A.F., A Child,

I.B., Natural Mother, Appellant

Filed May 28, 1987

7-97
86-1540

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Appeal from the Iowa District Court for Lee County (No. 785), Joel J. Kamp, District Associate Judge

The natural mother of a ten-year-old boy appeals from the juvenile court order terminating her parental rights pursuant to Iowa Code section 232.116(5). **AFFIRMED.**

Gregory A Johnson of Johnson, Phelan & Skewes, Fort Madison, for appellant

Thomas J Miller, Attorney General, Gordon E Allen, Special Assistant Attorney General, and Valencia McCown, Assistant Attorney General, for appellee

Considered by Oxberger, C J , and Donielson and Hayden, JJ.

OXBERGER, C.J.

In this appeal, we consider the propriety of the juvenile court's order severing the parent-child relationship of the appellant, I.B., and her ten-year-old son, P.A.F. The State initiated the underlying proceeding pursuant to section 232.116 of the Iowa Code, which sets forth various grounds for the termination of parental rights. Specifically, the State has relied upon subsection 232.116(5), which authorizes termination when:

> a. The children have been adjudicated as children in need of assistance pursuant to § 232.96; and
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> b. The custody of the children has been transferred from his or her parents for placement pursuant to § 232.102 for at least 12 months; and
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> c. There is clear and convincing evidence that the children cannot be returned to the custody of their parents as provided in § 232.102.

Iowa Code § 232.116(5)(1985).

Although I.B. concedes that the first two prongs of this statutory standard have been satisfied, she argues that the State failed to carry its burden of establishing by clear and convincing evidence that P.A.F. could not be returned to her custody. See Iowa Code § 232.116(5)(1985). After reviewing the record, however, we are convinced that the State satisfied its burden and accordingly, we affirm.

We begin our analysis with a brief recital of the basic principles governing our review. When examining a juvenile court's decision in a termination proceeding, our paramount concern is the best interest of the child. In Interest of J.R.H., 358 N.W.2d 311, 317 (Iowa 1984). In making this determination, we review the record de novo; thus, we are not bound by the findings of fact made by the trial court, but we do give them weight, particularly where the credibility

of witnesses is implicated. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

Although we have recognized a presumption that the best interests of children will be served by continued parental supervision, this presumption is in no way conclusive, and is tempered when necessary by the State's responsibility to insure that every child receives proper care and treatment. In re Interest of T.D.C., 336 N.W.2d 738, 740 (Iowa 1983); see also In Interest of K.L.C., 372 N.W.2d 223, 226 (Iowa 1985). In ascertaining whether a child's parent or parents are capable of providing the requisite care, we look to the child's long-range as well as immediate needs. Dameron, 306 N.W.2d at 745. In this connection, we necessarily consider what the future likely holds for the child if parental custody is reestablished. Id. Hence, we recognize that "[i]nsight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of future care that parent is capable of providing." Id.

With the foregoing principles in mind, we now turn to the merits of this appeal. The record discloses that the child whose custody is at issue, P.A.F., was adjudicated in need of assistance by an order entered October 19, 1980; at that time P.A.F. was four years old. The adjudication was based on Iowa Code section 232.2(5)(g),[1] and arose after the Department of Social Services received a number of substantiated reports that P.A.F. had been neglected and denied critical care. Following the adjudication, P.A.F. was permitted

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[1] Pursuant to this section, a child "[w]hose parent, guardian or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing, or shelter or refuses other means made available to provide such essentials," is a child in need of assistance. Iowa Code § 232.2(5)(g)(1979) (currently codified in section 232.2(6)(g)(1987)).

to remain with his sisters in I.B.'s home until April of 1983. During this period, the family's home was closely monitored by social workers from various agencies who worked with I.B. in an attempt to improve her parental and housekeeping skills.

Although these efforts were relatively successful, I.B. encountered a number of serious problems with P.A.F. which eventually necessitated that he be removed from the home and placed in foster care. The record reflects that P.A.F. suffers from severe behavioral and disciplinary problems which require that he constantly be supervised. For example, when P.A.F. was only six years old, his school teachers filed a number of complaints indicating that he frequently used profanity and made profane gestures in the classroom and had brought cigarettes to school. In addition, P.A.F. had been caught stealing, playing with matches, and smoking. The Department of Social Services speculated that P.A.F.'s behavior stems largely from the fact that he is a slow learner and has a shorter than average attention span.

The department determined that I.B. was unable to properly supervise P A.F. and attend to his special needs; by an order filed May 27, 1983, legal custody of P.A.F. was transferred to the department and P.A.F. was placed in a foster home. P.A.F.'s foster parents experienced a number of difficulties with him and approximately two months later, he was removed from their care and enrolled at Boys Acres, a residential treatment facility. P.A.F. stayed at Boys Acres slightly longer than a year, and was then placed in a second foster home; less than a year later, P.A.F.'s second foster parents requested that he be removed from their care because of his behavioral disturbances. P.A.F. was then transferred to a third foster family where he stayed for approximately six weeks until this family similarly requested his removal. In July of 1985, P.A.F. was placed in a fourth foster home with Marilyn Marple, who is the only foster parent to have had some degree of success with him.

Since he was removed in 1983, I.B. has never regained custody of P.A.F. During P.A.F.'s foster placement, however, I.B. continually exercised her visitation rights with him; although I.B.'s visits were initially quite disruptive, it appears that since P.A.F. has been living with Ms. Marple, I.B.'s visits have been less disturbing. Relatedly, I.B. has participated in a member of additional social programs designed to improve her parent-effectiveness. Nevertheless, the testimony of nearly all of the social workers involved in the case indicates that I.B. has remained incapable of properly supervising P.A.F. Consequently, in May of 1985, the State filed the underlying petition for the termination of I.B.'s parental rights.

I.B. acknowledges that at the present time she is unable to provide P.A.F. the parental guidance and supervision which he needs. I.B. requests that P.A.F. be permitted to stay with Ms. Marple for two more years; I.B. testified that she needs this amount of time to stabilize her relationship with her daughters before she can concentrate on P.A.F. While we commend I.B. for her candidness and fully acknowledge her sincerity, we cannot ignore the problems that inhere in requiring P.A.F. to remain in foster placement for an additional two years. Tragically, this young child has already spent the majority of his formative years in a myriad of temporary environments. Although Ms. Marple has had a marked degree of success with P.A.F., she is unable to adopt him or provide him a permanent home. Hence, even while P.A.F. is with Ms. Marple, he continues to be stranded in the sort of "parentless limbo" that our courts endeavor to prevent. See In re Interest of Lewis, 257 N.W.2d 505, 512 (Iowa 1977).

In addition to the years following P.A.F.'s initial adjudication as a child in need of assistance, I.B. has had three years to acquire the necessary skills to properly care for her son; unfortunately, the testimony of the several agency

personnel involved in the case reveals that I.B. has not made the requisite strides. Furthermore, at least three of the social workers who worked with I B. and P.A.F. explicitly expressed their doubts that I.B. would ever acquire the capacity to properly supervise P.A.F. As such, even if we were to grant I B. two additional years to improve her skills, it is precariously uncertain whether P.A.F. could safely be returned to her custody. Without equivocation, the department personnel associated with the case agreed that what P.A.F. most needs is a stable home environment. In these circumstances, we conclude that the record clearly and convincingly establishes that P.A.F. cannot be returned to I.B.'s care without a substantial risk of danger resulting from I.B.'s inability to properly supervise him. See Iowa Code § 232.2(6)(c)(2)(1985).

In cases of this nature, we often find ourselves pinned between the Scylla of our traditional resistance to separate a child from his parents and siblings, and the Charybdis of returning that child to home environment fraught with uncertainty. Guided by the principle that our ultimate responsibility is to protect the best interest of the child, however, we conclude that the latter is a gamble we are unwilling to take. See In Interest of C and K, 322 N.W.2d 76, 81 (Iowa 1982). We recognize that our decision in this case is extremely harsh for I.B. and her daughters to comprehend. Nevertheless, P.A.F.'s best interests mandate that he be placed in a permanent home as soon as possible. The record reflects that his chances for adoption are optimistic at this point, but that his adoptability will lessen as he continues to grow older. Moreover, permanent placement is particularly crucial in P.A.F.'s case. Accordingly, we conclude that the district court's ruling should be affirmed.

I.B. argues that P.A.F. objects to the termination of their parent-child relationship, and that given his age, the juvenile court should have exercised its discretion to refuse to terminate I.B.'s rights despite the court's finding

that the State's case was supported by clear and convincing evidence. See Iowa Code § 232.116(6)(b) (a court need not terminate a parent-child relationship if the court finds that the child is over ten years of age and objects to the termination). Initially, we do not think that the record fully supports I.B.'s contention that P.A.F. objected to the termination. At one point, when P.A.F. was asked what he wanted to do, he stated that he wanted to go home. When P.A.F. was asked whether he liked the idea of being placed for adoption, he stated that he did. Moreover, we have previously held that section 232.116(6) does not mandate that termination be denied; rather, if the child's best interests dictate that the parental relationship be terminated, this fact takes precedence. In Interest of L.P., 370 N.W.2d 839, 849 (Iowa App. 1985). As aforesaid, we think that this is such a case.

AFFIRMED.