IN THE COURT OF APPEALS OF IOWA

No. 3-627 / 93-0952

FILED
JAN 25 1994
CLERK SUPREME COURT

IN THE INTEREST OF J.H., A Child,

J.H., Natural Mother,
Appellant.

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

J.H. appeals the termination of her parental rights. **AFFIRMED.**

William D. Werger of Hanson & Werger, Manchester, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Judy Sheirbon, Assistant Attorney General, for appellee.

Mary Lou Tracey of Tracey & Tracey, Manchester, guardian ad litem for minor child.

Heard by Sackett, P.J., Habhab, J. and Peterson, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

HABHAB, J.

The mother, J.H., appeals the termination of her parental rights to J.E.H., born December 12, 1990.[1] We affirm.

After J.E.H. was born, hospital staff referred the mother to the Department of Human Services (DHS) because of concern over her angry outbursts. The mother and J.E.H. moved in with an aunt and uncle and participated in voluntary in-home services. In February 1991, a founded denial of critical care report was made against the mother when J.E.H. was left with her developmentally disabled uncle. Also in February the mother was committed to the mental health institute for arguing with her aunt then threatening to kill herself and the baby. She was discharged at the commitment hearing. J.E.H. was placed in foster care.

In June 1991, J.E.H. was adjudicated CINA pursuant to Iowa Code sections 232.2(6)(b), (c)(1) and (2). The court ordered that an interstate compact referral be made since the mother was moving to Chicago.

By December 1991 the mother had attended three out of six individual weekly therapy sessions. Illinois had still not located a foster family home and the mother had visited J.E.H. twice in the last six months. At a June 1992

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1. J.E.H.'s father does not appeal the termination of his parental rights.

dispositional hearing, the court was informed a foster home was located in Chicago. The court ordered J.E.H.'s transfer with appropriate services to be provided.

By November 1992 the mother had attended visitation eleven out of fifteen time. In December she gave birth to another child and subsequently missed the next six visits with J.E.H. At a January 1993 permanency hearing the court noted a lack of bonding between the mother and J.E.H. and the mother's inability to follow through with services. The court ordered the county attorney to file for termination.

At the termination hearing, evidence was presented showing that although the mother had made improvements with visitation and services, they were superficial and insufficient to show a true commitment to changing her parenting. The court concluded the mother had borderline intelligence and poor coping skills which halted her progress and understanding. It was noted that she had a chaotic home life and a physically abusive relationship. The mother's parental rights to J.E.H. were terminated on June 14, 1993, pursuant to Iowa Code sections 232.116(1)(c) and (g). The mother appeals.

Our review of termination proceedings is de novo. In re W.G.,349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom J.G. v. Tauke, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court, especially when

considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

Iowa Code section 232.116(1)(g) (1991) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (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 custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 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.
> (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.

The mother admits the statutory grounds for terminating her parental rights under section 232.116(1)(g) have been met.[2] The mother contends, however, the following "extenuating" circumstances militate against terminating her rights: (1) J.E.H. was never actually abused or neglected, (2) DHS failed to transfer J.E.H. to Chicago for fourteen months to the detriment of reunification efforts, (3) she has made significant progress since the transfer and should be given more time, and (4) DHS has failed to provide adequate services.

We look to whether the best interests of the child would be served by terminating the mother's parental rights. Our supreme court has said a child should not be

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2. We therefore need not decide whether her parental rights could be terminated under 232.116(1)(c).

forced to endlessly suffer the parentless limbo of foster care. In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990). To continue to keep children in temporary foster homes is not in their best interests. In re J.L.P., 449 N.W.2d 349, 353 (Iowa 1989). The amount of time normally for the children to be in foster care is prescribed by the termination statute. Id.

J.E.H. has been in foster care in Chicago since August of 1992. The visitation supervisor still has to remind the mother to interact with J.E.H. on visits. The supervisor also noticed little bonding between the mother and child. J.E.H. sought out the supervisor's attention just as often as his mother's. The supervisor also noted the mother had a difficult time parenting both children at visits.

We are also concerned about the mother's relationship with her boyfriend. She admits her boyfriend has struck her on two occasions, the last being a month before the termination hearing.

Although the mother's therapist described the mother as making "some progress" in working out her problems, she was unable to say how much longer the mother would need counseling. The therapist also stated she was unaware of what J.H.'s parenting skills are at this point.

The mother contends reasonable efforts were not made to prevent the ongoing removal of J.E.H. from her care. We find services were appropriate. We also find, as the juvenile court did, the mother's resistance to suggestions

from counseling and service providers, as well as her move back and forth to Chicago, complicated the receipt of services. We also note that this concern should have been raised earlier in the proceedings. Termination proceedings are not the appropriate time to raise such an argument. In re B.K.K., 500 N.W.2d 54, 57 (Iowa 1993).

We find it unlikely the mother in the near future will be able to provide a stable and structured environment for J.E.H. The testimony indicates J.E.H. is adoptable. We find the best interest of this child would be served by terminating her natural mother's parental rights.

AFFIRMED.

Peterson, S.J., concurs; Sackett, P.J., specially concurs.

SACKETT, J. (concurring specially)

I concur with the majority opinion.

The majority cites:

> A child should not be forced to endlessly suffer the parentless limbo of foster care. In re D.J.R., 454 N.W.2d 838, 845 (Iowa 1990); In re L.M.F., 490 N.W.2d 66, 68 (Iowa App. 1992).

I, like the majority, believe children should not have to spend their childhood years in foster care. Where I depart from the majority is that termination of a child's parental rights provides no guarantee they will not remain in foster care. In 1992, of the 263 special-needs children freed for adoption, only 138 were adopted. See Phoebe Wall Howard, Special-needs Kids Pray for New Families, New Lives, Des Moines Sunday Register, Oct. 10, 1993, at 1A.