



IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF H.S.,)
D.S., D.S., AND H.S.,)
Minor Children,)
M.S., Mother,)
Appellant.)

541

9-256
88-1619

Appeal from the Iowa District (Juvenile) Court for Lee County (1031, 1059, 1079 & 1320), Joel J. Kamp, District Associate Judge.

The mother of four children appeals the termination of her parental rights. **AFFIRMED.**

Jerald R. Gregg, Fort Madison, for appellant mother.

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

W. Jon Henson, Keokuk, guardian ad litem for the children.

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

HAYDEN, J.

This termination case involves two boys born in 1977 and 1980, respectively, and two girls born in 1978 and 1982, respectively. M.S., appellant, is the common mother to all of the children. Only her parental rights were terminated. Each of these children have a different father. The natural fathers' parental rights were not affected by this decree of termination. The issue of their parental rights were reserved for later proceedings.

Familiar principles guide our consideration of this appeal. Our review, of course, is de novo. . . . Thus, we examine the facts as well as the law and adjudicate rights anew on the record before us, mindful of our obligation to accord weight to the juvenile judge's factual findings, especially when considering the credibility of witnesses.

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[C]entral to a determination of this nature are the best interests of the child. In this connection we look to the child's long range as well as immediate interest. Hence, we necessarily consider what the future likely holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that parent is capable of providing.

* * *

The grounds for termination of parental rights must be shown by clear and convincing proof. Iowa Code § 232.116(5)(c).

In Interest of K.F., 437 N.W.2d 559, 560 (Iowa 1989)
(citations omitted).

This case began with a filing of a child abuse report in February of 1980 when only the two oldest children were born. A child in need of assistance (CHINA) petition was filed and the oldest daughter was adjudicated in need of assistance. M.S. was ordered to obtain mental health counseling. She did not comply and the oldest girl was placed in foster care. M.S. and the children have been involved with the Iowa Department of Human Services (DHS) and the juvenile court since then. The children have been in and out of foster care since then also.

All four children have been placed outside the mother's home continuously since May 1986. They were adjudicated to be children in need of assistance in June 1986. The juvenile court had terminated its jurisdiction on a previous CHINA adjudication in 1985.

M.S.'s history and background shows she has a violent and uncontrolled temper. She has repeatedly struck and physically abused the children. M.S. has had numerous unstable relationships with different men. One of these men sexually abused some of the children. She has not provided adequate supervision or shelter for the children. M.S. has expressed a great deal of anger and hostility against the social workers and the court system. She seeks vengeance against the DHS and the court. We do not recite in detail all of M.S.'s conduct and behavior with the children.

In May 1988 the State filed the present petition seeking to terminate M.S.'s parental rights. After a hearing, the juvenile court terminated her parental rights to all four children. The juvenile court relied on the grounds for termination stated in Iowa Code sections 232.116(1)(c) and 232.116(1)(e).

Iowa Code section 232.116(1)(c) authorizes the court to terminate parental rights upon a finding all of the following have occurred:

- (1) One or both parents have physically or sexually abused the child.
- (2) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
- (3) There is clear and convincing evidence that the parents were offered but refused services or failed to cooperate to correct the situation which led to the abuse or that the parents had received services to correct the situation which led to the abuse but the services did not correct the abusive situation.

Iowa Code section 232.116(1)(c) authorizes the court to terminate parental rights upon a finding all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (2) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months.

(3) 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.

I.

We first address a preliminary issue presented by M.S. She claims the trial court did not apply the correct law to the finding her parental rights should be terminated.

In its order the juvenile court terminated M.S.'s parental rights "for all the reasons set forth in the petition for termination of parental rights pursuant to the provisions of Section 232.116(c)(2)(3) and Section 232.116(e)(1)(2)(3)." These code sections are recited in the Supplement to the Code and the Iowa Acts of the General Assembly as sections 232.116(1)(c)(1)(2)(3) and section 232.116(1)(e)(1)(2)(3).

It is clear to us the juvenile court found M.S., the mother and one of the parents, had physically abused the children. This satisfies section 232.116(1)(c)(1). Also, the children had previously been adjudicated to be in need of assistance after they had been physically or sexually abused as the result of the acts or omissions of one or both parents. This satisfies section 232.116(1)(c)(2). The court also found clear and convincing evidence M.S., a parent, was offered but refused services or failed to cooperate to correct the situation which led to the abuse or the services did not correct the abusive situation. This satisfies section 232.116(1)(c)(3). The evidence and

testimony of the record hearing clearly and convincingly supports the trial court's findings. We determine the court followed the correct and applicable law of section 232.116(1)(c) even though it omitted to precisely identify it.

The juvenile court also found the children here had been adjudicated to be in need of assistance, had been in foster care for twelve of the last eighteen months, and they could not be returned to their parent, M.S. We determine the evidence in this record is clear and convincing and support the trial court's findings. This satisfies section 232.116(1)(e) and subsection (1), (2), and (3) thereof.

We hold the juvenile court relied upon and applied the correct statutory law and grounds for terminating M.S.'s parental rights. We recognize the juvenile court failed to fully and precisely set out each and every numerical subsection of section 232.116 it relied upon. It would have been better for the court to fully and accurately cite each subsection; however, failure to do so is not fatal to these proceedings or this appeal. The juvenile court followed and relied upon the correct legal principles and applicable law. We affirm on this issue.

II.

M.S. next contends there was not clear and convincing evidence to support the trial court's findings. We have

indicated in Division I of this opinion the evidence and testimony in this record is sufficiently clear and convincing to support the trial court's findings. We note again only some of the more cogent and revealing facts to support the trial court's findings.

This case has been going on, in one stage or another, since February 1980. There have been ten child abuse reports. The DHS has offered many different services to M.S. in attempts to help her. M.S. has failed to avail herself of this help. She has failed to rehabilitate herself. These children need permanency. Her oldest child has spent 37 months in foster care. We also refer to our recital of facts expressed in the outset of this opinion.

The children have all been adjudicated children in need of assistance since June 12, 1986, and have been in the custody of DHS in foster care with relatives or others since May 9, 1986. The long-term involvement of the agencies has had little long-term success, if any, as to M.S.'s ability to have these children returned to her home. Personnel from DHS, Mental Health Center, and Protective Homemaker Services testified there has been little to no progress in the important areas of dealing with M.S.'s volatile, hostile, rebellious, depressed, confused, unpredictable, and constantly vacillating mental state. We hold there was clear and convincing evidence to support the trial court's findings.

No intervention up to this point has altered the repetition of the cycle. Given the fact the children have already spent a great amount of their lives in foster care, we must view these tragic circumstances with a sense of urgency. See In Interests of K.F., 437 N.W.2d 559, 564 (Iowa 1989). Termination is the only viable means by which these children can escape the cycle and relinquish their roles as victims. Id. We affirm on this issue.

III.

M.S. argues termination of one of the older children should be avoided because he objects to the termination. Our review of this record reveals this is not the true situation. This child indicated he would like to see his mother. However, he feels he cannot be returned home because "it's not going to work out" and "she'd just get a temper, go back to the beatings and stuff like that." It is clearly shown this child does not object to the termination. M.S.'s argument to the contrary is without merit.

IV.

Finally, M.S. claims she deserves an additional six months to prove herself. The juvenile justice system of Iowa, the juvenile court, and state agencies have been working with M.S. and her children since 1980. We note the Child Development Clinic recommended termination eight years ago. Plans which extend the twelve-month period

during which parents attempt to become adequate in parenting skills should be viewed with a sense of urgency. In Interest of A.C., 415 N.W.2d 609, 614 (Iowa 1987). We agree with the State it is time to give these children a permanent home.

AFFIRMED.

Oxberger, C.J., concurs; Sackett, J., specially concurs.

SACKETT, J. (specially concurring)

I concur with the majority because I find clear and convincing evidence these children cannot be returned to their mother's care, and I recognize under such a fact-finding the legislature has dictated parental rights be terminated.

However, unlike the majority, I cannot find our decision in any way guarantees these children a permanent home nor does it guarantee them June and Ward Cleaver will be waiting at the courthouse steps with a promise of a secure home.

These children are now between the ages of seven and twelve. Because of their age and emotional scars, they will be hard to place. In April of this year there were eighty-two children with special needs on the Iowa adoption exchange and some 34,000 nationally.¹

1. Devine, Study: Recruit Singles To Adopt Special Children, Des Moines Register, April 18, 1989, at 2A.