IN THE COURT OF APPEALS OF IOWA

No. 5-066 / 94-1578

FILED
MAR 30 1995
CLERK SUPREME COURT

IN THE INTEREST OF D.C. and **A.C.,**

Minor Children,

B.C., Mother,

Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Gordon C. Abel, District Associate Judge.

Mother appeals district court's order terminating her parental rights. **AFFIRMED.**

Mark J. Eveloff of Sciortino, Vannier & Eveloff, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, Judy Sheirbon, Assistant Attorney General, and Martha B. Heinicke, Assistant County Attorney, for appellee-State.

Roberta Megel, Deputy Public Defender, Council Bluffs, guardian ad litem for minor children.

Heard by Donielson, C.J., and Hayden and Habhab, JJ.

DONIELSON, C.J.

Brenda appeals the termination of her parental rights to her son and daughter. She contends: 1) it was not in the best interests of the children to terminate her parental rights; 2) reasonable efforts were not made to reunite her and her children; 3) it was not in the best interests of the children to be separated from their half-siblings; and 4) the district court erred by misstating findings of fact in its termination order. Upon our de novo review of the record, we affirm the termination of Brenda's parental rights.

Brenda is the mother of David, born June 25, 1987, and Amanda, born June 23, 1989. The parental rights of the fathers of David and Amanda are not involved in this appeal. Brenda is also the mother of two sons, Rodney born in September 1992 and Rudolph born in August 1993. These sons are half-siblings to David and Amanda.

Brenda, David, and Amanda were first referred to the Iowa Department of Human Services ("DHS") in November 1989. It had been reported to DHS that Amanda had been hospitalized due to a possible failure to thrive and Brenda did not have a stable residence and was having trouble budgeting money.

On December 9, 1989, Brenda left David and Amanda in the care of a baby sitter. When Brenda failed to return for her children by December 12, 1989, the sitter contacted the police department. The children were placed in

protective custody, and a child in need of assistance ("CINA") petition was filed alleging Brenda had abandoned or deserted her children. A temporary removal hearing was held, and it was agreed by the parties the children should be placed in the temporary care, custody, and control of DHS. In conjunction with the removal of the children from her care, Brenda was ordered to complete an inpatient psychiatric evaluation.

Brenda completed the psychiatric evaluation in January 1990. Her evaluator concluded Brenda had a significant personality disorder, adjustment disorder with mixed emotional features, a borderline intellectual ability, and was paranoid with inadequate and dependent features.

On February 8, 1990, Amanda and David were adjudicated CINA and were ordered to remain in the custody of DHS for foster care placement. The court ordered the provision of several services for the family. Brenda was allowed supervised visitation with the children.

In March 1990 the children were returned to Brenda's care with the continued provision of in-home services, individual therapy for Brenda, day care, and AEA services for the children. In July 1990 there was a founded report of child abuse of Amanda by Brenda based upon Brenda's failure to provide appropriate medical attention and medication for Amanda's diaper rash.

A review hearing was held in August 1990. The court ordered Brenda to complete a chemical dependency evaluation.

Another child abuse report was deemed founded in early September 1990 when Brenda left the children in the care of her thirteen-year-old nephew without making arrangements for adult supervision of the children and without providing information as to when she would return. Brenda's sister contacted the police department, and the children were again placed in protective custody. Brenda did not contact her sister or DHS about her children until two days later.

Due to the incident in early September 1990 when Brenda had left her children in the care of her nephew, a finding of denial of critical care was made. A temporary removal/review/modification hearing was held on September 10, 1990, and the court directed the children be removed from their mother's custody and placed in the care, custody and control of DHS.

After a March 1991 review hearing the children were again returned to Brenda's care with the provision of ongoing DHS services and supervision. However, in August 1991 the children were removed from Brenda's custody when representatives of the police department determined Brenda was too intoxicated to appropriately care for them. The children have remained in the custody of DHS since that time.

After a March 1992 review hearing the court continued the children's placement in foster care. The court found Brenda had not attended individual therapy for over six months and had not followed through with recommendations made in her chemical dependency evaluations.

Following a June 1992 review hearing, the court found Brenda had a history of avoiding court-ordered services, her prior participation in chemical dependency treatment had been sporadic, and she had been involved in individual therapy on only two occasions since the last court hearing. The court ordered the continuation of foster care and services, and it ordered weekly unsupervised visits for Brenda with her children.

In October 1992 a review hearing was held and the court found reunification could not safely be done at that time. DHS services and the children's foster care placement were continued, and the court ordered there be a review hearing scheduled in ninety days to determine the need for initiating termination of parental rights proceedings.

In January 1993 a review hearing was held, and the court found Brenda had a great deal of difficulty in caring for the children whey they were with her. It also found Brenda had not made reasonable efforts to obtain a residence where she could reside with the children.

Beginning on February 8, 1993, an intensive reunification effort was again implemented by DHS. David and Amanda were delivered to their mother's residence each

morning so Brenda could care for them throughout the day. This arrangement continued for approximately thirty days until Brenda failed to follow her case permanency plan and be at home when the children arrived on March 3, 1993. Brenda had spent the night prior to March 3 playing cards at a location six blocks away from her residence and did not walk or obtain transportation to get home in time to care for her children. Also on March 3, 1993, Brenda left a message for her caseworker informing her she would be unable to attend a staffing meeting scheduled for that day. Brenda did not contact her case worker until a week later to discuss her absences on March 3.

After Brenda failed to be available to care for her children on March 3, 1993, her daily visits with the children were suspended and replaced with semimonthly supervised visits. Brenda failed to appear for one of these scheduled foster care visits on March 26, 1993. She did not contact her caseworker to explain her absence until March 29, 1993.

Due to the failure of the reunification efforts, Brenda's permanency plan goal was changed from family reunification to the termination of her parental rights. The April 14, 1993, permanency plan reflects that in the preceding ninety days Brenda had not attended more than a couple AA meetings nor had she been actively involved in therapy.

In June 1993 a termination of parental rights petition was filed. The hearing on the petition to terminate was held on December 13, 1993. At the time of the termination hearing, Brenda's son Rodney had been removed from her care and taken into protective custody due to suspected sexual abuse.

The father of Brenda's two youngest sons, John, is a man with whom Brenda has been involved for five years. Brenda testified this man had physically abused her for the last four years. Despite this fact, Brenda moved in with John several months after the April 1993 review hearing. John has been charged and found guilty of domestic abuse against Brenda on at least two occasions. Although John was the subject of no-contact orders, Brenda's relationship with him continued. The most recent incident of John's physical abuse of Brenda had occurred only three to four weeks before the termination hearing.

On August 30, 1994, the juvenile court entered an order terminating Brenda's parental rights pursuant to Iowa Code sections 232.116(1)(B) and 232.116(1)(E). Brenda appeals from that order, and we separately address each of the issues raised in her appeal.

I. BEST INTERESTS OF THE CHILDREN.

In her brief the mother suggests the decision to cease reunification efforts and terminate her parental rights was based solely on the fact she was fifteen minutes late

to care for her children on March 3, 1994. This is a gross distortion of the facts. The reality is David and Amanda had been in Iowa's foster care system for over four and one half years at the time Brenda's parental rights were terminated. Extensive services had been offered to the family, and two attempts to return the children to their mother's care had failed in 1990 and 1991. When intensive reunification efforts were commenced in 1993, Brenda again failed to demonstrate the level of responsibility necessary to care for two young children.

We utilize de novo review in determining if there is clear and convincing evidence to support the termination of parental rights. In re S.A., 502 N.W.2d 23, 25 (Iowa App. 1993). A child's rights and needs are paramount in termination proceedings. Id. The primary concern is the best interests of the children.

> We look to the child's long-range, as well as immediate, interests. We consider what the future 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 the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citations omitted).

Brenda's children were initially removed in 1989 because of her abandonment of their care to a sitter. Under similar circumstances the children were returned to

DHS custody in 1990. In 1991 the children were removed from Brenda's care because her intoxication left her unable to care for them. Finally, in 1993, Brenda failed to appear and care for her children as scheduled when intensified reunification efforts were implemented.

Despite the provision of exhaustive DHS services over the course of several years, Brenda has failed to demonstrate the level of responsibility necessary to parent two young children. A child should not be expected to endlessly await the maturity of his or her natural parent. See In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983).

There is considerable evidence in the record to demonstrate David and Amanda have suffered because of the frequent moves from foster care to Brenda's care. It is in their best interests to provide some stability and certainty to their lives. There was clear and convincing evidence the children could not be safely returned to Brenda's care as the definitional grounds of a child in need of assistance still existed. Iowa Code § 232.116(1)(e). It was in David and Amanda's bests interests to terminate Brenda's parental rights.

II. REASONABLE EFFORTS TO REUNIFY FAMILY.

Brenda argues reasonable efforts were not made to reunite her and her children prior to termination of her parental rights. Reasonable services must be offered to preserve the family unit. In re L.M.W., 518 N.W.2d 804,

807 (Iowa App. 1994). A parent's challenge to the sufficiency of services should be made when they are offered. In re C.D., 508 N.W.2d 97, 100 (Iowa App. 1993). Objections to the services and reunification efforts offered by DHS must be raised prior to the termination proceedings. See In re B.K.K., 500 N.W.2d 54, 57 (Iowa 1993).

Assuming, without deciding, Brenda has preserved this issue, we find it is without merit. The record reveals Brenda was offered an exhaustive array of services including: in-home family centered services; individual therapy; psychiatric and psychological evaluations; chemical dependency evaluations and follow-up; protective day care; and play therapy and AEA services for the children. When asked, Brenda testified she could not think of any services the Department had not offered her that could help get her children returned to her care.

Brenda's level of participation in DHS services ranged from consistent to erratic. Despite several years of services Brenda remained unable to responsibly care for her children for any protracted length of time. It was only after Brenda had failed to comply with the intensive reunification plans in March 1993, that a determination was made she had received the maximum benefit she could receive from DHS services. DHS worked with this mother for a very long time, and it adequately complied with its duty to offer reasonable services to preserve the family unit.

III. SEPARATION OF SIBLINGS.

Generally siblings should not be separated without good and compelling reasons. In re A.M.S., 419 N.W.2d 723, 734 (Iowa 1988). Such reasons exist in this case. David and Amanda were removed from their mother's care in 1989. Their half brothers were born in 1992 and 1993. Other than visits with their mother, David and Amanda have never resided with their half-brothers as part of a family unit. Their maternal grandmother indicated Brenda favored her younger children and disciplined David and Amanda more severely. The grandmother testified Brenda's boyfriend (the father of her two younger children) did not wish to have Amanda and David around.

Since David and Amanda have not been with with their younger brothers for any significant amount of time, and the record reveals no strong attachment or bond between them, their separation from the half-siblings should not have any significant consequences. Under the circumstances of this case, we find it was not contrary to David and Amanda's best interests to separate them from their half-siblings.

IV. FINDINGS OF FACT--ALLEGED ERRORS.

Brenda argues the juvenile court misstated factual matters in its order terminating her parental rights. We have reviewed each of her assertions in this regard and find they are without merit. There was substantial

evidence in the record to support the juvenile court's findings regarding the extent of the services offered to Brenda. Likewise, based on the record before it, the observations of the juvenile court regarding Brenda's ability to care for Rodney and/or Rudolph were reasonable.

Finally, Brenda takes issue with the juvenile court's finding that she had failed to comply with the visitation schedule on two consecutive days. This statement is not an error. The record reveals Brenda failed to have the children at her apartment when the foster mother arrived to pick them up on the evening of March 2, 1993. On March 3, 1993, Brenda failed to be present when the foster mother delivered the children for their regularly scheduled visit. We find clear and convincing evidence supported the juvenile court's factual findings. We affirm the termination of Brenda's parental rights to David and Amanda.

AFFIRMED.