IN THE COURT OF APPEALS OF IOWA

No. 0-127 / 99-1309
Filed March 15, 2000

IN THE INTEREST OF M.M, K.M., E.M., and Z.M., Minor Children,

L.M., Father,
Appellant,

J.M., Mother,
Appellant.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Tama, Susan Flaherty, Juvenile Court Judge.

Mother and father appeal the termination of their parental rights to their children. **AFFIRMED.**

Michael M. Lindeman of Dolezal & Lindeman, Cedar Rapids, for appellant-mother.

Mary E. Chicchelly of Seidl & Chicchelly, Marion, for appellant-father.

Nancy Burk, Toledo, guardian ad litem for minor children.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, and Brent D. Heeren, Assistant County Attorney, for appellee-State.

Heard by Sackett, C.J., and Vogel and Hecht, JJ.

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VOGEL, J.

Larry and Joanna appeal the termination of their parental rights to their children. Upon completion of our de novo review, we affirm.

Background facts. There are four children in this family. Marnie, the oldest, is the natural child of Joanna but not Larry. Her biological father has already terminated his rights. Kimberly, Ernest and Zachary are the natural children of both Larry and Joanna. The family first became involved with the Department of Human Services in December, 1992 because the condition of the home presented serious health and safety concerns for the children. They have received ongoing services since the initial contact with DHS. The children have been adjudicated to be children in need of assistance and all four children were removed from parental custody and placed in foster care in January, 1998. The juvenile court terminated the parental rights of Larry and Joanna in July, 1999. Marnie, Kimberly and Ernest were terminated under Iowa Code sections 232.116(1)(c), (e) and (h) (1997)[1]. Zachary was terminated under Iowa Code sections 232.116(1)(c), (g) and (h) (1997)[2]. They now appeal this ruling.

Scope of review. We review proceedings to terminate parental rights de novo – we review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron,* 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the

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[1] Iowa Code sections (1)(c), (e) and (h) allow for termination of parental rights for neglect where the parents have been offered and received services; the children are four or older, have been adjudicated as CINA, have been out of the home for at least twelve months of the last eighteen, and there is clear and convincing evidence they cannot be returned to the home; and they are adjudicated CINA due to neglect which caused significant risk of imminent danger and receipt of services would not correct the harmful conditions.

findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995); Iowa R. App. P. 14(f)(7).

We have recognized there exists a parental interest in the integrity of the family unit, but such interest is not absolute and may be forfeited by certain conduct. *In re Dameron,* 306 N.W.2d at 745. The State has the duty to see every child within its borders receives proper care and treatment and must intercede when parents abdicate that responsibility. *In re I.L.G.R.,* 433 N.W.2d 681, 689 (Iowa 1988). At a minimum, this care includes proper food, clothing, discipline, and supervision. *In re J.W.D.,* 456 N.W.2d 214, 217 (Iowa 1990). "Every child deserves a safe, healthy, and stimulating environment in which to grow and mature." *Id.*

Reasonableness of services. Reasonable efforts to reunite parent and child are required prior to the termination of parental rights. *In re T.C.,* 522 N.W.2d 106, 108 (Iowa App. 1994); *see generally* Iowa Code section 232.102 (1997). Generally, the DHS must make reasonable efforts to provide services to eliminate the need for removal. *See* Iowa Code section 232.102(10)(a) (1997). Larry and Joanna contend they were not offered adequate reunification services. However, this issue must have been preserved for appeal by being raised before the termination hearing. "While the State has the obligation to provide

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[2] Iowa Code section (1)(g) allows for termination of parental rights for a child who is three or younger, has been adjudicated as CINA, has been out of the home for at least six months of the last twelve, and there is clear and convincing evidence the child cannot be returned to the home.

reasonable reunification services, the Mother had the obligation to demand other, different or additional services prior to the termination hearing." *In re S.R.,* 600 N.W.2d 63, 65 (Iowa App. 1999). When this burden has not been met by the parents, they are barred from appealing the termination on this ground. Larry and Joanna, therefore, are barred from raising this issue for the first time on appeal.

Evidence to terminate parental rights. The burden of proof necessary to terminate parental rights is clear and convincing evidence. *In re K.L.C.,* 372 N.W.2d 223, 228 (Iowa 1985). Larry and Joanna allege the State did not meet this burden of proof at the termination hearing. We find, however, that they did. This family became involved with the Department of Human Services in December, 1992. The children have been adjudicated as CINA, finally resulting in their removal from the home. During this ongoing, seven-year process, Larry and Joanna have been offered many different services including homemaker assistance, parent skill development, and protective day care for the children. These services were offered to help them improve their parenting and home management skills in order to facilitate a family reunification. Unfortunately, for reasons known only to them, Larry and Joanna were continually uncooperative and inconsistent in the receipt of these services and made only minimal progress in providing for the safety and health of their four children. When considering what the future likely holds if the child is returned to parental custody, evidence of the parent's past performance may be indicative of the quality of care the parent is capable of providing. *In re L.L.,* 459 N.W.2d at 493.

At the time of the termination hearing, neither parent was able to have the children returned to their custody. Larry estimated his home would be habitable for the children in another six months while Joanna had a six month wait for HUD housing to become available. Having been unable to exert the necessary effort to provide a clean and safe environment for their children in the previous seven years, they now ask the court to grant them an additional six months to meet this expectation. "At some point, the rights and needs of the child rise above the rights and needs of the parents. The legislature, through section 232.116 directs us to that point." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). Therefore, we find the record contains clear and convincing evidence to terminate Larry and Joanna's parental rights.

Having considered all issues properly before us on appeal, we hereby affirm the decision of the juvenile court.

AFFIRMED.