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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTEREST OF EDITH RENEE PUNTENEY,

Juvenile.

Filed March 31, 1980

0-13
3-63536

Appeal from Mills Juvenile Court, Ross Caniglia, Judge.

Natural parents appeal termination of parental rights pursuant to section 600A.8(5), The Code 1977. - Affirmed.

Richard D. Crotty, Glenwood, for appellants.

Thomas J. Miller, Attorney General of Iowa, Francis C. Hoyt, Jr., Assistant Attorney General, and John G. Black, Special Assistant Attorney General, for appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

The natural parents of Edith Renee Punteney, age seven, appeal the termination of their parental rights pursuant to section 600A.8(5), The Code 1977. We affirm.

Our review is de novo. In re Ponx, 276 N.W.2d 425, 433 (Iowa 1979). Our rule prescribing the according of weight to the trial court's fact findings, especially with regard to the credibility of witnesses, Iowa R. App. P. 14(f)(7), is particularly applicable in termination cases. In re Long, 255 N.W.2d 140, 143 (Iowa 1977).

Our de novo review of the record reveals the following pertinent facts. Edith and Rudolph Punteney, Jr. were married in 1970. Both Edith and Rudolph admittedly have a very limited education and they met while attending the Glenwood State School. Rudolph also suffers from very poor eyesight. In 1971, while residing in Council Bluffs, Edith and Rudolph had their first child, a son, Rudolph III. At that time, the Department of Social Services became involved with providing services assisting in the care of the child. Shortly thereafter, however, the child had to be hospitalized for an intestinal disorder, and it was then determined that the best interests of the Punteneys' son required that he be placed in foster care. Foster care continued until 1974 when the child was voluntarily adopted.

Prior to that time, on September 20, 1972, the Punteneys had their second child, a daughter, Edith Renee, hereinafter referred to as Renee. The Department of Social Services also became involved with assisting the parents in caring for Renee, as they had with the earlier child. However, as before, the parents had problems in giving Renee proper care. Various reports prompted the filing of a petition to adjudicate Renee to be a child in need of assistance in September, 1974, and again in September, 1975. Apparently the Punteneys left Pottawattamie County where the child in need of assistance petitions were filed, and moved to Omaha before any hearings were held on the petitions. They left Omaha in October of 1978 after receiving notification of eviction for sexual misconduct. Coincidentally, the Punteneys left Omaha prior to the arrival of the Sheriff for the purpose of temporarily removing Renee from the custody of her parents pursuant to a juvenile court order. The Punteneys moved to Glenwood in Mills County, Iowa and are currently living there. The Department of Social Services for Mills County became involved in attempting to assist the parents in the care of

Renee, however, after further reports of problems, the Department of Social Services took temporary custody of Renee on January 2, 1979, and the petition for termination of parental rights was filed on January 12, 1979.

The only ground asserted in the petition for termination of parental rights was that contained in subsection 5 of section 600A.8, The Code 1977.[1] Subsection 5 states that if there is clear and convincing proof supporting such a finding, parental rights may be ordered terminated if it is shown that:

> [a] parent is palpably unfit to be a party to the parent-child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent-child relationship either of which are determined by the juvenile court to be permanently detrimental to the physical or mental health of the child.

The trial court found, as do we in our de novo review of the record, the following facts. On numerous occasions, while the family was living in Omaha, passers-by reported that they had observed through open doors or uncurtained windows that Edith and Rudolph were walking about the house in the nude, apparently oblivious either to the observations or to the propriety of the public exposure of their nudity. Rudolph and Edith have been observed through open windows while engaged in sexual intercourse on the livingroom floor in Renee's presence. On several occasions, Rudolph has masturbated in the presence of visitors to the home, including children. On one occasion, while Renee and a friend were playing outside near the home, Rudolph appeared in the nude in the doorway and asked Renee's friend if she would like to come inside. On another occasion, Renee was observed in an act of fellatio with her father. The child's mother, Edith, once approached a neighbor and advised him that Renee, five years old at the time, wished to have sexual intercourse with him. At least on one occasion, Edith has attempted to shoplift in Renee's presence, an attempt that resulted in Edith chastising Renee for thwarting her attempt. Both parents have voiced extreme profanities in the presence of Renee, and have taken to shouting obscenities at her,

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[1] Subsections 4 - 6 of section 600A.8 were repealed by 1978 Session, 67th G.A., ch. 1088, § 97. The effective date of that repeal, however, was July 1, 1979. Therefore, subsection 5 was still in effect when this petition was filed and when the hearing on the petition was held.

including calling her "a motherfucker", "a whore", and "a slut". Renee has also been observed expressing profane language to other children and adults. Renee has been observed pulling down her pants and displaying her genital area to adults other than her parents. On several occasions, Renee has at least simulated masturbation in the presence of adults other than her parents. Renee had missed a number of days of school due to her mother's penchant for oversleeping. She has been fed and clothed at school because of apparently inadequate attention to those basic needs by her parents. In addition, Renee has been given a shower at school on several occasions because of her obnoxious odor, apparently due to lack of proper bathing at home.

In addition to these fact findings, we find that Edith was once arrested for and found guilty of shoplifting, and Rudolph was once arrested for and found guilty of larceny. Renee has been observed on occasion to be inappropriately clothed for the weather. Renee has been locked out of the apartment late at night on several occasions. She has also been disciplined by being locked in a closet several times. When at home, Renee often slept with her father, while her mother slept in a separate bed. On one occasion, when Renee was four years old, and in day care school, Renee was found in the same cot with a little boy, apparently engaging in oral sex. From its findings of facts, the trial court concluded that there was clear and convincing proof that parental rights should be terminated pursuant to section 600A.8(5), The Code 1977.

In reviewing a trial court's decision on a petition to terminate parental rights, our primary consideration is the best interests of the child. Ponx, 276 N.W.2d at 433. There is a presumption that the interests of children are best served by leaving them with their parents, however, that presumption must give way when, under the evidence, it conflicts with the State's duty as parens patriae to assure proper treatment to every child within its borders. Long, 255 N.W.2d at 143; In re Kester, 228 N.W.2d 107, 109 (Iowa 1975). In assessing parental fitness, we consider such parental characteristics as age, character, stability, mental and physical health, the capacity and interest of the parent to provide for the emotional, social, moral, material, and educational needs of the child, and the stability and wholesomeness of the environment offered by the parent. In re Rice, 236 N.W.2d 40, 43 (Iowa 1975). We must consider that which has

taken place and is likely to occur in the future because of present conditions. Long, 255 N.W.2d at 143.

Applying these principles to the case at bar, we conclude that the trial court properly terminated parental rights pursuant to section 600A.8(5), The Code 1977. Edith and Rudolph have continually subjected their child to reprehensible parental conduct since she was born, despite repeated attempts at assistance by the Department of Social Services, despite warnings through child in need of assistance petitions, and despite losing their parental rights to their first child. The evidence clearly and convincingly shows that Renee has been inadequately fed, clothed, and bathed. She has been continually subjected to profane verbal abuse, which she apparently has learned to deliver in the same manner as she receives it. Moreover, she has been continually exposed to her parents' inappropriate sexual conduct, an exposure that has clearly had a detrimental effect on the child's behavior, as revealed by her conduct.

While there is no conclusive evidence that the child is physically unhealthy or emotionally disturbed, we need not wait until that is the case. The termination statute is preventative as well as remedial. Long, 255 N.W.2d at 143; Kester, 228 N.W.2d at 110. Action is mandated to prevent probable harm to children; we are not required to delay until after harm has been done. Id.

We realize that under the circumstances, the lack of proper feeding and clothing may have been due in part to the parents' financial situation. However, we cannot allow that consideration to excuse the parents' irresponsible treatment of this child. Children need more than food, clothing and shelter. They also need love, affection, security, and freedom from unwholesome moral influences. See In re Morrison, 259 Iowa 301, 313-14, 144 N.W.2d 97, 104 (1966). The best interests of the child require a wholesome mental and moral atmosphere in the home. Rice, 236 N.W.2d at 44. The evidence clearly and convincingly shows that Edith and Rudolph have failed and would probably continue to fail to provide such a home for Renee.

We do not necessarily conclude that Edith and Rudolph have made a deliberate ultimate decision not to care for Renee, and we are not required to. In re Robbins, 230 N.W.2d 489, 494 (Iowa 1975). We do conclude that the decision to terminate Edith and Rudolph's parental rights is justified on the basis of their failure, despite many

opportunities, to change their pattern of behavior, which involved deliberate choices that established a pattern of living that has been destructive to the welfare of their child. Id. Under the circumstances presented here, reflecting an inadequacy of parental guidance and no certainty of any change for the better, we will not gamble with Renee's future by making her await uncertain parental maturity. Long, 255 N.W.2d at 145-46. Consequently we affirm the trial court's decision to terminate parental rights.

AFFIRMED.