IN THE COURT OF APPEALS OF IOWA

No. 5-691 / 95-1121

FILED
DEC 22 1995
CLERK SUPREME COURT

IN THE INTEREST OF Z.H., A Minor Child,

D.G., Mother,

Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge.

Mother appeals the juvenile court's order terminating her parental rights over her minor child. **AFFIRMED.**

Michael T. Hines of McCarthy & Lammers, Davenport, for appellant.

Thomas J. Miller, Attorney General, and Charles K. Phillips, Assistant Attorney General, for appellee-State.

Jeff Bert, Rock Island, Illinois, guardian ad litem for minor child.

Considered by Hayden, P.J., and Sackett and Huitink, JJ.

HAYDEN, P.J.

D.G. and T.G are the parents of Z.H., born April 29, 1988. D.G. is also the mother of R.G III., born April 18, 1989, and J.G., born January 17, 1991. D.G is currently married to R.G., who is the father of both R.G. III and J.G.

In November 1992 a report was filed alleging Z.H.'s stepfather, R.G., had physically abused him. The court entered an order for temporary removal of Z.H., R.G. III, and J.G. from D.G.'s home. The children were adjudicated to be in need of assistance pursuant to Iowa Code section 232.2(6)(b) and (c) in February 1993. The court stated the adjudication was based on the children's out-of-control behavior, the physical violence between the siblings, and the parental failure or inability to supervise. The court also noted the physical abuse perpetrated by R.G. against Z.G. Sanitation and safety of the home was an additional concern.

At the adjudicatory hearing, the custody of R.G. III and J.G. was returned to D.G., while custody of Z.H. was continued with DHS for placement in foster care. Z.H. was originally placed in foster care on November 9, 1992, where he remained until April 26, 1993, when he was placed in the custody of his father, T.G., in lieu of foster care. In January 1994 Z.H. was removed from T.G.'s custody and placed in DHS's custody for placement in family foster care. In June 1994 a report of denial of critical care and failure to provide proper supervision of R.G. III and J.G. by D.G. was founded.

In October 1994 R.G. III and J.G. were removed from D.G.'s custody and placed in foster care.

Z.G.'s guardian ad litem filed a petition for termination of D.G.'s and T.G.'s parental rights in January 1995. T.G. consented to the termination of his parental rights. A hearing on the petition regarding D.G.'s parental rights took place in March, April, and May 1995. The court concluded grounds for termination of D.G.'s parental rights existed pursuant to Iowa Code section 232.116(1)(e). The court found D.G. had not significantly progressed according to the case plan and, after more than two-and-a-half years of intervention, had no better capability of parenting Z.G. The court went on to state D.G. failed to understand her obligations and responsibilities to Z.G. and did not understand the effect of her lifestyle upon him. The court determined there was no palpable change from the conditions which led to Z.G.'s adjudication as a child in need of assistance and the risk of further physical abuse or neglect was high.

D.G. appeals.

I. Scope of Review.

Appellate 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.

The primary concern in termination proceedings is the best interest of the child Iowa R. App P. 14(f)(15); *In re Dameron*, 306 N.W 2d 743, 745 (Iowa 1981).

> 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) (citing *Dameron*, 306 N.W.2d at 745).

Iowa Code section 232.116(1)(e) (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 four years of age or older.
> (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 twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

II. Merits.

As noted by the juvenile court, the main issue in this case has been the sufficiency and appropriateness of parental care and supervision. The case started with allegations of failure to supervise Z.H. and his brother, then ages four and three, when they appeared at school with knives. A CINA adjudication was based on the

out-of-control behavior of Z.H. and his siblings, physical violence between siblings, and parental failure or inability to supervise. Sanitation and safety of the home, was also a concern. Z.H. was removed from his mother's custody because of allegations of physical abuse by the stepfather, R.G.

Throughout this case, the children have exhibited aggressive, destructive, and dangerous behaviors. The juvenile court found, and we agree, despite the children's destructive behavior, D.G. and R.G. have been apathetic, have failed to properly parent, have not set boundaries for the children, and have not modeled appropriate behavior. Although R.G. physically abused Z.H., D.G. continues to live with R.G. Despite the abuse, R.G. does not accept responsibility for his own actions and has refused to participate in services. As such, R.G.'s parental skills have not improved, and he is likely to abuse Z.H. again if Z.H. is returned to D.G.'s household. Furthermore, D.G. has had difficulties with the law and serious substance abuse problems. These circumstances make it extremely likely Z.H. would suffer harm, in the form of physical abuse or neglect, if returned to D.G.'s custody.

As stated above, R.G. has refused to participate in services. D.G., on the other hand, has participated in some services. Many service providers, however, found D.G. does not internalize many aspects of the case plan and is not willing to implement what she has learned from service providers. Providers found D.G. either participated in services too late or did not benefit from services completed. D.G. has been described

as "low energy" and "lethargic." Because D.G. has failed to implement what she has learned through services, she is still not capable of parenting Z.H.

A child should not be forced to endlessly await the maturity of his or her mother *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). 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 re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). Termination must occur if twelve to eighteen months have elapsed since the child was removed from the home and the parent still cannot take care of the child. *In re T.C.D.*, 336 N.W.2d at 744.

Because there has been no palpable change from the conditions which led to the CINA adjudication, termination is appropriate. After more than two-and-a-half years, D.G. has not made significant progress on the case plan and has not become more capable of parenting Z.H. Furthermore, if Z.H. is returned to the custody of his mother, the risk of physical abuse or neglect is high because D.G. has failed to implement what she has learned from service providers and D.G. continues to live with R.G., the man who physically abused Z.H. and who has refused to participate in services. We determine there is clear and convincing evidence Z.H. cannot be returned to the care of his mother and termination is in Z.H.'s best interests. We affirm.

AFFIRMED.

Huitink, J., concurs; Sackett, J., concurs specially without opinion.