IN THE COURT OF APPEALS OF IOWA

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No. 7-724 / 97-0990

FILED
JAN 28 1998
CLERK SUPREME COURT

IN THE INTEREST OF B.G., D.G., and N.K., Minor Children,

S.K., Mother,
Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis, District Associate Judge.

Mother of three minor children appeals a district court ruling terminating her parental rights. **AFFIRMED.**

Stephen N. Greenleaf of Lynch, Greenleaf & Michael, L.L.P., Iowa City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Deborah Minot, Assistant County Attorney, for appellee State.

Bruce D. Nestor of Tindal, Erdahl, Goddard & Nestor, Iowa City, guardian ad litem for minor children.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

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MAHAN, J.

Shelley appeals the termination of her parental rights. She alleges the district court erred when it found the children could not be safely returned to her custody. Shelley claims the court may only terminate her rights if the original grounds for removal still exist. She also questions the weight and credibility the court gave to the testimony of various witnesses. We affirm.

Shelley is a single mother of four sons: Patrick, born in 1981; Bryan, born in 1989; Daniel, born in 1991; and Nathan born in 1993. Only Bryan, Daniel, and Nathan are involved in this appeal. The Department of Human Services initially filed child in need of assistance petitions alleging Shelley failed to provide adequate food. There were also concerns about Shelley's mental health. The parties stipulated to an adjudication the three children were in need of assistance. They have been out of Shelley's home since February 1995 when she entered the University of Iowa Psychiatric Hospital. Since that time, Shelley has also been in and out of substance abuse facilities. She has had difficulty maintaining her sobriety and had an extended relapse during June, July, and August 1996.

In March 1995, at a dispositional hearing, the court determined the children should stay in foster care. The court expressed concern regarding Shelley's mental health, her parenting ability, and other issues such as budgeting and housing. Shelley's substance abuse has subsequently become a concern.

Shelley has complained whenever her role with the children has been increased. She complained about being worn out and about people not understanding her social life. She has also complained people should not expect her to be a supermom early in the morning.

Patrick has been verbally and physically abusive to the younger boys. Shelley has been giving Patrick increasing parental roles. In the past, Patrick and Shelley fought over who was the parent. During one of Patrick's visits, he killed Shelley's cat by throwing it against the wall. Bryan was not present, but the incident adversely affected him and he began to talk of being afraid of Patrick.

The boys' troubles with their mother and oldest brother have resulted in mental health problems. Doctors diagnosed Daniel with adjustment disorder with mixed anxiety and depressed mood. He is also at risk for reactive attachment disorder and mixed receptive-expressive language disorder. Also, both Bryan and Nathan have problems ranging from temper tantrums to frustration to soiling problems. Bryan and Daniel receive individual counseling.

In early 1996, as the visits increased, the boys' loyalty to their mother also increased. However, by May 1996, their behavior had regressed. The case permanency plan of July 19, 1996, reported the goal had been to return the children to Shelley by that summer or a recommendation for termination would be made. Because of Shelley's willingness to enter treatment, DHS recommended she be given extra time. However, because of the children's need for permanency, DHS

recommended petitions for termination if the boys could not return to Shelley within three months. As visits were again increased, Shelley's parenting difficulties returned. She failed to attend Bryan's psychiatric evaluation, claiming it was too early in the morning. She also missed the boys' first day of school, after telling them she would attend.

On October 30, 1996, Shelley filed a motion to modify the dispositional order, seeking the return of the three boys to her care and custody. DHS submitted a case permanency plan with the stated goal of termination of her parental rights. The court praised Shelley for three months of sobriety, but stated she needed at least six months of sobriety before making any major changes in her life. The court continued foster placement.

On December 31, 1996, the State filed a petition to terminate parental rights, but increased visitation with the boys. The State later filed a motion to continue the hearing for sixty days to determine whether Shelley was willing and able to be a parent to the boys. Again, Shelley missed appointments and had trouble with basic duties including attending parent/teacher conferences at school. Shelley was fired from her part-time job. The boys also showed further signs of regression.

At the April 1997 termination hearing, the court found clear and convincing evidence the boys had been adjudicated children in need of assistance, had been placed outside the home for over two years, and could not safely be returned to either parents' custody.

I. STANDARD OF REVIEW. We review terminations of parental rights de novo. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1993). We review both the facts and the law, and we adjudicate rights anew. *In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992). Although we give weight to the factual determinations of the juvenile court, especially when considering the credibility of witnesses, we are not bound by them. *In re T.A.L.*, 505 N.W.2d 480, 483 (Iowa 1993).

II. TERMINATION OF RIGHTS. Shelley claims she has remedied the problems that caused the removal of the three boys and this should be sufficient to regain custody. The State argues, even if the original problems have been remedied, it may terminate Shelley's parental rights if other circumstances exist which would result in the children being determined in need of assistance. We agree with the State. *See In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995) ("[i]f any one of the grounds listed in section 232.2(6) can be proven by clear and convincing evidence, there is sufficient basis for termination."). To determine otherwise would be to save the children from one danger, only to require the court to return them to another source of harm because it did not exist when the children were removed. This would seemingly defeat the purpose of the statute. However, we must still determine whether the State met its burden in proving the need for terminating Shelley's parental rights.

The primary consideration in parental termination proceedings is the best interests of the child. Iowa R. App. P. 14(f)(15). In seeking those best interests, we look to the child's long-range as well as immediate interests. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). This requires considering what the future holds for the child if returned to the parents. *Id.* at 493-94. When making this decision, we look to the parents' past performance because it may indicate the quality of care the parent is capable of providing in the future. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The State has a duty to see every child within its borders receives proper care and treatment. *In re J.W.D.*, 456 N.W.2d 214, 217 (Iowa 1990). This includes at a minimum proper food, clothing, discipline, and supervision because "[e]very child deserves a safe, healthy and stimulating environment in which to grow and mature." *Id.* Thus, the State must intervene when parents do not fulfill their responsibilities. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa App. 1996).

"The court has often recognized that there exists a parental interest in the integrity of the family unit; nonetheless we also are cognizant that this interest may be forfeited by certain parental conduct." *In re Wall*, 295 N.W.2d 455, 457 (Iowa 1980). The State may interfere to prevent possible harm rather than intervene as a remedial measure. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Under Iowa Code section 232.116(2), we consider the physical, mental, and emotional condition and needs of the child when deciding whether to terminate parental rights. *C.W.*, 554 N.W.2d at 282.

From the facts in the record, as set forth above, we find clear and convincing evidence Bryan, Daniel, and Nathan cannot safely be returned to Shelley's care and custody because circumstances currently exist which would support an adjudication the children are in need of assistance. Shelley is unable to protect the younger boys from physical, verbal, and emotional abuse from Patrick when he is in the home. Additionally, she is unable to provide the stability and consistency Bryan and Daniel need, given their psychological disorders. Shelley continues to demonstrate an inability to provide critical care on any consistent basis. We conclude termination of Shelley's parental rights to Bryan, Daniel, and Nathan is necessary and appropriate.

For these reasons, we affirm the decisions of the trial court.

AFFIRMED.