IN THE COURT OF APPEALS OF IOWA

No. 0-689 / 90-1234

FILED
JAN 29 1991
CLERK SUPREME COURT

**IN THE INTEREST OF J.E.W.,**
A Child,

344

**R.W.**, Mother,

Appellant.

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Appeal from the Iowa District Court for Polk County, Vincent M. Hanrahan, Judge.

Mother appeals the termination of her parental rights. **AFFIRMED.**

Frank Steinbach III of Cook, Gotsdiner, McEnroe & McCarthy, Des Moines, for appellant mother.

Bonnie J. Campbell, Attorney General; Gordon E. Allen, Deputy Attorney General; and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee State.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

**HABHAB, J.**

The child in question is a boy born in June 1987. His biological father is unknown.

The child lived with his mother from birth until September 1988. During this period the mother severely neglected his needs. On several occasions she left the child with a baby-sitter and failed to pick him up for days, even though she had told the sitter she would be back the same day. The mother is heavily involved in substance abuse and has also engaged in other criminal activity.

In September 1988 the child was placed in foster care on an emergency basis.[1] He has been in foster care continuously since that time. In November 1988 he was adjudicated to be a child in need of assistance.

During the child's foster care the mother has missed many of her scheduled visits. She has also failed to address her substance abuse problems, in spite of repeated encouragement and assistance from social workers and others.

In January 1990 the State filed a petition to terminate the mother's parental rights. After a hearing, the

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1. On September 16, 1988, it was reported to police that the mother had again dropped J.E.W. off and had not returned for him. A child abuse referral was received revealing that J.E.W. had been left with the family for six days. The family did not have sufficient supplies to continue caring for the child. The family did not know how to find the mother. J.E.W. had to be taken to the hospital for diarrhea and fever during the mother's absence. This type of circumstance has occurred at least four times previously.

juvenile court did terminate her parental rights. The juvenile court relied on Iowa Code section 232.116(1)(g), which permits termination if a child is under three years of age, has been adjudicated CINA, has been in foster care for six of the last twelve months, and cannot safely be returned to the parent's custody.

The mother has appealed from the termination order. She challenges the sufficiency of the evidence to establish that the child cannot safely be returned to her care.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (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.

Central to a determination of this nature are the best interest of the child. In the Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). Those best interests are to be determined by looking at the child's long-range as well as immediate interests. The court is to consider what the future likely holds for the child if that child is returned to his or her parents. Id. Insight for that determination is to be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. Id. The termination statutes are preventative

as well as remedial. Id. Under those statutes the state must act to prevent probable harm to a child, and need not delay until harm has actually occurred. Id.

The mother concedes that all the provisions of Iowa Code section 232.116(1)(g) have been met except she argues the State has not shown that the child cannot be returned to her custody. The State asserts and we agree that the record does show by clear and convincing evidence that the child cannot be returned to the custody of his mother. Accordingly we affirm.

The record reveals the mother has a severe drug problem. While R.W. asserts she has reached a "turning point", the record suggests she has had considerable difficulty controlling her problem. As early as October 1988, R.W. knew she was expected to seek a substance abuse evaluation and follow through with its recommendations. Yet, R.W. failed to even obtain the evaluation until January 1989. Although this evaluation recommended inpatient treatment, R.W. did not enter such treatment until January 1990, sixteen months after J.W. entered foster care and five days after the filing of a petition to terminate parental rights. R.W. successfully completed the treatment program on March 13, 1990. However, on April 2, 1990 a drug screen indicated continued use of cocaine and R.W. was discharged from the House of Mercy halfway house because of the positive cocaine usage. R.W. has also been

incarcerated on a number of occasions for theft.[2]

J.W. was initially removed from the home because R.W., on more than one occasion, left J.W. with a baby-sitter and subsequently failed to return to the sitter's to retrieve the child. After the child had been removed from the home R.W. was uncooperative with Human Services and was inconsistent in visiting her child. Of the thirty-nine visits offered to the mother, she only fully completed fifteen of them. She entirely missed fourteen visits and was late for ten of them.

This child should not be forced to endlessly await the maturity of his mother. In re T.D.C., 336 N.W.2d 738, 744 (Iowa 1983). We agree with the trial court that it would be in the child's best interest to terminate the parental rights of R.W.

**AFFIRMED.**

Donielson, P.J., concurs; Sackett, J., specially concurs.

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2. As an instance of her prior behavior, the record reveals the following: On February 15, 1989, R.W. did not show up for her visit with J.W. The social worker did not hear from R.W. again until March 13, 1989. At that time, R.W. reported she had been in the Polk County Jail for a failure to appear charge and a third-degree theft charge. She was ordered to serve two years probation. On April 13, 1989, a probation revocation hearing was scheduled and R.W. did not appear. On the night of April 13, 1989, R.W. was arrested on a new theft charge. R.W.'s probation was revoked. Between April 13, 1989, and September 1989, R.W. was incarcerated.

**SACKETT, J.** (specially concurring)

I concur with the majority's decision to affirm the trial court order terminating parental rights. The mother, a disadvantaged single parent, has been unable to control her substance abuse problem. The State, despite expending considerable resources over a two-year period has not been able to assist the mother in controlling her problem. The program provided for the mother directed her to visit her child and attend parenting classes and substance abuse treatment. When it became apparent the prescribed program was not working, the mother was told once more to follow the same program. Again, she failed.

During this period the child was in several foster homes. The mother still is not a productive member of society. This child appears to be a child defined as hard to place. Termination does not assure him adoption. It is easy when ordered programs do not work to blame the parent or parents. However, when the State spends considerable resources and they do not help reunite the family, I think we have an obligation to look at the programs offered and ask why.

Today there are several substance abuse programs in the state, including the Clark House of Mercy in Des Moines, that utilize an approach to treatment that keeps a mother and child together, and, in essence, treats the family rather than the individual. This family did not have the

benefit of such a program. Perhaps if it had, the results would have been different.

I have a second concern about the case. The order appealed from does not identify the father, or show any attempt was made to identify and notify the natural father of these proceedings. The order only finds the man the mother identified as the father was not the father. If the child is to be adopted, it is important to adoptive parents that the issue as to the natural father be resolved.