

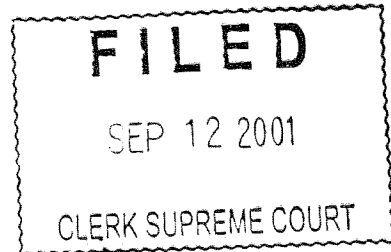
IN THE COURT OF APPEALS OF IOWA

No. 1-491 / 00-1860
Filed September 12, 2001

IN THE INTEREST OF W.R., Jr., E.R., N.R., and E.R.R.,
Minor Children,

N.R., Mother,
Appellant.

W.R., Sr., Father,
Appellant.



Appeal from the Iowa District Court for Iowa County, Nancy A. Baumgartner, District Associate Judge.

Mother and father appeal separately from the juvenile court order terminating their parental right to their children. **AFFIRMED.**

Eric D. Tindal of Saylor & Tindal, P.L.C., Williamsburg, for appellant mother.

Christopher L. Jorgensen of John C. Wagner Law Offices, P.C., Marengo, for appellant father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Fred Stiefel, Special Prosecutor, for appellee-State.

James Claypool of Claypool & Claypool, Williamsburg, for minor children.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

PER CURIAM

Parents appeal the juvenile court decision terminating their parental rights. They both claim the State did not present sufficient evidence to warrant termination of their parental rights and termination is not in the children's best interests. The father also claims the State did not engage in reasonable efforts to reunite him with his children. We affirm on appeal.

Margaret is the mother of William, born in April 1989; Edward, born in July 1994; Nicholas, born in 1998; and Elizabeth, born in February 2000. Bill is the biological father of William and Edward, and the legal father of all the children.¹ Margaret suffers from depression, and she is mildly mentally retarded. Bill is an alcoholic.

The family came to the attention of the Department of Human Services (DHS) in December 1995, when Bill left William and Edward home alone to go to a bar. Margaret was at work at the time. The boys were found wandering along a highway in their pajamas on a very cold night. Bill was convicted of child endangerment. He was in jail for a few months, then was placed on probation.

The family voluntarily participated in services, then quit participation. The State filed a petition alleging William and Edward were children in need of assistance (CINA). In November 1996, the juvenile court adjudicated the children CINA under Iowa Code section 232.2(6)(c) (1995), but suspended the adjudication for one year because the parents voluntarily agreed to receive services.

¹ Dennis is the biological father of Nicholas. The putative father of Elizabeth is Doug. Neither Dennis nor Doug has been a part of the children's lives and is not a party to this appeal.

In June 1997, Bill violated his probation and was sentenced to serve time in jail. While Bill was in jail, Margaret began a relationship with Dennis and became pregnant. When Bill was released from jail in February 1998, the parents separated. However, later that month the parents reunited. In April 1998, the suspended adjudication was revoked and William and Edward were adjudicated to be CINA.

Nicholas was born in August 1998. In early 1999, during an argument with Margaret, Bill hit William's fingernail with a hammer. DHS issued a confirmed report of physical abuse against Bill based on this incident. Margaret left Bill and she and the children moved in with Dennis. Margaret and William reported Bill was again using alcohol, and that he was sometimes physically aggressive. Margaret had a drug test which showed positive for marijuana.

In April 1999, Margaret moved back in with Bill. Based on concerns with Bill's continuing alcoholism and Margaret's inability to protect the children, the children were placed in foster care. Nicholas was adjudicated CINA under sections 232.2(6)(b) and (c)(2) (1997). Margaret had a psychological evaluation, which determined she suffered from a major depressive disorder. Bill also had a psychological evaluation, and was found to have probable antisocial personality disorder traits. Both parents had a substance abuse evaluation. Margaret completed a recommended outpatient program. It was recommended that Bill attend a relapse prevention program. Bill claimed he attended a program, but did not offer proof to DHS. The parents were inconsistent in attending marital counseling.

In February 2000, Margaret and Bill separated again. Margaret reported Bill was still drinking alcohol. She was briefly hospitalized for her mental condition. Margaret gave birth to Elizabeth. Elizabeth was placed in foster care on her discharge from the hospital. Elizabeth was adjudicated CINA pursuant to sections 232.2(6)(b), (c)(2), (g) and (n) (1999). Bill was hospitalized for his mental condition in March 2000.

In June 2000, the State filed a petition to terminate Margaret and Bill's parental rights to William, Edward, and Nicholas. A petition to terminate the parents' rights as to Elizabeth was filed in July 2000. The termination hearing was held in October 2000.

The juvenile court terminated Margaret and Bill's parental rights under section 232.116(1)(e) (William and Edward), and (g) (Nicholas and Elizabeth).

The court stated:

The problems that led to the Iowa Department of Human Services initial intervention with this family back in 1996 exist to this day. [Bill] and Margaret's inability to protect their children from harm and provide them their basic needs is matched only by their lack of insight into their own shortcomings.

The court concluded termination was in the children's best interests, "All four children deserve to have permanency and stability in their lives, something they are never likely to receive from their parents." Margaret and Bill each appeal the juvenile court decision.

I. SCOPE OF REVIEW

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa

Ct. App. 1999). Our primary concern is the best interests of the child. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. MARGARET

A. Sufficiency of the Evidence

Margaret contends the State did not present sufficient evidence to justify termination of her parental rights. She asserts that although social workers were suspicious she had reunited with Bill, there was no proof she was living with him. She claims she did not present a threat of harm to the children, and they could be returned to her care.

A court must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for the children. *In re A.Y.H.*, 508 N.W.2d 92, 96 (Iowa Ct. App. 1996). The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. *In re D.A.*, 506 N.W.2d 478, 479 (Iowa Ct. App. 1993). At some point, the rights and needs of the child rise above the rights and needs of the parents. *J.L.W.*, 570 N.W.2d at 781.

The State presented sufficient evidence to show the children could not be returned to Margaret's care at the present time. Margaret would not tell social workers where she was living. Thus, even if she was not living with Bill, it is likely her home was not suitable for children. In addition, she had not resolved her unstable relationship with Bill. Furthermore, reports following supervised visits suggest Margaret will have difficulty caring for all four of the children alone. We conclude the juvenile court properly terminated her parental rights.

B. Best Interests

Margaret claims termination of her parental rights is not in the children's best interests. She states it is unlikely all four children will be adopted into one home. Margaret asserts termination will only add to the children's problems and instability.

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must still be in the best interests of the child. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1984). In determining the best interests of a child, the court looks to the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The court must consider the physical, mental, and emotional condition and needs of the child in deciding to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996).

We determine termination of Margaret's parental rights is in the children's best interests. The children need stability, which Margaret is not able to provide. Margaret has not shown stability in her housing, employment, or her relationship with Bill. The juvenile court stated:

The Court has considered that all four children are not now placed together and may not be adopted together, and specifically concludes that the danger of harm posed by any possibility of return to a parent far outweighs any negative impact from being separated.

We concur with the juvenile court's finding on this issue.

III. BILL

A. Sufficiency of the Evidence

Bill contends the State has failed to show the children would be subjected to harm if returned to his care. He asserts he is able to care for the children and his parental rights were improperly terminated.

We find there is clear and convincing evidence to show the children could not be safely placed in Bill's care. Bill has not fully addressed his alcoholism. There was evidence in the record to show Bill continued to drink, although he denied this. Also, Bill has not addressed his mental health issues which led to his hospitalization in March 2000. There continued to be questions about Bill's housing and employment. Furthermore, Bill and Margaret continue to have an unstable relationship. We conclude Bill's parental rights were properly terminated.

B. Reasonable Efforts

Bill claims the State did not engage in reasonable efforts to reunite him with his children. He asserts DHS should have offered him services to help him, as a single parent, care for the children. He also asserts DHS should have helped him with transportation to visitation.

The State must make "every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child." Iowa Code § 232.102(7); *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). The State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent. *Id.* The focus is on services to improve parenting. *Id.*

While the State has an obligation to make reasonable efforts, it is a parent's responsibility to demand services if they are not offered prior to the

termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997). We focus on the services provided by the State and the parent's response, not on services a parent claims the State failed to provide. *C.B.*, 611 N.W.2d at 494. Here, Bill did not request transportation services prior to the termination hearing, and so has waived his complaint on this issue.

We find the remaining services offered by DHS were sufficient to satisfy its reasonable efforts mandate. The parents were offered marital counseling and parental skills training. In addition, Margaret was offered domestic violence counseling. The parents were inconsistent in their participation in services, and they did not follow through with what they had been taught. We note the parents received services for more than four years.

C. Best Interests

Bill asserts termination of his parental rights is not in the children's best interests. For the same reasons discussed above regarding Margaret, we determine termination of Bill's parental rights is in the children's best interests.

We affirm the decision of the juvenile court.

AFFIRMED.