IN THE COURT OF APPEALS OF IOWA

FILED
MAY 30 1995
CLERK SUPREME COURT

No. 5-197 / 94-2121

IN THE INTEREST OF G.D., A Minor Child.

E.D., Mother,

Appellant.

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

Mother appeals a district court judgment ordering termination of her parental rights to a minor child. **AFFIRMED.**

Jack E. Dustheimer, Davenport, for appellant.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; Kathrine S. Miller-Todd, Assistant Attorney General; and Henry C. Filseth, Assistant County Attorney, for appellee State.

Catherine P. Alexander, Bettendorf, guardian ad litem for minor child.

Heard by Donielson, C.J., and Habhab and Huitink, JJ.

DONIELSON, C.J.

The mother, Ericka, appeals the termination of her parental rights to her daughter Gabriella. Upon our appellate review, we affirm.

Gabriella was born on December 30, 1992. The Iowa Department of Human Services (DHS) obtained an order for her temporary removal from her mother's care on March 2, 1993. The parties stipulated Gabriella was a child in need of assistance pursuant to Iowa Code sections 232.2(6)(c)(2), 232.2(6)(g) and 232.2(6)(n). A petition to terminate Ericka's parental rights was filed August 19, 1994, and was amended on October 18, 1994. A hearing on the petition was held on November 28, 1994. The court entered an order terminating Ericka's parental rights pursuant to Iowa Code sections 232.116(1)(c), 232.116(1)(d), and 232.117.

Ericka has appealed and contends the district court erred in finding clear and convincing evidence supported the termination. The mother does not argue that any particular grounds for termination have not been met. Instead, in her brief, Ericka asserts "[t]here is clear evidence that the State wanted to terminate [her] rights as soon as possible" and this was contrary to the State's statutory obligation to maintain the family unit. She also argues when hearsay evidence is admitted in a termination hearing in the form of DHS documentary records, a higher standard of proof should be applied.

We utilize de novo review in determining if there is clear and convincing evidence to support the termination of parental rights. *In re S.A.*, 502 N.W.2d 23, 25

(Iowa App. 1993). A child's rights and needs are paramount in termination proceedings. *Id.* The primary concern is the best interests of the child.

> 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) (citations omitted).

The record reflects Gabriella was two months old when removed from Ericka's care and was nearly twenty-three months old at the time of the termination hearing. Ericka has an older daughter who was placed in foster care before Gabriella's birth. The older child was removed from Ericka's care due to the sexual abuse of the child and Ericka's failure to properly supervise her. The juvenile court has now given guardianship of the older daughter to her father.

Ericka has an alcohol abuse problem. She has entered and quit treatment on at least four occasions (September 1992, March 1993, September 1993 and January 1994). Completion of an inpatient substance abuse treatment program and participation in an aftercare program were requirements of Ericka's case permanency plan.

Since Gabriella was removed from her care, Ericka had the opportunity to visit her 82 times. Ericka had been expected to meet with her case worker

each time she had a visit with Gabriella. DHS records reflect Ericka attended only 22 visits with her daughter, and had even fewer visits with the case worker.

Ericka did not visit her daughter between December 1993 and June 1994. Among her explanations for missing so many visits was that she was pregnant and the "hot weather" from January to May made her sick. Ericka provided no plausible excuse for missing so many visits with her daughter. Ericka testified at the termination hearing she had been more interested in her friends and in going to the bars than she had been in taking full advantage of her visits with Gabriella.

The record does not support Ericka's contention that DHS wanted to terminate her parental rights as quickly as possible and did not support reunification of the family. In August 1993 DHS informed the mother she had until February 1994 to make progress on her case plan and if she was not able to do so then DHS would recommend termination of her parental rights. Termination proceedings may commence after a child under three years of age has been in foster care for six months. Iowa Code § 232.116(1)(g) (1993). By August 1993 Gabriella had been in foster care for five months and DHS gave Ericka an additional six months to demonstrate progress. There was no rush to terminate Ericka's parental rights. Ericka was given ample time and warning of her need to make progress and she failed to do so. Ericka, and not DHS, was responsible for the failure to reunify her with her daughter.

Ericka argues she has turned her life around as evidenced by her care for her third daughter born shortly before the termination hearing. While Ericka's third child was not in the care of Iowa or Illinois social service agencies at the time of the termination hearing, Ericka's past performance in caring for her older daughters does not bode well for her future ability to parent a child. *See In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990) (parent's past performance may be indicative of quality of future care parent is capable of providing). At the time of the termination hearing Ericka had not yet completed a substance abuse treatment program and had failed to take advantage of the vast majority of opportunities she had for visits with her daughter. Clear and convincing evidence existed to support the juvenile court's termination of her parental rights.

Finally, the mother contends a higher standard of proof should apply in termination proceedings in which DHS records and documents containing hearsay are relied upon by the court. The State correctly notes this issue was not properly raised below and has therefore not been preserved for appellate review. *See In re R.J.*, 495 N.W.2d 114, 117 (Iowa App. 1992) (issue not presented in the juvenile court may not be raised for first time on appeal).

AFFIRMED.