IN THE COURT OF APPEALS OF IOWA

No. 0-447 / 00-515
Filed October 25, 2000

IN THE INTEREST OF
N.R.H. and T.D.H., Minor Children,

C.R.H., Mother,
Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Poweshiek County, Michael R. Stewart, District Associate Judge.

A mother appeals the decision of the juvenile court terminating her parental rights to her two minor children. **AFFIRMED.**

Thomas D. Grabinski, Grinnell, for appellant.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Kelly T. Bennett, Assistant County Attorney, for appellee-State.

Jeffrey L. Garland of Charnetski, Olson, Lacina & Garland, L.L.P., Grinnell, for minor children.

Heard by Streit, P.J., and Vogel and Miller, JJ.

VOGEL, J.

A mother appeals the decision of the juvenile court terminating her parental rights. She claims the State did not present sufficient evidence to support termination of her parental rights. We affirm.

Colleen is the mother of Nicola, born in May 1994, and Tiffany, born in June 1996. Colleen has a lengthy history of legal problems and substance abuse. The family came to the attention of the Department of Human Services (DHS) in August 1994, when Colleen was hospitalized for a drug overdose. DHS founded a report of denial of critical care because Colleen's drug use rendered her unable to give suitable care to Nicola. In October 1995, a second founded report of denial of critical care was made, due to Colleen's inappropriate discipline of Nicola.

Nicola was adjudicated to be a child in need of assistance pursuant to Iowa Code section 232.2(6)(c)(2) (1995). Colleen received parent skill training and in-home services. However, she often missed sessions. Colleen participated in a psychological evaluation, which found she lacked empathy and an attachment to others.

Colleen engaged in a series of criminal activities. In May 1996, she was convicted of possession of marijuana and shoplifting. In February 1997, Colleen was arrested for theft in the fifth degree. In March 1997, she was convicted of driving while license suspended. She was required to perform community service work for these crimes.

The children were removed from Colleen's care in April 1997, after she was arrested for stealing lottery tickets, and placed with Colleen's sister. Colleen

was sentenced to a term of imprisonment not to exceed five years. In September 1996, Tiffany was adjudicated to be a child in need of assistance pursuant to sections 232.2(6)(b) and (c)(2).

In December 1997, the children were placed in a foster home because Colleen's sister was unable to continue caring for them. That same month, the children began supervised four-hour visits about once a month with their mother at the prison. Colleen attended a substance abuse program while in prison.

Colleen was released to a halfway house in August 1998, and her visitation was increased to bi-weekly. All was not well for Colleen in the halfway house as she received disciplinary reports for theft and false statements. Because of her disciplinary problems, she was denied furlough and was unable to attend all scheduled visits with the children. During visits she did attend, Colleen was unable to discipline the children and did not show a bond with them.

In March 1999, Colleen was released from the halfway house and moved to an apartment. The State filed a petition to terminate Colleen's parental rights in March 1999. Nonetheless, DHS continued to make an effort to reunite Colleen with the children; her visitation was increased to weekly visits, and the length of the visits was increased.

The children developed behavior problems associated with visits. Nicola became aggressive, wet her pants, and refused to talk. Tiffany became very agitated. In May 1999, the children began to attend therapy to address these behavioral problems. The therapist determined both of the girls had an adjustment disorder. The therapist found the children had no observable emotional bond with Colleen, and in fact, they indicated emotional distress when

they were with her. The therapist recommended Colleen's parental rights be terminated.

The termination hearing was held in February and March 2000. The juvenile court determined Colleen's parental rights should be terminated under sections 232.116(1)(e) as to Nicola and (g) as to Tiffany. The court specifically found Colleen was not credible. The court also found there were serious concerns for the safety of the children if they were returned to Colleen's care. Colleen appeals.

I. Scope of Review

The scope of review in termination cases is de novo. *In re J.LW.*, 570 N.W.2d 778, 780 (Iowa App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

II. Sufficiency of the Evidence

Colleen asserts the State did not present sufficient evidence to show the children could not be returned to her care, which is an element of sections 232.116(1)(e) and (g).[1] She claims she is now a law-abiding citizen, has completed parenting class, has her own apartment, and is ready to parent the children.

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[1] Colleen contends the State did not present sufficient evidence to support termination of her parental rights under section 232.116(1)(d). However, the termination order terminated only the parental rights of Tiffany's father under this section. Colleen's parental rights were not terminated under section 232.116(1)(d), and we do not address this section.

There is clear and convincing evidence in the record to show the children could not be safely returned to Colleen's care. Because of Colleen's criminal actions, she has been unable to care for her children for a substantial period of time, which diminished her bond with the children. Colleen continued to have disciplinary problems after she was released to a halfway house, which again reduced the amount of time she could spend with her children. She has not demonstrated reasonable and consistent efforts to resume care of the children. Colleen is not bonded with the children, and they experience emotional distress in her presence.

In addition, there is the problem of Colleen's continuing relationship with a man named John, who was Colleen's co-defendant on the charge of stealing lottery tickets. Colleen also admitted to drug usage at the time of the crime. At the termination hearing, Colleen testified she was pregnant with John's child and planned to marry him. Colleen and John do not have a stable relationship. In November 1998, Colleen accused John of sexually abusing Nicola however later retracted the accusation, explaining she only made it to gain some type of revenge against John. As the juvenile court pointed out, due in part to her unstable relationship with John, Colleen is in no position to provide a stable home for the children.

Considering all of these factors, we find there is sufficient evidence in the record to support termination of Colleen's parental rights under sections 232.116(1)(e) and (g).

III. Reasonable Efforts

Colleen contends the State did not make a reasonable effort to reunite her with her children. She believes that while DHS was telling her it was working toward reunification, it was actually taking steps to terminate her parental rights. Colleen asserts she should have been given unsupervised visits with the children, and this would have improved her bond with the children.

Reasonable services must be provided to attempt to reunite a family before the State can terminate parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). Generally, DHS must make reasonable efforts to provide services to eliminate the need for removal. *In re T.C.*, 522 N.W.2d 106, 108 (Iowa App. 1994). The reasonable efforts concept would broadly include a visitation arrangement designed to facilitate reunification while protecting the children from the harm responsible for the removal. *In re M.B.*, 553 N.W.2d 343, 345 (Iowa App. 1996). The nature and extent of visitation is controlled by the best interests of the child. *Id.*

After a review of the services offered to Colleen, we agree with the juvenile court's statement, "The Department of Human Services has gone the extra mile with the family." DHS made a good effort to maintain visits between Colleen and her children while she was in prison. Even after the petition to terminate parental rights was filed, Colleen's visitation was increased in a final effort to reunite her with the children. Colleen was told what she needed to do to gain unsupervised visitation, but she failed in her attempts. Furthermore, the visits proved to be problematic to the children as they developed behavior

problems as the visits were increased. We find the services provided in this case, including the visitation, were reasonable.

Having considered all issues raised on appeal, we affirm the decision of the juvenile court.

AFFIRMED.