IN THE COURT OF APPEALS OF IOWA

No. 0-291 / 99-2009
Filed June 28, 2000

FILED
JUN 28 2000
CLERK SUPREME COURT

IN THE INTEREST OF
K.R., Minor Child,

K.R. and C.A., Parents,
Appellants.

Appeal from the Iowa District Court for Polk County, Karla Fultz, Associate Juvenile Judge.

The parents appeal the court's order terminating their parental rights to K.R. **AFFIRMED.**

James A. Benzoni of Benzoni Law Office, P.L.C, Des Moines, for appellants.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Emily McConkey, Assistant County Attorney, for appellee-State.

Christine Bisignano, West Des Moines, attorney for minor child.

Heard by Streit, P.J., and Zimmer and Hecht, JJ.

STREIT, P.J.

Christine and Kenneth appeal the termination of their parental rights, claiming (1) the court's waiver of reasonable efforts was contrary to law and unconstitutional, (2) the court erred in denying their request for the appointment of an expert and trial transcripts of an earlier termination, and (3) the State failed to prove the statutory elements for termination were met by clear and convincing evidence. We affirm, finding no merit to their claims.

I. Background Facts & Proceedings.

Kenneth and Christine are the parents of Kendrick, born November 26, 1998. Including Kendrick, Christine has given birth to ten children. Her parental rights to six of those children were terminated in Scott County due to her habitual use of crack cocaine, her failure to admit to her addiction, and her flat refusal to follow any rehabilitative directives. A seventh child has spent the majority of his life in placement outside the home. The father of one of those children terminated was Kenneth. His parental rights to that child were also terminated due to substance abuse. Christine and Kenneth then moved to Des Moines and had two more children. Their parental rights regarding these two children were terminated a few weeks before Kendrick's birth for continued substance abuse. In all, three of Christine's children have tested positive for cocaine at birth, and between the two parents there has been a total of five founded child abuse reports. Throughout their lengthy involvement with the department of human services (DHS), the parents were offered in excess of twenty-five different services without a hint of success.

During Christine's pregnancy with Kendrick, she failed to appear for the termination hearing concerning her two older children, and she twice tested positive for cocaine. Kendrick was born a few weeks later; however, DHS was unaware of Christine's whereabouts. The month following Kendrick's birth, Kenneth tested positive for cocaine. In January of 1999 DHS learned Christine had returned to Des Moines and was back living with Kenneth. Kendrick was removed from the home, adjudicated a child in need of assistance (CINA), and placed in foster care. At the adjudication the court waived the implementation of reasonable efforts to reunify the family finding there were aggravated circumstances under Iowa Code section 232.101(14)(c) (1999). The parents moved for reinitiation of reasonable efforts, for the preparation of trial transcripts of the earlier termination at state cost, and for the indigent appointment of an expert to conduct a study on whether the parents' positive drug screens were due to second-hand inhalation from their apartment complex's ventilation system. The court denied all motions. Prior to trial Kenneth and Christine tested positive for cocaine, and neither parent was employed. The court terminated the parental rights of both parents pursuant to Iowa Code sections 232.116(1)(f) and (k).

The parents appeal, claiming the court erred in waiving reasonable efforts, in failing to appoint an expert witness and order transcripts, and in finding there was clear and convincing evidence to support the termination.

II. Waiver of Reasonable Efforts.

The parents first claim the court's waiver of reasonable efforts is contrary to statute and unconstitutional.

A. Standard of Review. We review de novo claims of constitutional error. *In re S.A.W.*, 499 N.W.2d 739, 740 (Iowa App. 1993).

B. The Merits. The parents in arguing the court erred in waiving reasonable efforts offer a mixed bag of statutory and constitutional law. The primary thrust of their argument, however, is reasonable efforts are mandated by statute. In the alternative, they make some rather sweeping constitutional generalizations regarding substantive and procedural due process.

The parents' argument regarding a statutory mandate of reasonable services has no merit. Iowa Code section 232.102(12) (1999) permits a court to waive reasonable efforts if aggravated circumstances exist. The aggravated circumstance in this instance was the parents' parental rights had been terminated "with respect to another child who [was] a member of the same family, and there [was] clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child's removal." *Id.* § .102(12)(c). The promulgation of this statute was in response to the federal Adoption and Safe Families Act of 1997 which demanded the states adopt specific plans for foster care and adoption in order to receive federal funding. 42 U.S.C. § 671(a) (1997). Subsection fifteen of that Act required the State to make reasonable efforts in reunifying the family. *Id.* § 671(a)(15)(B). It, however, also recognized reasonable efforts were not required in aggravated circumstances. *Id.* § 671(a)(15)(D). Therefore, under both state and federal law there is specific authorization for the waiver of reasonable efforts.

The parents' general constitutional claims must also fail. The statutory directive to employ reasonable services, absent aggravated circumstances, does not give rise to a constitutional right. While parents do have a fundamental liberty interest in the care, custody, and management of their child, state-sponsored efforts at reunification are not constitutionally mandated. *Suter v. Artist M.*, 503 U.S. 347, 363, 112 S. Ct. 1360, 1370, 118 L. Ed. 2d 1, 16 (1992); *In re Eden F.*, 741 A.2d 873, 888 (Conn. 1999) ("At no time did the [Supreme Court] suggest that a showing of reasonable or diligent efforts at reunification was itself constitutionally mandated."). Furthermore, the parents are not deprived of procedural due process merely because their previous terminations are taken into account in waiving reasonable efforts. A basic tenet of juvenile law is a court may gain insight into a child's prospects for remaining safe and healthy by reviewing evidence of the parent's past performances, for it may be indicative of the parent's future capabilities. *See In re K.F.*, 437 N.W.2d 559, 560 (Iowa 1980). As such, their constitutional claims must fail.

III. Expert Witness & Transcripts.

The parents next claim the trial court erred in refusing to provide transcripts of the earlier termination and in refusing to appoint an expert regarding the correlation behind second-hand inhalation and positive drug screens.

A. Standard of Review. We review a juvenile court's ruling on perfunctory trial management motions for an abuse of discretion. *In re C.W.*, 554 N.W.2d 279, 281 (Iowa App. 1996).

B. The Merits. The parents sought, at public cost, transcripts of the previous termination proceedings and the appointment of an expert witness. The parents, neither in their brief nor in their argument, were able to provide this court with any authority that indigent parents are entitled to witnesses or transcripts at the state's expense. Failure to cite authority in support of an issue may be deemed waiver of that issue. Iowa R. App. P. 14(a)(3). The issue has been waived. However, even if the juvenile court was to possess some innate power to grant such requests, we could not conclude the trial court abused its discretion in denying the motions. The request for an expert regarding second-hand inhalation of controlled substances was not made until two days into trial, making it untimely. The parents' drug history was well-documented and essentially uncontroverted, making such an appointment wholly unnecessary. The request for transcripts was also unnecessary. Counsel received all the documentary evidence from the previous terminations. That evidence was voluminous and alerted counsel of all issues facing these parents. We find the parents' claims to be both procedurally barred and without substantive merit.

IV. Clear and Convincing Evidence Supports Termination.

The parents claim the State failed to show the statutory elements for termination were met by clear and convincing evidence. Although they profess error as to each statutory ground found by the trial court, "we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm." *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999) (citation omitted). We will therefore limit our analysis to Iowa Code section 232.116(1)(k).

A. Standard of Review. Appellate review of proceedings to terminate a parent-child relationship is de novo; thus, "it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us." *In re O'Neal*, 303 N.W.2d 414, 422 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses whom the court heard and observed firsthand, but we are not bound by those findings. *Long v. Long*, 255 N.W.2d 140, 143 (Iowa 1977).

B. The Merits. Iowa Code section 232.116(1)(k) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.
>
> (2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.
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> (3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

The parents claim the second and third factors were not met by clear and convincing evidence.

We look to the parents' prior acts in determining whether they suffer from a substance abuse problem and if that problem presents a danger to themselves or others. *See In re A.J.*, 553 N.W.2d 909, 914 (Iowa App. 1996). If there is a

substance abuse problem, we must then determine whether the prognosis indicates Kendrick can be returned to their care within a reasonable time. *See id.*

The parents' substance abuse is both severe and chronic. Both parents continue to deny and minimize their drug usage despite numerous failed treatment experiences, a multiple-year history of positive drug screens, the presence of cocaine in three of the children at birth, the admitted usage during pregnancy, and the prior terminations due to substance abuse. It is clear both parents are drug addicts in the truest sense.

Not only is their substance abuse severe and chronic, but also their inability to control the addiction is harmful to themselves and others. Their addiction has clearly been harmful as evidenced by the prior terminations, not to mention the well-documented deleterious physical effects of long-term substance abuse. However, of greater import is the harmful effect their substance abuse has on their son. Throughout the course of these proceedings, both parents have consistently denied their substance abuse affects their ability to parent or has proved harmful to Kendrick. Simply because Kendrick has not yet stumbled into his parents' nefarious affairs does not mean the State must shield its eyes until such time as Kendrick inhales vast quantities of toxins or his parents become so strung out so as to become oblivious of his needs. *See In re I.L.G.R.*, 433 N.W.2d 681, 689 (Iowa 1998) (ruling the State must act to prevent probable harm and need not delay until actual physical harm has occurred). The evidence is clear and convincing both parents have severe and chronic substance abuse problems that tolls harmful effects on themselves and others.

Finally, the parents' prognosis that Kendrick could be safely returned to their care is poor. The parents, over the course of multiple terminations, have been offered every imaginable service. Despite this enormous outpouring by the social service community, the parents have consistently rejected all offers of help. They continue to deny the depth of their addiction and fail to realize the damaging repercussions of their abuse. They have habitually failed to remain drug free despite the termination of eight prior children. Their love for cocaine is clearly stronger than their love for their children. Such a bleak reality does not bode well for Kendrick. The parents' documented history of drug abuse, their denial of an obvious addiction, and their flat refusal to cooperate with services provide clear and convincing evidence Kendrick will not be able to be safely returned to his parents' care. Because the elements of Iowa Code section 232.116(1)(k) are met by clear and convincing evidence, the termination is affirmed.

AFFIRMED.