IN THE COURT OF APPEALS OF IOWA

No. 1-585 / 91-1183

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF

J.B. and M.B.,

Minor Children.

E.B., Mother,

Appellant.

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Appeal from the Iowa District Court for Lee County Joel Kamp, Judge.

Appellant mother appeals from a ruling of the district court terminating her parental rights in her two minor children. **AFFIRMED.**

Gary L. Hoyer of Saunders, Humphrey, Johnson & Hoyer, Fort Madison, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Katherine S. Miller-Todd, Assistant Attorney General, for appellee.

Jerry Gregg, Fort Madison, guardian ad litem for minor children J.B. and M.B.

Considered by Oxberger, C.J., and Schlegel and Habhab, JJ.

OXBERGER, C.J.

A CINA petition was filed on behalf of twin boys, Jonathon and Matthew on April 13, 1989. The twins had been born three months prematurely to Etta, a young woman of seventeen years of age. The mother was under the custody of the Iowa Juvenile Home at the time of the births of the children. The children required intensive medical treatment, and the mother stayed at the hospital to care for the children. The hospital set up an apartment for her and the children. The hospital became concerned that she had limited ability to stimulate and care for the children, and was unable to identify symptoms of illness. The hospital recommended that the children be placed in foster care upon their discharge from the hospital. On July 14, 1989, the children were placed in temporary foster care.

On August 21, 1989, the children were placed at the Adolescent Parent Program in Davenport. Pursuant to the case plan, the twins' mother was required to participate in numerous parental and mental health programs. The mother was reluctant to place her children in foster care for one year until she reached eighteen. She ultimately agreed to the request because she believed in doing so, she could keep her children. She was cooperative in the beginning. Over time however, her cooperation gradually deteriorated. A resistance to intervention developed. She refused to go to school, and to meet the program requirements placed upon

her. She then received notice that her voluntary foster care placement was being terminated on December 20, 1989.

After leaving the program, the twins' mother returned to Iowa City. On December 23, 1989, Matthew was placed in foster care, and Jonathon was placed with him on December 26, 1989. She became hostile toward the caseworkers.

In September 1990 the mother told authorities she wanted to start over and work toward regaining custody of her children. She continued to have difficulty with scheduled meetings and eventually, her visitation with the children diminished. On April 12, 1991, the State filed a petition to terminate her parental rights. A hearing was held on May 21, 1991. During the hearings the mother stated she did not want to cooperate with any more services, and that she did not want to see her children again because she did not want a bond with them. The juvenile court terminated the mother's parental rights on July 2, 1991.

Originally, Matthew and Jonathon were found to be in need of assistance due to their medical conditions upon birth. The mother acknowledged to the court she was unable to properly monitor her very sick children at the time they were adjudicated children in need of assistance. During that same hearing, she affirmatively stated she was not unwilling to provide such treatment and care.

On appeal, the mother asserts that the programs which the juvenile court ordered her to participate in had nothing to do with the reason the children were found in need of assistance. She contends the programs offered were not designed to help her provide appropriate medical care for her children. She asks this court to consider whether there was sufficient evidence upon which to rule her parental rights should be terminated.

SCOPE OF REVIEW: 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.

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

> 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) (citing to Dameron, 306 N.W.2d at 745); see also In re A.C., 415 N.W.2d 609, 613 (Iowa), cert. denied, 458 U.S. 1008 (1987).

In order to prevail in an action to terminate parental rights, the State must prove its case by clear and convincing evidence. In the Interests of C & K, 322 N.W. 76, 78 (Iowa 1982). To support the termination of a parent's right, the court must determine that the child would suffer harm if returned to the parent's care by clear and convincing evidence. See In the Interests of Chad, 318 N.W.2d 213, 219 (Iowa 1982) Types of harm to a child sufficient to support termination are delineated in Iowa Code section 232.2(6). Proof of any one of these harms is sufficient to support termination. In the Interests of C.M.T., 433 N.W.2d 55, 56 (Iowa Ct. App. 1988). There is a rebuttable presumption that the best interests of the child are served by custody of the natural parents. In the Interests of Chad, at 218.

BACKGROUND OF THE MOTHER: At the onset, we note the difficult background of this young women's inauguration into motherhood. The mother was a seventeen-year-old adolescent woman, who had from 1985 to 1988 been placed in eleven places to live. Her homes included residential treatment centers, shelters, a group home, and the Iowa Juvenile Home. She lived from one day to eleven months at each. Her beginnings as a mother did not entail the usual strain of caring for one healthy child but rather two children, prematurely born and ill. As her Case Permanency Plan of 5/10/89 noted, she was pregnant with limited

education, inadequate knowledge of parenting, without financial resources and any support system. It is disappointing that the State, the substituted parent, was unable to better prepare this young mother for parenting.

After the children were born on July 11, 1989, a staffing was held at the hospital to "discuss [the mother's] abilities, or lack thereof, to care for Matthew and Jonathon." The conclusions from this meeting became the foundation for recommendations by hospital staff that the children should not be given to their mother.

We consider the circumstances leading to the conclusions of that July 11, 1989 meeting and the impact of such upon our decision. Beginning with this mother's case permanency plan of May 10, 1989, we find a list of "responsibilities" which were set for her. She was to "abide by the rules and regulations of the Independent Living Program," "seek and secure employment," "participate in parent skill education," "cooperate with court ordered supervision of babies," "practice budgeting finances," and "establish a savings program." During this time the mother was "counseled" on releasing the babies for adoption. The evidence shows she chose to keep the children and hoped to maintain custody.

In the Department of Human Services' report to the court in August 1989, the youth worker stated; "[mother] was reminded of rules and responsibilities both verbally

and written." The August report indicated that because the medical personnel were hesitant about the mother, she was placed in a mock apartment to "demonstrate" her ability to be a mother. Extensive notes were then kept by nurses and copies were provided to the court. We find the notes meticulously scrutinized the mother's performance. Reports included the mother's failure in leaving one child on the bed while she took the other in her arms. She was reported for trying to feed both babies at the same time. A hospital social worker decided a girlfriend of the mother's was a "bad influence." As a result, the mother and the friend were prevented from visiting. When the girls violated this decision, they were noted as "argumentative" with nurses. The mother was reported for leaving to do laundry while the children slept in the crib. Responsibilities were presented to the mother in the following fashion:

> Responsibilities for Jonathon and Matthew to be done by the Mother.
>
> 1. Will be responsible for Jonathon's and Matthew's daily baths and cares.
> 2. Will do all feedings.
> 3. Will notify nursing personnel before leaving the unit and upon return.
> 4. Will be off unit no longer than 1 hour at mealtime and 20 minutes for shorter breaks.
> 5. Will notify nursing personnel of any problem, questions, and/or concerns.

When asked to set a schedule regarding when she would visit her children, she resisted. Seven days later, the July 11, 1989 staffing meeting at the hospital occurred.

At this meeting the mother was determined to be 1) unable to pick up on symptoms of illness, 2) inconsistently follows routines and 3) was unable to "properly stimulate the boys." Upon review, we find a dramatic inconsistency with these conclusions and the nursing reports on the behavior of the mother toward her children.

On June 14, 1989, the hospital chart reported "[mother] handles babies caringly, holding enface position, kissing and talking to the child." On June 16, 1989, the chart reported "[mother] is reminded to bundle up the babies warmly. Later that day she was observed bundling the baby correctly." On June 20, 1989, the chart reported "[mother] held Matthew close with face-to-face contact, kissing and talking with him". On June 17, 1989, the chart reported "[mother] detects Matthew's abdomen distended, she continued to feed then alerted the nurse." On June 23, 1989, the chart noted "[mother] noticed irritation in Jonathon, she alerted the nurse." On June 26, 1989, the chart noted "[mother] alerted the nurse that Jonathon's ID band was too tight, she requested that the nurse remove and replace it with a looser one. The nurse agreed and took appropriate action."

Concern was expressed that this mother "inconsistently follows routines." In light of this, the caseworker indicated the twins would need a strict feeding schedule. There is, however, no indication that this mother is unable

or unwilling to feed her children in such a manner. One caseworker report regarding this mother's motivation stated: "if [mother] thinks she will like the task, she does put a lot of effort into it." There is no merit to the State's inference that this mother would fail in feeding her children on schedule.

Reporting about the mother, the caseworker complained to the court:

> She did not follow instructions the first time and Medicaid was denied. This worker had to put extreme pressure on [mother] to take care of this responsibility in order for the twins hospital bill to be paid for. A great deal of energy and time has been devoted to [mother]. In turn, she has been belligerent and defiant with her independent caseworker.(emphasis added)

Upon our de novo review of the record and the evidence, we find a tragic escalation of conflict. On the one side is social services, speaking of "offering opportunities" to help. On the other side is an adolescent mother who perceives only "rules and requirements" and authority unfairly involving itself in her family's life. The State notes that this mother testified she did not want a strong bond between herself and the boys. The State now draws attention to her diminishing visitation with the children.

MOTHER'S MOTIVATION, DISENFRANCHISEMENT OF PARENT: In light of the circumstances of this case, we cannot ignore the effect of the government's involvement on this mother's relationship with her children. It is not unreasonable to conclude that a seventeen-year-old parent, without

financial resources, and without family support, can lose hope of retaining her child, when the forces of government with its vast resources intervenes. It should come as no surprise that such hope would erode over time in attempting to challenge the manner in which government is "assisting." It is reasonable to conclude there are circumstances in which a parent would "give up" and believe it better not to have a strong bond with the child. We find this mother's conduct of visitation with the children and statements of bonding arise from such circumstances. We find no merit to the inference that this mother does not now care for her children.

SERVICES REQUIRING THE MOTHER'S PARTICIPATION: The mother asserts it was inappropriate to require her to successfully complete counseling services, parenting assistance services, and mental health services where her children were adjudicated CINA based upon a medical condition that she could not adequately monitor. At the hearing on the CINA petition, the mother was present and represented by counsel. During this hearing, the State introduced the testimony of caseworker Nancy Gutman. Ms. Gutman specifically addressed recommendations regarding the mother. She recommended that the mother be placed in an independent living program, participate in parent skill development and the Alcohol Anonymous program. On cross-examination counsel asked if the services proposed

for the mother dealt with the medical knowledge she would need to care for the children. Apart from reference to education by nurses at the hospital, no other services were clearly recommended to assist her in this area. Counsel did not, however, object to the recommendations put forth by the State. We find the mother's attempt now to argue this issue on appeal is untimely. Furthermore, all the other services were necessary to prepare the mother for parenthood. However, there must be a better way to address the needs of a young mother than were offered in this case. The department should use this case as a learning device to do a better job in the future. Throwing many tasks all at once at a teenage mother without adequate emotional support will only result in failure again in future cases.

TERMINATION OF PARENTAL RIGHTS: We next consider whether there was clear and convincing evidence upon which to make a finding that the parental rights of this mother should be terminated. The State argues the children cannot be returned safely to their mother's care. In support of this position, they note that the mother "before conception" of the children had problems. They point to the mother's delinquency, truancy, running away, impulsive and poor decisions, substance abuse, and defiance toward authority. They conclude their argument by noting she was placed at the Iowa Juvenile Home.

We agree the mother cannot adequately parent these children. The department must share some of the blame, they have had her in their custody for several years. The seventeen-year-old mother must bear a large measure of responsibility for her own failures. However, we cannot delay the future of these children while finger-pointing the blame for lack of parenting. Hopefully the department will improve its performance in future cases. Hopefully the mother will face up to her responsibility to improve herself. In the meantime, we find the needs of the children will be best served by affirming the trial court's decision to terminate the parental rights of Etta.

AFFIRMED.

Habhab, J., specially concurs; Schlegel, J., dissents.

HABHAB, J. (specially concurring)

I concur in the result only. Without direct input from the department as to their reasoning, I decline to be critical of their conduct.

SCHLEGEL, J. (dissenting)

For the reasons set forth by the majority, I would reverse.