IN THE COURT OF APPEALS OF IOWA

No. 6-213 / 95-2127

IN THE INTEREST OF J.H., Minor Child,

R.H., Mother,

Appellant.

FILED
MAY 31 1996
CLERK SUPREME COURT

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

The mother appeals from the order terminating her parental rights as to J.H.

AFFIRMED.

Robert E. Tucker, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Maureen McGuire, Assistant Attorney General, John Sarcone, County Attorney, and Jaki Livingston and Ray Blase, Assistant County Attorneys, for appellee.

M. Kathryn Miller, Des Moines, attorney and guardian ad litem for minor child.

Considered by Sackett, P.J., and Huitink and Streit, JJ. Vogel, J., takes no part.

SACKETT, P.J.

The juvenile court terminated the parental rights of Roxanne to her daughter Joy, born in April 1986, and Roxanne now appeals. She contends (1) the State failed to prove by clear and convincing evidence her parental rights should be terminated and (2) the State failed to make reasonable efforts to preserve the family relationship. Joy's birth father consented to termination of his parental rights and is not a party to this appeal. We affirm.

We review de novo but give weight to the findings of the juvenile court, particularly on the issue of credibility of witnesses. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). The State must prove its case by clear and convincing evidence in order to terminate Roxanne's parental rights. *In re D.T.*, 418 N.W.2d 355 (Iowa App. 1987).

Roxanne first contends there is not clear and convincing evidence her parental rights should not be terminated because the State did not prove by clear and convincing evidence her parental rights should be terminated under Iowa Code section 232.116(1)(e) in that the State failed to show Joy could not be returned home. The State argues the juvenile court was correct in terminating Roxanne's parental rights under this section because Roxanne suffers paranoid schizophrenia and has special needs. We agree with the State Roxanne's mental illness prevents her from caring for her child without constant supervision. The Iowa supreme court has said a parent's mental illness is a proper factor for the court to consider insofar as it effects his or her

ability or inability to care for his or her child. *See In re J.W.D.*, 456 N.W.2d 214, 218 (Iowa 1990); *In re R.M.*, 506 N.W.2d 463, 464 (Iowa App. 1993). Roxanne suffers a mental impairment and has been diagnosed as a schizophrenic. This condition rendered Roxanne unable to meet Joy's needs and is the reason Joy was removed from Roxanne's custody.

Roxanne was treated in a mental hospital for about six months and has been in programs and under the care for her mental illness since that time. Her illness has not been treatable and, although there have been positive signs, there also are relapses. When there are relapses, Roxanne is out of touch with reality and has delusions.

Roxanne loves her daughter and Joy loves her mother. Roxanne has made progress, but her mental disability prevents her from developing the stable existence a parent needs in order to adequately care for his or her child. We agree with the State there is clear and convincing evidence Joy cannot be returned to her mother's care under the current circumstances.

Roxanne contends, because she is a paranoid schizophrenia, she suffers a disability and should have life-long specialized services and is protected under the Americans With Disabilities Act. She contends rather than termination her older daughter should be established as the guardian of Joy.

The State's argument reveals it relies on Roxanne's mental illness in advancing Roxanne is not able to care for Joy. Roxanne's mental disabilities prevent her from

caring for Joy. Roxanne contends because her mental disabilities prevent her from caring for her child, she should be supplied with the services necessary to allow her to care for Joy. Roxanne would need nearly around-the-clock assistance before Joy could safely be placed in Roxanne's custody. Roxanne is a single parent and she alone cannot provide the necessary care. She does not have the financial ability to purchase the necessary services.

The State plan treated the daughter and mother separately and made no effort to place them together based on an opinion of a doctor treating them both. For efforts to solve the problems of the family, it is necessary to focus on the family as a whole. We agree with Roxanne that was not done. We also agree with Roxanne the services offered were not structured to accommodate her disability and allow her to retain custody of Joy. But we also recognize, until this point in time, Roxanne has not challenged the State on this issue. Perhaps more importantly, Roxanne has failed to request such specific services.

It is well established cases involving child custody and care should not be prolonged. Also, before a termination case reaches this stage, there are numerous opportunities for a parent to request services from the State and challenge the offered services as inadequate. That was not done in this case. Roxanne, in failing to do so, has waived her challenge that the State failed to supply services to accommodate her disability and we will not address it at this late date. *See In re B.K.K.*, 500 N.W.2d 54, 46-57 (Iowa 1993).

There is evidence Joy will be adopted by her foster parents. Having found there are grounds for terminating Roxanne's parental rights, we need to determine what situations will be better for Joy. If Joy is adopted by her foster parents, she will maintain stability of residence. We have not a magic ball to allow us to predict whether Joy's mental health would be better served by the adoption or to return her to her mother's custody with extensive services. Roxanne and Joy are bonded. They are concerned for one another. Joy has a strong relationship with her older biological sister. Termination of Roxanne's parental rights will not cut off the emotional ties Joy has to her birth family. She obviously will continue to suffer emotional trauma as a result of her mother's inability to care for her. It would appear Joy will be better served by the termination and subsequent adoption.

Joy's guardian ad litem has joined with the State in asking for termination. The guardian ad litem has further responsibility to monitor the case until the adoption of Joy by her foster parents is finalized.

AFFIRMED.