

IN THE COURT OF APPEALS OF IOWA

No. 7-114 / 96-1775

IN THE INTEREST OF J.L.S., Minor Child,
S.S., Mother,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

Mother of minor child, J.L.S., appeals a district court ruling continuing the placement of her oldest daughter in long-term foster care and terminating her parental rights to her youngest daughter. **AFFIRMED.**

Kay E. Dull of Kay E. Dull, P.C., Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Rhoda Tenuta, Assistant County Attorney, for appellee State.

Joseph Kertels of the Juvenile Law Center, Sioux City, guardian ad litem for minor child.

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

STREIT, J.

Mother of minor child, J.L.S., appeals a district court ruling continuing the placement of her oldest daughter in long-term foster care and terminating her parental rights to her youngest daughter. Mother contends: (1) there was not clear and convincing evidence J.L.S. could not be returned to her; (2) her lower functioning mental capabilities does not mean she could not effectively parent J.L.S.; (3) the State failed to adequately provide her with services with a goal toward reunification; (4) J.L.S. and her sister should not be separated without a compelling reason; (5) the court should have ordered continued long-term foster care with support for her continued visitation privileges; and (6) the court failed to consider the adoptability of J.L.S.

Sherry S. is the mother of two minor children, Jammie S., born October 9, 1980, and Jessica S., born September 15, 1986. Only Jessica is the subject of the present appeal.

The family first came to the attention of the Department of Human Services (DHS) in September 1990 following a child abuse referral. The DHS had concerns regarding lice, nutrition, and a dirty home. Jammie was discovered to have contracted chlamydia, a sexually transmitted disease. Sherry, however, failed to keep doctors appointments. Jammie's school reported she had missed sixteen out of thirty-five days and had been tardy eight times. Ten of the days missed were due to head lice

problems. During an interview with social workers, Jammie stated her Uncle Gary had intercourse with her and her mother knew about this but continued to allow Gary to babysit. When confronted with this information, Sherry stated Jessica had also been molested and that Jammie had been raped when she was nine years of age.

DHS social workers found the family home was overrun with cockroaches and the family had been without food for two weeks. Although services were offered to Sherry, she failed to fully participate in them. As a result, a child in need of assistance petition was filed on behalf of both children on November 9, 1990. The parties stipulated the children were in need of assistance, but the children remained in Sherry's care.

Tests conducted by DHS revealed that Sherry was low-functioning and exhibited a mixture of schizoid and avoidant personality traits. Sherry was ordered to participate in Parental Survival classes and homemaker services. In March 1991, a referral was again made to DHS, alleging Jammie had again been sexually assaulted by her uncle. The police placed Jammie in a shelter while Jessica was placed in foster care. During the investigation, it was discovered the uncle had taken several photos of Jammie in sexually explicit positions. The uncle later admitted to the sexual contact.

An application for temporary removal of both girls was filed on March 20, 1991. Sherry offered no resistance to their removal. Following a hearing, the court ordered both children placed in foster care and that Sherry continue to receive services.

A review hearing was held in December 1991. Social workers stated the children had been having difficulties following unsupervised visitation from Sherry and requested any further visitation be supervised. The social workers expressed their concerns about Sherry's ability to provide for and protect the children, even though Sherry was cooperating and participating in family services.

At a June 1992 review hearing, social workers testified that although Sherry continued to attend the Parental Survival program, they had doubts about her ability to protect the girls from further sexual abuse. Jammie was diagnosed as having a learning disability, and Jessica was found to exhibit severe behavioral problems and sexually inappropriate behaviors.

During the summer of 1992, Sherry was again allowed unsupervised visitation; however, both girls demonstrated regressive behavior immediately after the visits. DHS did acknowledge there appeared to be a strong bond between the children and their mother. DHS also determined that due to the children's ages and behavioral difficulties, it would be difficult to place them for adoption. DHS therefore recommended long-term foster care continue.

Following a September 1992 review hearing, the district court concluded that despite the many difficulties facing the family, the children and Sherry had developed a strong bond. The court also found Sherry could not adequately insure the girls' safety. The court concluded termination would not be in the children's best interest. In September 1993, Jammie stated in a review hearing that she no longer wanted to have visits with her mother. Visitation between Jammie and Sherry was subsequently suspended. Jammie later expressed a great deal of anger toward her mother. Further psychological examinations revealed Jammie was suffering from over-anxious disorder with hallucinations, post traumatic stress disorder, and possible dissociative disorder.

Sherry's visitation with the children decreased significantly between December 1993 and May 1994. Both Jessica and Jammie exercised visitation with their mother, but each time exhibited anxiousness and stress. Both children declined further visitation with their mother after December 1994.

Sherry was continually offered services from Lutheran Social Services but failed to complete them. In August 1995, Lutheran Social Services recommended Sherry's parental rights be terminated. DHS also recommend termination. In June 1996, the State filed a petition for termination of Sherry's parental rights. The hearing was held in September 1996. At the hearing, social workers testified the two children made considerable progress while in foster care and the children had been assimilated

into their new families. Sherry testified she had not sought visitation with the children due to lack of transportation. She testified she was capable of taking care of the children, but if she could not have custody, then she wished to have visitation.

The court ruled that whatever bonding had existed between Sherry and the children had ceased to exist. The court terminated the parental rights of the children's natural father, and the court terminated Sherry's parental rights to Jessica. The court reasoned Jessica was still capable of being adopted, while it was too late for Jammie. The court ordered Jammie to remain in long-term foster care, with guardianship and custody remaining with DHS. Sherry has appealed.

Sherry argues the State failed to show clear and convincing evidence that Jammie could not be returned to her custody as provided in Iowa Code section 232.102 (1995). She points out that she is living with a family who trusts her to provide child-care for four-year old twins. Sherry further asserts her due process rights were violated because the State failed to actively seek reunification. Sherry next maintains the juvenile court erred in considering nonrelevant exhibits. She additionally contends the juvenile court erred in separating the two children without good and compelling reasons.

Appellate review of termination proceedings is *de novo*. *In re W.G.*, 349 N.W.2d 487, 491 (Iowa 1989), *cert. denied sub nom., J.G. Tauke*, 469 U.S. 1222

(1985). We give weight to the findings of fact made by the juvenile court, but we are not bound by them. *Id.* at 491-92.

In this case, the girls were temporarily removed from their mother's care in 1991 after Jammie made allegations of abuse by her uncle and those allegations were confirmed. No abuse of Jessica was ever found. In 1992, a permanency hearing was held for both girls. DHS recommended long-term foster care for both girls. The department acknowledged a strong bond between the mother and the girls. The mother was consistent in her attendance and participation in the Nurturing Program and at the Parent Survival Program and had continued to make efforts to improve upon her parenting skills. The department questioned whether the mother could keep the girls safe from further sexual abuse if they were in her custody. The court concluded though "due to the children's special needs and the mother's lower functioning level, there currently are no services available to alleviate the need for an out-of-home placement."

Visitation for the next couple of years was sporadic because of problems with transportations or conflicts with the foster family. Some visitations were supervised and others were unsupervised. The department found visits between the mother and children became less and less significant after 1994. The department contacted Lutheran Social Services to provide some help to the mother in order to make the

visits more meaningful, but the mother failed to make any appointments. Finally, visitations ceased with both of the girls.

At the time the permanency order was entered in March 1996, the Department of Human Services had received guarantees from the foster family they would be willing to provide placement for both girls on a long-term basis. They recommended termination of parental rights upon a petition that had been filed in February. The court continued long-term foster care pending a hearing on the petition for termination of parental rights. Two weeks prior to the date of the termination hearing, however, Jessica was removed from the foster home she had resided in for the last five years, due to allegations of sexual abuse by one of the foster parents. Jessica has been moved to another foster family, but it is not a long-term candidate.

Jessica is ten years old. She has severe behavior problems and expresses sexually inappropriate behaviors. In 1992 she was diagnosed as having an oppositional defiant disorder and major depression. Jessica has, however, made progress in foster care. Although no specific plans for adoption for Jessica were presented at trial, the juvenile judge concluded she was capable of being adopted. We give weight to the findings of the juvenile judge.

There is a rebuttable presumption that the best interests of a child is served when custody is with the natural parents. *See* Iowa Code § 232.1 (1997). “Termination is an outcome of last resort. To legally end a relationship with an

ineffectual but loving and caring mother, without being reasonably assured of any hope of permanency with an adopted family is of doubtful advantage” *In Interest of S.J.*, 451 N.W.2d 927, 832 (Iowa 1990).

“Children cannot wait for responsible parenting. Parenting cannot be turned off and on like a spigot. It must be constant, responsible, and reliable.” *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). A child should not be forced to endlessly suffer the parentless limbo of foster care. *In re D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990). Long-term foster care is not preferred to termination of parental rights. *In re R.L.*, 541 N.W.2d 900, 903 (Iowa App. 1995). We must not gamble on the child’s future by awaiting the mother’s maturity. *Id.*

In making a determination as to whether the children can be returned to the custody of the parents, we must look at the best interests of the children. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). It is not likely Jessica will ever be returned to Sherry’s care. Mindful of the uncertainty Sherry will ever be in a position to parent Jessica, we affirm the juvenile court’s terminating Sherry’s rights.

AFFIRMED.