IN THE COURT OF APPEALS OF IOWA

No. 0-132 / 99-1679
Filed April 28, 2000

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CLERK SUPREME COURT

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

M.W., Mother,
Appellant.

Appeal from the Iowa District Court for Dickinson County, David C. Larson, District Associate Judge.

The mother of minor child J.W. appeals a district court order terminating her parental rights. **AFFIRMED.**

Priscilla E. Forsyth, Spirit Lake, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Bethany Brands, Special Assistant County Attorney, for appellee State.

Shannon Sandy of Sandy Law Firm. P.C., Spirit Lake, guardian ad litem for minor child.

Considered by Mahan, P.J., and Zimmer, J., and Peterson, S.J.*

* Senior Judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

PETERSON, S.J.

Marquella and Nathan are the parents of Jerra, who was born on June 6, 1997. Only Marquella appeals the juvenile court decision terminating their parental rights. She claims the district court erred in ruling the State had proved by clear and convincing evidence the minor child could not be returned to her care and the termination was not in the child's best interest and, if termination was appropriate, custody should have been granted to her mother, Brenda. We affirm.

Marquella came to the attention of the Department of Human Services (DHS) when she was fifteen years of age. There was an investigation and it was determined Marquella had been a victim of sexual abuse. She was provided services at that time which consisted of sexual abuse treatment for her and Brenda as well as in-home counseling. Her participation in these services was initially fairly regular but, as time went by, she became less compliant. She was subsequently adjudicated a delinquent as a result of possession of alcohol as a minor and an assault charge.

Marquella, in discussing her relationship with Brenda at that time, said she would be mouthy and Brenda would slap her and this occurred throughout her childhood and teenage years. As a teenager, she would spend weekends with boyfriends or other friends and it was known there was drinking, use of drugs, and sexual activity at these times. She became tired of school and would miss many days of school. Eventually she was denied attendance because she had surpassed the number of days she could miss. Marquella continued living with

Brenda until she was seventeen, when she left home and moved in with some friends at Rolfe, Iowa.

In July of 1996, she suffered a stroke which was quite debilitating in nature. She participated in extensive rehabilitation, but the stroke left her with some permanent damage.

On June 6, 1997, Jerra was born. In September of that year, an allegation was made to DHS that Jerra was left alone and fed only sugar water. As a result of that allegation, a child abuse investigation was conducted and although the abuse was unconfirmed, it was recommended Marquella be provided with some services in her home. Initially she was hesitant to allow these, however, ultimately she did agree to have community treatment services as well as services from the community health nurse. The health nurse was not always allowed in Marquella's home, and she did have some concerns about the care being provided Jerra. She was concerned as to whether Marquella was able to read the formula can and was afraid Jerra's formula had been improperly mixed. The nurse also was concerned Marquella was feeding Jerra food that was too advanced for her age and digestive system at that time and Marquella had not started any immunizations for Jerra. At times Marquella would leave Jerra with other individuals and she did not know the provider's name or how to contact them.

On the evening of November 4, 1997, Marquella planned a birthday party for herself in her apartment. A number of friends came over and were drinking quite heavily and became intoxicated. Marquella had a seizure, and she was

taken to the hospital and admitted. Jerra remained at the apartment with the participants of the party until Brenda was called. Brenda came to the apartment and took Jerra home.

The following day, DHS was contacted by the hospital staff. They became alarmed because Marquella had come out of the seizure the next morning and she did not know where Jerra was.

A petition alleging Jerra to be a child in need of assistance was filed, and Jerra was removed from Brenda's care and was placed in the a foster home. Jerra has continued to reside in that foster home On November 20, 1997, Jerra was adjudicated to be a child in need of assistance.

At that time, DHS began to provide services to Marquella. These services included work on parenting skills, assistance in making appointments, cooperation with the child support recovery office, a psychological evaluation, and a substance abuse evaluation. Supervision was also provided for visits with Jerra.

A psychological evaluation was performed upon Marquella in January and March of 1998. The evaluation in January raised concerns that she had significant cognitive limitations which would negatively impact her ability to profit from social service interventions designed to improve her parenting care and supervision of Jerra. The March evaluation determined Marquella had a full-scale I.Q. scale of seventy-two, which placed her in the borderline range of intellectual functioning. Her verbal I.Q. was sixty-eight, which was below the second percentile, and her performance I.Q. of eighty-one, places her below

average range and at the tenth percentile. Home and health and parent education services were recommended but the evaluation indicated it should be expected her ability to show sustained gains would require lengthy delivery of services. Her long-term prognosis was difficult to predict. It could not be predicted if she could genuinely achieve a level of competency to adequately parent and supervise Jerra.

Marquella did not cooperate with the child support recovery unit to establish paternity of Jerra's father. The substance abuse evaluation was completed, although Marquella missed two appointments. The evaluation found Marquella was not chemically dependent.

The current service provider supervising the visitations felt Marquella acted appropriately and did a good job of parenting but was unable to predict if she would be capable of full-time care for Jerra. A prior service provider as well as two DHS case workers that have been involved in Marquella's case felt Jerra could not be returned to Marquella's care at the present time.

Marquella was initially resistive to the services being provided to her but has become more receptive to the services and has made some progress in improving her parenting skills. She has worked as an exotic dancer at a local establishment as well as at other places in other cities. She concedes this is a dangerous occupation because of the possibility of prostitution and drug activity. On one occasion, she journeyed to another state with an individual she had just met. As a result of that relationship, she was stabbed in the hand which required medical attention.

She contends she is no longer engaged in that activity; however, she was recently observed outside an establishment that employs exotic dancers and dressed as if she was still dancing.

In August of 1998, she moved back to live with Brenda. Also living in that home is Arnie, Brenda's boyfriend, and Dustin, Marquella's boyfriend. Although Marquella has had difficulty with Brenda in the past, she contends they get along well at this time.

Jerra appears to be happy when she sees her mother at the visitations, and they interact together. However, she is not upset when the visitation is concluded. Jerra has no difficulty returning to her foster home, and the foster family expresses much love for Jerra. Jerra appears to be bonded and attached to the foster family. Jerra is strong in all developmental areas and functions above age level in all domains including expressive and comprehensive language, cognitive development, self-help skills, small and gross motor skills, and social development. There are no medical concerns at this time, and the foster family obtained all the necessary immunizations.

A permanency assessment concerning Jerra and Marquella was completed in September of 1999. That report recommends Jerra not be returned to Marquella's care because her cognitive deficits from her stroke present a major hurdle in assuming full-time care of Jerra. There were serious concerns about Marquella's ability to deal with the everyday details of parenting including retaining important information, making appropriate decisions, thinking ahead, and dealing with the challenges a very bright child will present.

The report does not recommend Jerra be placed in Brenda's custody because Brenda believes Marquella is capable of having custody of Jerra and does not recognize Marquella's intellectual problems.

I. Discussion. Proceedings to terminate parental rights are reviewed de novo. Iowa R. of App. P. 4. We review the facts as well as the law and adjudicate the parent's rights anew. *In re Dameron,* 306 N.W.2d 743, 745 (Iowa 1981). Our primary concern in a termination proceeding is the best interest of the child. *In re R.R.K.,* 554 N.W.2d 274, 275 (Iowa App. 1995). Those best interests are determined by looking at the child's long-range as well as immediate interests. We consider what the future likely holds for the child if that child is returned to his or her parent. Insight for that determination may 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. *In re L.L.,* 459 N.W.2d 489, 493 (Iowa 1990).

Parental rights may be terminated under section 232.116(1)(g) if it is established the child in question is three years of age or younger and the child has been adjudicated a child in need of assistance pursuant to Iowa Code section 232.96, and the child has been removed from the physical custody of the child's parents for at least six of the last twelve months and there is clear and convincing evidence that the child cannot be returned to the custody of the child's parents. The fourth requirement can be met when the child cannot be returned to the parental home because a definitional ground of a child in need of assistance pursuant to section 232.2(6) of the Iowa Code exists. *In re A.L.,* 492

N.W.2d 199, 202 (Iowa App. 1992). Iowa Code section 232.2(6)(n), provides a child in need of assistance means an unmarried child whose parent or guardian's mental capacity or condition . . . results in a child not receiving adequate care.

It has been established by clear and convincing evidence the stroke Marquella sustained has caused a significant disability. The psychological evaluation indicated she is borderline in intellectual functioning. She has deficits in word fluency, memory, verbal expression, word knowledge, attention, and concentration. It was further indicated while home and parent education services were recommended, it should be expected her ability to show sustained gains would require lengthy delivery of services. The long-term prognosis was difficult to predict as to whether she can genuinely achieve a level of competency to adequately parent and supervise her daughter. Service providers as well as workers from DHS express an opinion Marquella cannot adequately parent Jerra because of her intellectual limitations. The psychological evaluation raised serious concerns about Marquella's ability to deal with the everyday details of parenting, including retaining important information, making appropriate decisions, thinking ahead, and dealing with the challenges of this very bright child.

Marquella requests if Jerra cannot be returned to her, she should be placed in the custody of Brenda. The psychological evaluation does not recommend this type of placement. This is based on Brenda's lack of awareness of Marquella's intellectual problems. Brenda's past performance as a parent of

Marquella also would indicate this would not be an appropriate placement. It also would be tantamount to placing Jerra in the custody of Marquella.

In conclusion, we find the State has established by clear and convincing evidence Jerra cannot be returned to the care of Marquella and it is in Jerra's best interest to terminate Marquella's parental rights. Placement with Brenda would not be appropriate.

AFFIRMED.