IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF B.K.E. and R.R.E., Children,

L.C., Natural Mother,

Appellant.

8-292
87-1339

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Appeal from the Iowa District (Juvenile) Court for Scott County (J(T)4651-0284), John A. Nahra, Judge.

The natural mother appeals the juvenile court's termination of her parental rights. **AFFIRMED.**

Gary D. McKenrick of Gomez, May, McKenrick & Kelly, Davenport, for the appellant mother.

Thomas J. Miller, Attorney General of Iowa, and Charles K. Phillips, Assistant Attorney General, for the appellee State.

John Aitken, Davenport, guardian ad litem for the children.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

SCHLEGEL, J.

L.C., natural mother of B.K.E. and R.R.E., appeals the juvenile court's termination of her parental rights. On appeal, L.C. contends that: 1) the termination was unlawful because it was done on the authority of a 1984 termination petition which had been continued several times; 2) the psychologist opinion testimony as to the truthfulness of B.K.E.'s testimony was inadmissible; and 3) the juvenile court should have considered and applied Iowa Code section 232.116(6)(d) (1983). Our review of proceedings to terminate a parent-child relationship is de novo. 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 Dameron, 306 N.W.2d 743, 745 (Iowa 1981). We affirm.

L.C. (mother) and R.R.E., Sr. (father), are the natural parents of four children, M.P.E., A.M.E., B.K.E., and R.R.E. In 1984 the State filed a petition to terminate the parental rights of both parents with regard to all four children. R.R.E.'s parental rights to all four children were terminated. With respect to L.C., however, the 1984 orders provided for a continuation of the question of whether to terminate her parental rights. In 1985, after a further hearing, L.C.'s parental rights were terminated with regard to the two younger children, M.P.E. and A.M.E., and such termination was affirmed by the Iowa Court of

Appeals in 1986. In the present proceeding, the juvenile court, still acting under the authority of the 1984 termination petition, terminated L.C.'s parental rights with regard to B.K.E. and R.R.E. L.C. has appealed from this termination order.

L.C. first challenges the jurisdiction of the juvenile court. She contends that the termination order with respect to B.K.E. and R.R.E. was unlawful because there had been no new termination petition filed since 1984. In support of her argument, L.C. cites Iowa Code section 232.117(2)(3)and (4), which essentially provide that a termination court has three options after a termination hearing: 1) to terminate parental rights, 2) to dismiss the petition, or 3) to decline to terminate, but to order a CHINA disposition. Iowa Code † 232.117(2)(3)(4) (1983). L.C. specifically argues that when the juvenile court declined to terminate and instead continued the matter to two later hearings, her constitutional rights under the United States and Iowa constitutions were violated.

Although a novel argument, we are not persuaded in this case that the juvenile court's decision to continue a parental termination hearing is unlawful, and deprives the court of jurisdiction in further proceedings in the same matter. Although not directly on point, we are guided by Iowa Rule of Civil Procedure 183(a) which provides that the granting or refusal of a motion for continuance rests

largely in the sound discretion of the trial court and such discretion is very broad. A reviewing court will interfere with the actions of the trial court in this matter only where there has been a clear abuse of discretion. State v. Kyle, 271 N.W.2d 689, 691 (Iowa 1978). In the absence of any authority which specifically requires the refiling of a parental termination petition as to each and every hearing in a particular case, we believe that the court's decision to continue the matter in this case was without error. Appellant failed to prove that she suffered any prejudice because of the court's continuance, and in fact, benefited from the court's willingness to allow her additional time to prove herself as a fit and responsible parent. We find appellant's argument to be without merit.

L.C. next contends that the juvenile court erred in admitting a psychologist's opinion testimony that B.K.E. was telling the truth when he claimed his stepfather sexually abused him. She argues that such testimony invades the province of the factfinder and falls outside the scope of opinion testimony allowed by Iowa Rule of Evidence 702.

The Iowa courts are generally committed to a liberal rule which allows opinion testimony if it will aid the jury in screening the properly admitted evidence to ascertain the truth. State v. Hall, 297 N.W.2d 80, 84 (Iowa 1980), cert. denied 450 U.S. 927, 101 S. Ct. 1384, 67 L. Ed. 2d

359 (1981). When a trial court has exercised its discretion to admit expert testimony, we reverse only upon an abuse of that discretion. Id. at 86. An abuse of discretion occurs when the trial court's ruling is based on untenable grounds. State v. Morrison, 323 N.W.2d 254, 256 (Iowa 1982).

Iowa Rule of Evidence 702 provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

In State v. Myers, 382 N.W.2d 91, 98 (Iowa 1986), our supreme court held that it was reversible error to allow testimony by an "expert" to the effect that minor children of sex abuse crimes rarely lie in regard to the event, and concluded that "expert opinions as to the truthfulness of a witness is not admissible pursuant to rule 702. [T]he effect of the expert opinions in this case was the same as directly opining on the truthfulness of the complaining witness." Id. at 97.

In the case at bar, L.C. argues that, pursuant to the court's decision in Myers, Dr. Richard Whittlesey's letter (petitioner's exhibit "13") which opined that B.K.E. was telling the truth when he stated that he had been sexually abused by L.C.'s then-husband, H.M., as well as Dr. Whittlesey's testimony at trial that the child had been

quite honest with him as he "brought in problems that he experienced," were inadmissible. We believe, however, that Myers is distinguishable from the present case. The ultimate issue here is whether or not it has been demonstrated by clear and convincing evidence that B.K.E. and R.R.E. cannot be returned to the care of their mother, L.C. Accordingly, we agree with the State's argument that the focus of the juvenile court in this matter is on the best interests of the children involved, not the guilt or innocence of the perpetrator. This is a situation unlike that in Myers, in which the jury was called upon to determine the guilt or innocence of a man charged with indecent contact with a child. In excluding the expert testimony, the court stated "[w]e believe the effect of the opinion testimony was to improperly suggest the complainant was telling the truth and, consequently, the defendant was guilty." Id. at 97-98. Here, Dr. Whittlesey's testimony as to B.K.E.'s "truthfulness" does not, in and of itself, suggest that the clear and convincing evidence standard has been met, but merely adds additional support to an already strong case in favor of termination. Accordingly, we hold that the trial court did not abuse its discretion in admitting Dr. Whittlesey's testimony concerning the veracity of B.K.E.'s statements regarding sexual abuse.

L.C. further contends that the juvenile court erred by failing to consider and apply Iowa Code section

232.116(6)(d), which permits a juvenile court to avoid an otherwise warranted termination if the juvenile court finds "it is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child."

After the juvenile court rendered its decision in this matter, L.C. made a timely motion under Iowa Rule of Civil Procedure 179(b) to enlarge or amend findings, arguing that the court consider Iowa Code section 232.116(6)(d) (1983) in its determination. In its ruling on the motion, the court noted that in the event the court found any provisions of section 232.116(6)(a-c) applicable, the trial court may decline to terminate, but was not required to. See also Interest of L.P., 370 N.W.2d 839, 843 (Iowa App. 1985). The court found that, "after having considered the matters within section 232.116(6)(a-c) . . . it is still in the best interest of these children that the parent-child relationship be terminated."

Upon our de novo review of the record, we are convinced that the juvenile court's decision with respect to this issue is correct. Although R.R.E. is in need of residential treatment, the evidence clearly indicates that L.C. is not a fit and proper parent for these children; L.C. has borderline intellectual abilities, is prone to extreme anger, and has consistently accused her children of lying

when they expressed fears of violence. Moreover, her lifestyle is chaotic and disorganized. She has made very little effort to visit B.K.E. or R.R.E. since their placement in foster care, and when she has visited them, it was observed that her needs always took precedence over the children's needs. We agree with the juvenile court that the risk of injury or abuse would be paramount if placed in L.C.'s care.

Based upon the foregoing, we see no reason to disturb the juvenile court's determination in this matter.

AFFIRMED.