IN THE COURT OF APPEALS OF IOWA

No. 5-309 95-0169

FILED
JUN 27 1995
CLERK SUPREME COURT

IN THE INTEREST OF H.H. and G.H., Minor Children.

K.H., Mother,

Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, Judge.

Mother appeals the juvenile court's order terminating her parental rights. **AFFIRMED.**

Lauren M. Phelps, Davenport, for appellant.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; Marne E. Woods, Assistant Attorney General; and Gerda Lane, Assistant County Attorney, for appellee-State.

Jack Dusthimer, Davenport, guardian ad litem for minor children.

Considered by Donielson, C.J., Habhab and Huitink, JJ.

DONIELSON, C.J.

Khristine appeals the termination of her parental rights. We affirm.

Khristine is the mother of Heather born February 23, 1991, and Garth born July 22, 1992. On January 15, 1993, the children were removed from Khristine's care due to her failure to provide appropriate medical care for their severe cases of diaper rash. At the time of his removal, Garth's diaper rash extended from his mid-abdomen and over his buttocks to his scrotum and penis.

Each child had apparently had diaper rash for several months and their conditions had last been treated by a physician on December 21, 1992. Khristine reportedly had an appointment for the children to be seen by a doctor on January 14, but failed to keep it. The foster mother took the children to a doctor on January 15. Khristine appeared at the doctor's office and indicated she was going to take the children and leave. The police had to be contacted and Khristine was eventually escorted from the office.

Following the provision of services by the Iowa Department of Human Services ("DHS"), the children were returned to Khristine's care on February 12, 1993. The children were again placed in foster care on April 13, 1993, due to Khristine's failure to provide proper supervision. On April 13, 1993, she had left eight-month old Garth alone while she went to a store.

The children were adjudicated children in need of assistance ("CINA") on June 14, 1993, due to their mother's failure to properly supervise them and her limited

parenting ability caused by her mental retardation and mental health problems. They have remained in foster care since April 13, 1993.

Khristine has been diagnosed as having an attention deficit disorder with hyperactivity, an organic personality disorder, and a seizure disorder. Khristine has a low I.Q., is low-functioning, and is classified as mentally retarded. She was provided with extensive DHS services appropriate for her mental and intellectual needs. During part of the CINA and termination proceedings, Khristine was hospitalized because of her mental illness.

Despite the provision of DHS services, Khristine demonstrated no significant progress in her parenting abilities. Khristine was not receptive to the provision of homemaker services and was terminated from some programs because of her assaultive and threatening behavior. During one discussion about her need to work on her parenting skills, Khristine got angry and threw a chair through a window.

Khristine was often hostile and resistive to services. She did not wish to have Heather evaluated by the Area Education Agency ("AEA") and did not follow through on AEA recommendations that she obtain safety glasses for Heather to protect her eyesight.

Khristine made several unannounced visits to her social worker's office during which she boasted about consuming large amounts of alcohol and being "hung over." Khristine was not consistent in her participation in substance abuse treatment programs.

At the time of the children's removal, Garth's putative father was in prison for the sexual abuse of two of Khristine's nieces. In May 1993 Khristine informed her caseworker she was the subject of an abuse investigation involving children other than her own. On December 2, 1993, Khristine plead guilty to a charge of indecent contact with a child and was placed on probation for two years. Khristine violated the terms of her probation and was jailed on February 9, 1994, for forty days.

A petition to terminate Khristine's parental rights was filed on September 27, 1994. A hearing on the petition was held on January 10, 1995. An order was filed January 13, 1995, terminating Khristine's parental rights pursuant to Iowa Code sections 232.116(1)(c), (d), and (g).

I. STANDARD OF REVIEW.

We utilize de novo review in determining if there is clear and convincing evidence to support the termination of parental rights. *In re S.A.*, 502 N.W.2d 23, 25 (Iowa App. 1993). A child's rights and needs are paramount in termination proceedings. *Id.* The primary concern is the best interests of the children.

> 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) (citations omitted).

II. SECTION 232.116(1)(d).

Khristine argues the requirements for termination under section 232.116(1)(d) were not met. Specifically, she contends it was not proven she had failed to maintain significant and meaningful contact with her children and had not made reasonable efforts to resume their care during the previous six months. We find there was clear and convincing evidence to support termination on this statutory basis. Khristine was not consistent in maintaining visitation with her children. During her visits Khristine's interaction with the children was minimal and she regularly ignored Heather. During an August 1994 visit she fell asleep and her caseworker had to awaken her so she could supervise her children. When her caseworker would leave the room during a visit, Khristine would want to terminate the visit with her children rather than supervise them alone.

Khristine's conduct did not reflect a genuine effort to complete the responsibilities prescribed in her case permanency plan or the affirmative assumption of the duties encompassed in the role of being a parent. Termination of parental rights pursuant to section 232.116(1)(d) was appropriate.

III. BEST INTERESTS OF THE CHILDREN.

Khristine does not dispute the grounds for termination pursuant to sections 232.116(1)(c) and (g) were established. However, she asserts the children's best interests were not served by the termination. We disagree. Heather has no vision in

her right eye, suffers from a seizure disorder, and is developmentally delayed in language skills. Khristine has failed to demonstrate sufficient progress to meet Heather's special needs.

At the time of the termination hearing the children had been in foster care for nearly twenty-one months. They had no significant bond with Khristine and were doing well in the care of their foster parents. The foster parents had indicated a desire to adopt Heather and Garth. The children deserve stability and permanency in their lives, which Khristine is in no position to provide. The best interests of the children warrant the termination of Khristine's parental rights.

IV. REMOVAL OF THE CHILDREN.

Khristine contends the district court should have refused to terminate her parental rights because DHS originally removed her children without any "reasonable cause," and removal was not the least restrictive alternative available at that time. Assuming, without deciding, Khristine has preserved this issue, we reject this argument. The record contains sufficient evidence to support the removal of the children. Removal was the least restrictive alternative given the children's medical condition and Khristine's lack of parental supervision.

V. REUNIFICATION EFFORTS.

Khristine argues DHS failed to make reasonable efforts to reunite her family and was determined early in the case to terminate her parental rights. We find no support in the record for Khristine's contention that her caseworker's disapproval of corporal punishment made her hostile toward Khristine.

Reunification initially failed in April 1993 when Khristine left Garth alone, creating a dangerous situation for her eight-month old son. Preserving families is the underlying principle in these proceedings. *In re C.D.*, 508 N.W.2d 97, 99 (Iowa App. 1993), and the record reflects numerous efforts were made to improve Khristine's parenting skills and reunify her family. DHS provided Khristine with: counseling; parenting education; homemaker services; substance abuse treatment; and sexual abuse treatment. Khristine resisted some services and was inconsistent in her compliance with others.

DHS tailored its programs to accommodate Khristine's mental abilities. We find DHS made reasonable efforts to reunite this family, and Khristine's argument to the contrary is rejected.

VI. COUNSEL'S MOTION TO WITHDRAW.

Immediately prior to the January 10, 1995, termination hearing, Khristine asked her court-appointed counsel to withdraw as she preferred to seek separate

counsel. Her counsel requested permission from the court to withdraw and her request was denied.

Khristine asserts termination was improper given the juvenile court's denial of her request for new counsel and a continuance. She contends the court should have allowed her to defend her parental rights with counsel of her choice.

The juvenile court found Khristine's counsel was experienced, competent and familiar with Khristine's case. The court also found further delay in the case was not in the children's best interests. We conclude the denial of counsel's request to withdraw was reasonable and Khristine's due process rights were not violated.

VII. REFUSAL TO GRANT CONTINUANCE.

Khristine argues termination of her parental rights was improper because the juvenile court should have granted her counsel's request for a continuance of the termination hearing. Counsel had requested a continuance because she had received the quarterly termination report on Friday, January 6, 1995, and the case permanency plan on the morning of the January 10, 1995, termination trial.

An attorney for a parent should have copies of the State's reports in ample time to prepare for trial. *C.D.*, 508 N.W.2d at 99-100. Khristine concedes the case permanency plan contained little new information. However, she argues the quarterly termination report contained significant new material. While the latter document contained information about new providers, the services were similar to those of the

past and Khristine was not prejudiced by the fact the report was given to her counsel only four days before trial. A request for a continuance is subject to the juvenile's court's discretion and we find no abuse of that discretion in denying the request for a continuance. *See id.* at 99.

VIII. HEARSAY EVIDENCE.

Khristine contends she was denied due process by the guardian ad litem's "near-total" reliance on hearsay evidence to establish the grounds for terminating her parental rights. Assuming, without deciding, Khristine adequately preserved this issue for appellate review, we find it is without merit. Hearsay evidence is admissible in termination proceedings. *In re E.J.R.*, 400 N.W.2d 531, 533 (Iowa 1987).

Direct evidence from Khristine's case worker provided considerable evidence in support of the termination of her parental rights. Khristine could have subpoenaed the testimony of additional physicians or service providers. We find no due process violation in the use of hearsay evidence in this case.

AFFIRMED.