IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

No. 1-219 / 00-0318
Filed July 18, 2001

IN THE INTEREST OF A.C. and A.C., Minor Children,

C.C., Mother,
Appellant.

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

The mother of two minor children appeals a juvenile court order terminating her parental rights. **AFFIRMED.**

Lori M. Holm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Emily McConkey, Assistant County Attorney, for appellee State.

Nancy Pietz, Des Moines, guardian ad litem for minor children.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

Christine appeals the juvenile court order terminating her parental rights to two of her minor children. She contends the juvenile court erred in finding the State proved by clear and convincing evidence it was in the children's best interest to terminate her parental rights because the children's permanency had been established and there had been no change in circumstances since the entry of the permanency order. We affirm.

I. BACKGROUND FACTS

Christine is the mother of Austin, born October 16, 1992, and Andrew, born November 23, 1994. The boys began living with Debra, Christine's former stepmother, in January 1997. In February 1997 Christine executed a notarized statement giving full temporary legal custody of Austin and Andrew to Debra. The children lived with Debra and her husband Bob until May 1997 when Christine moved herself and the boys in with her boyfriend David.

In July 1997 a petition was filed alleging the boys to be Children in Need of Assistance under Iowa Code sections 232.2(6)(b) and (6)(c)(2) (1997) based on allegations that Andrew had been severely abused, either by his mother or by David.[1] The abuse incident was investigated by child protective workers and was confirmed, naming David as the perpetrator. Christine denied either she or David had injured Andrew. The children were removed from Christine's custody and she voluntarily placed the boys back with Debra in July 1997 after she received notice of the physical abuse allegations.

[1] Austin had been removed from Christine's care on two previous occasions while they were living in South Dakota.

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The children were found to be Children in Need of Assistance under Iowa Code section 232.2(6)(b) and (6)(c)(2) at an adjudication/disposition hearing on September 23, 1997. At that time the juvenile court ordered the children remain in the temporary legal custody of Debra and Bob, with supervision by the Department of Human Services (DHS). The juvenile court ordered that services, as contained in the case permanency plan, be provided to aid Christine in achieving reunification. The court continued in effect an order, initially entered in July 1997, that there be no contact between David and the children. That order remained in effect throughout the pendency of this action.

Review hearings were held as required by statute. The children continued with Debra and Bob until July of 1998 when the children were placed in Nebraska with their maternal aunt, Stacey and her husband. A petition for termination of Christine's parental rights under Iowa Code sections 232.116(1)(c), (d), (e) and (g) was filed in August 1998. It was based in large part on her refusal to accept services being offered to alleviate the problems which led to the initial removal of the children and assist her in the ultimate goal of reunification. The State specifically pointed to Christine's failure to attend scheduled visits without prior notice, and going as long as six weeks without calling or seeing the children.

A hearing was held in juvenile court on the petition for termination and for permanency in October 1998. In its resulting order of November 1998, an order that was stipulated to by all interested persons, the court found termination of the parent-child relationship would not be in the best interest of the children and dismissed the termination petition. However, the court also found that placement of the children outside the home was necessary as placement in the home would

be contrary to their welfare because Christine had not completed the services offered to her to correct the situation and she continued to have a relationship with David, a person who had been the subject of a founded report of physical abuse against one of the children, Andrew.

The juvenile court also placed legal custody and guardianship of Andrew and Austin with the DHS for long-term foster care placement with their aunt Stacey in Nebraska under Interstate Compact Supervision. However problems arose and in January 1999 Stacey requested that the boys be removed from her home. Therefore, the children were returned to Iowa and a modification of the permanency order was issued by the court placing temporary legal custody of the children with Debra. As a result of a February 1999 review hearing the court again placed the children in the legal custody and guardianship of the DHS, for long-term foster care placement in Debra's home, where they have remained since.

A second petition for termination of Christine's parental rights was filed in July 1999. The petition alleged Christine continued to deny that David had abused Andrew and was continuing in her relationship with him. Christine had had a child, Jasmine, with David in February 1999. Jasmine had also been adjudicated a Child in Need of Assistance. The State alleged Christine continued to only minimally cooperate with the services provided to her, attending very few of the parenting classes and individual therapy sessions offered to her. The petition also alleged Christine began attending scheduled visitations with the boys only after the court found Jasmine to be a Child in Need of Assistance and Christine had not yet secured independent, stable housing for herself and the

children after nearly two years of services. As further support for termination the State pointed to the psychosocial assessment, which had finally been conducted after being ordered twice by the court, by Janice Hill, MSW, LISW. After conducting interviews with Christine, Debra, Bob, and both of the boys, Ms. Hill recommended termination of Christine's parental rights with respect to Andrew and Austin to allow them to be adopted by Debra and Bob.

A hearing was held on the second petition for termination. At the hearing Christine did not ask the court to return the boys to her, but requested that Debra, their custodian at the time, be appointed their guardian also. She reasoned this would allow her to become more involved in their lives and at some time in the future, after she and David proved they were trustworthy, the boys could be returned to her. The juvenile court terminated Christine's parental rights to Andrew and Austin under Iowa Code sections 232.116(1)(c), (d), (e) and (h) (1999). Christine appeals from this order. She argues that because there had not been a change in circumstances between the time permanency was established and the time the court terminated her parental rights the court erred in finding clear and convincing evidence it was in the best interest of the children to terminate her parental rights.

II. SCOPE AND STANDARDS OF REVIEW

We review termination proceedings de novo. Iowa R. App. P. 4; *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Accordingly, we review both the facts and the law and adjudicate rights anew. *In re T.A.L.*, 505 N.W.2d 480, 482 (Iowa 1993). We give weight to the factual determinations of the juvenile court, especially when considering the credibility of witnesses, but are not bound by

them. *Id.* The grounds for termination must be proven by the State by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 831 (Iowa Ct. App. 1997). Our primary concern is the best interests of the child. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa Ct. App. 1996).

III. MERITS

The controlling standard in cases involving the termination of parental rights is the best interest of the children involved. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981).

> 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 the 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 the child.

In re R.K.B., 572 N.W.2d 600, 601 (Iowa 1998) (quoting *In re C.M.W.*, 503 N.W.2d 874, 875 (Iowa Ct. App. 1993)). It is well established there exists a parental interest in maintaining the integrity of the family unit. *Dameron*, 306 N.W.2d at 745. This interest, however, is not absolute and may be forfeited by certain parental conduct. *Id.* The State has a duty to assure that every child within its borders receives proper care and treatment and it must intercede when parents abdicate that responsibility. *Id.*

Christine argues that termination was not in the best interest of the children because permanency (i.e. long-term foster care) had already been established and the circumstances had not changed since the establishment of that permanency. Assuming without deciding that "change in circumstances" is the proper analysis to apply in determining whether termination is appropriate

after permanency has been established, for all of the following reasons we conclude there were in fact substantial changes in circumstances between the time permanency was established in October of 1998 and the second termination petition was filed in July 1999.

First, and perhaps most importantly, it became clear during this period that Christine intended to continue her relationship with David, who had been found to have sexually abused a dependent adult and to have seriously physically abused Andrew. In fact she had a child by him on February 19, 1999. Although at the time of the second termination hearing Christine was not living with David, she testified that within the week she planned to move Jasmine and herself into a trailer David had bought for them. Christine stated it was one of her "dreams" to marry David and when asked how she would characterize her current relationship with David she said they were, "Very strong companions, there for each other. And the biggest thing of all, wanting to be a family, bring everything and correct it." Therefore, it is clear Christine has a continuing and ongoing relationship with David and has no plans or intentions of ending it any time soon. She continues to place her relationship with him ahead of her relationship with Austin and Andrew.

Furthermore, while Christine at the hearing acknowledged for the first time that David had abused Andrew, she was somewhat tentative and hedging in this acknowledgement. Moreover, she gave no suitable answer to questions posed to her on cross-examination as to why it had taken her so long to acknowledge the abuse by David or how she had allowed her two children to be out of her

custody for over two years by refusing to earlier acknowledge that David had abused Andrew.

Second, the psychosocial evaluation was finally completed in the relevant time frame. Ms. Hill, who performed the evaluation, testified at the second termination hearing and her written evaluation was admitted into evidence. Ms. Hill recommended termination of Christine's parental rights. In her evaluation Ms. Hill stated that it is imperative for the boys to have permanency in a safe, loving, nurturing, stable home, and Debra and Bob have provided such a home for Austin and Andrew, have committed to the boys, and have the ability to understand and provide for the boys' needs. The report further stated that Christine evidenced antisocial, narcissistic and dependent personality traits and Ms. Hill was doubtful of Christine's ability to understand the needs of her children and to put their best interests above her own.

Ms. Hill testified at the hearing that in her opinion guardianship would not be in the children's best interest if adoption were an option because it would not offer them the kind of permanency they need at this point. She testified, "And I think for the boys, it could mean not feeling settled, not knowing this is where they are going to grow up." It appears from the evidence that adoption by Debra and Bob is a very real possibility.

Finally, we do recognize that at the time of the second termination hearing Christine was cooperating with service providers and making some effort to meet the requirements of her case permanency plan. She was taking parenting classes, meeting one-on-one with a therapist, having regular visitation with the boys and completing a substance abuse evaluation. However, the record,

including Christine's own testimony during the hearing, shows that none of these requirements were satisfied, nor did Christine make any real effort to satisfy them, until *after* the birth of Jasmine (her child with David) in February 1999. This was approximately two years after Austin and Andrew were initially removed from her custody.

Christine could not explain why it took her so long to follow through with services and attempt to meet the requirements necessary in order for her to regain custody of the boys. Christine did testify that after Jasmine was born and adjudicated a Child in Need of Assistance she did not want her taken away, as the boys had been when they had been adjudicated children in need of assistance, and that is when she started to try to change her life. These developments were a change in circumstances between the time permanency was established with Debra and the second termination hearing. However, for the reasons set forth below we do not believe this change to be an entirely positive one, at least in relation to the best interest of Austin and Andrew.

The juvenile court made the following findings,

> [Christine] either refused or did not cooperate with the services to alleviate the problems which led to the removal and to assist her in developing parenting skills for her children, Andrew and Austin. Numerous services were offered to her. Only after her child with [David], the man she chose over her boys, was placed in jeopardy of being removed did she participate in any services whole heartedly. Her testimony shows she has little comprehension or understanding of the needs of Andrew and Austin. [Christine] has provided inconsistent emotional support to her children, treating them like parcels which can be checked until its convenient to reclaim them.

We fully agree with these findings and adopt them as our own. It is clear from the record that Christine neither acknowledged David's prior abuse nor made any

meaningful attempt to meet the requirements of the case permanency plan until after Jasmine had also been adjudicated a Child in Need of Assistance and she feared she would lose custody of her, as she had lost custody of Austin and Andrew before.

The strides Christine has made in complying with portions of the case permanency plan in the months after Jasmine's birth are to be commended and will likely serve both Christine and Jasmine well in the future. Further, beginning to acknowledge that David did abuse Andrew is also a positive step. However, Christine's recent attempts at change and trying to come to terms with the abuse issue are too little and too late.

In her testimony regarding David's abuse of Andrew, Christine used terms such as "possible," "could have," and "possibly," she did not feel that Andrew was "beaten" by David but only "abused," she did not believe such an incident had ever happened before the founded abuse which occurred in 1997, and she felt David had changed since then and it would now be safe to have her children around him. Furthermore, this was the first time in these proceedings that she had ever acknowledged that David might have abused Andrew, despite the fact the abuse had long since been confirmed and placed in the child abuse registry. This very tentative acknowledgement came over two years after the abuse had occurred, while the two boys remained in foster care. They were in foster care because she was still with David and had been unwilling to acknowledge the abuse.

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For the foregoing reasons we find there was a "change in circumstances" between the establishment of permanency, the long-term foster care, and the second petition and hearing on the termination of Christine's parental rights.

Regardless of whether a "change in circumstances" analysis applies, our concern remains the best interests of the children. *Dameron*, 306 N.W.2d at 745; *In re R.L.F.*, 437 N.W.2d 599, 600-01 (Iowa Ct. App. 1989). We find termination was in Austin and Andrew's best interests. Long-term foster care is not preferred to termination of parental rights. *In re R.L.*, 541 N.W.2d 900, 903 (Iowa Ct. App. 1995). "While we recognize the law requires a 'full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,' Iowa has built this patience into the statutory scheme of Iowa Code chapter 232." *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000) (quoting *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987)). However, this time period and patience are "limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children." *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989).

These boys need a stable, reliable and permanent place to call home. "The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems." *In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). Austin and Andrew should not have to endlessly await the maturity of their mother. *See In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). 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). "Children simply 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).

IV. CONCLUSION

For all of the reasons stated above and based on our de novo review of the record we find there was a change in circumstances between the establishment of "permanency" and the termination of Christine's parental rights, and find the termination of those rights is in Austin and Andrew's best interests. We conclude, as did the juvenile court, that Christine did in fact choose David over her boys and only when faced with the very real possibility of losing custody of a third child did she attempt to make meaningful changes in her life. While some of her recent efforts are positive and to her credit, unfortunately she has failed to change what poses perhaps the greatest danger to her boys, her relationship with the confirmed prior abuser of one of them. This choice demonstrates to us Christine's inability to put the best interests of her children before her own. The order of the juvenile court terminating Christine's parental rights under Iowa Code sections 232.116(1)(c), (d), (e) and (h) must be affirmed.

AFFIRMED.

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