IN THE COURT OF APPEALS OF IOWA

No. 4-406 / 94-391

FILED
OCT 25 1994
CLERK SUPREME COURT

IN THE INTEREST OF B.S. and I.S., Minor Children,

E.S. and D.S., Natural Parents,

Appellants.

Appeal from the Iowa District Court for Keokuk County, Lucy J. Gamon, Associate District Court Judge.

Parents appeal from an order terminating their parental rights. **AFFIRMED.**

Edward F. Noyes, Fairfield, for appellants.

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and John E. Schroeder, County Attorney, for appellee State.

Edward M. Conrad, Sigourney, for minor children.

Considered by Sackett, P.J., and Habhab and Cady, JJ.

HABHAB, J.

The natural parents of two children are appealing an order terminating their parental rights. We affirm. The father, E.S., and the mother, D.S., have two children: a daughter, B.S., born February 22, 1990, and a son, I.S., born August 16, 1991. On March 20, 1992, B.S. and I.S. were removed from their parents' home on an emergency basis following an incident in which D.S. set a wastebasket on fire and subsequently entered a mental hospital.

The emergency removal was confirmed on March 31, 1992, because of the risk of E.S.'s history of sexually abusing his daughters from a previous marriage, D.S.'s emotionally troubled behavior, and B.S.'s severe developmental delay. One of E.S.'s daughters from a previous marriage stated that E.S. had sexually abused her as a child and that she eventually became pregnant with his child. E.S. also sexually abused a mentally retarded daughter from a previous marriage. E.S. has shown no remorse for his conduct. While he now admits the previous acts of abuse, he minimizes them. D.S. has admitted to feeling depressed and irritable, throwing things, setting the fire, cussing at her children, and having suicidal ideations. Medical examinations of B.S. revealed she was severely developmentally delayed and that she might be a victim of shaken baby syndrome.

The department of human services (DHS) completed its child abuse investigation on April 14, 1992 and found the

denial of critical care allegation was founded; allegations of physical abuse of I.S. were unfounded; allegations of physical abuse of B.S. were undetermined; and concerns of current sexual abuse of B.S. were unfounded.

On June 29, 1992, the children were adjudicated children in need of assistance (CINA). The juvenile court found B.S. had suffered severe developmental delay from the parents' failure to provide proper nurturing, care, attention, and stimuli, and that she had suffered harmful emotional effects due to D.S.'s mentally unstable and verbally abusive conduct. The court also found the children were at risk of possible sexual abuse by E.S. The children were ordered to remain in foster care and E.S. and D.S. were to be provided parent skills development instruction and homemaker services. D.S. was ordered to maintain her mental health treatment and E.S. was ordered to attend appropriate sexual abuse perpetrator treatment.

On July 22, 1992, a dispositional order continued the foster care of the children and ordered the parents to continue with ordered services. The court noted B.S. was making exceptional progress in her development and I.S. was doing well in foster care. The court found B.S. made exceptional gains, demonstrating better physical skills, more direct interaction, and marked improvment in communication skills. The court also noted D.S. was still suffering from depression and the parents both had very little parenting ability and had difficulty sensing their children's needs.

Review orders were entered on January 22, and June 21, 1993. The parents were resistant or refusing services. They did not believe they needed help with their parenting abilities. Service providers, however, indicated the children could not be returned to their parents even with twenty-four hour supervision. The court ordered termination proceedings instituted.

On October 1, 1993, a petition to terminate parental rights was filed. A hearing was held on January 25, 1994. Service providers continued to recommend termination of parental rights. They testified E.S. and D.S. did not have the ability to provide a safe and nurturing environment for their children. D.S. testified her depression had resolved and that she was no longer on any medication. E.S. testified that he and D.S. would accept some help with their parenting so long as DHS didn't "overdo it." The juvenile court terminated their parental rights on February 4, 1994. D.S. and E.S. appeal.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); 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 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) (citing Dameron, 306 N.W.2d at 745).

Iowa Code section 232.116(1)(g) (1993) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The child is three years of age or younger.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least six of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

The element in dispute in this case is the fourth element. The parents contend the State has failed to prove by clear and convincing evidence that harm will come to the children if they are returned to the parents. Specifically, they argue the grounds which existed when the children were taken out of the home no longer exist. They assert the mother is not presently suffering from depression and the father does not pose a current threat of sexual abuse to his prepubescent daughter.

The mother suffers from significant psychological problems. She has been diagnosed with adjustment disorder, dependent personality disorder, and self-reported history of major depression and traits of organic personality syndrome. In addition, she operates in the lower range of borderline intellectual ability. At the time of the hearings to terminate parental rights, the mother was not on medication for depression.

The father has a history of sexually abusing two teenage daughters from a previous marriage. A clinical psychologist stated he did not think the father would consider a prepubescent child to be a sexual object. However, the psychologist also stated further evaluation would be necessary if the father lived with a daughter reaching the age of puberty. The father's low level of intellect and sophistication makes it unlikely he would profit from the usual sexual offender treatment program. Rather, ongoing surveillance would be necessary when his daughter reaches the age of puberty.

Both parents have been found to be seriously lacking basic parenting skills. They have been found to have no ability to provide a safe and nurturing environment for their children. A family therapist testified the parents' progress in acquiring basic parenting skills has been nonexistent. The prognosis of benefiting from a treatment program is poor. The parents continue to deny their inadequacies, resist the need for treatment, and lack

insight into their problems as parents. They have a very limited understanding of the problems that have beset them. The parents' inability to care for the children has not changed since the children were removed from the home, nor does it appear their abilities will ever change.

We also note the developmental progress the children have made while in foster care. At the time the children were removed from the home, B.S. was unable to make eye contact with adults, she had difficulty walking more than a few steps at a time, she knew approximately two words, and she often assumed the fetal position and was withdrawn. She was two years old at the time. Testimony was given regarding the childrens' significant progress on their developmental delays since their removal from the home. An adoption specialist testified she would be able to find an appropriate adoptive home and she personally knew of six families who would be appropriate for these children.

We find clear and convincing evidence that the children cannot be returned to the custody of their parents. We find the statutory grounds for terminating the parent's parental rights pursuant to Iowa Code section 232.116(1)(g) have been met.

AFFIRMED.

Cady, J., concurs; Sackett, P.J., specially concurs without opinion.