IN THE COURT OF APPEALS OF IOWA

No. 1-230 / 99-1826
Filed May 23, 2001

IN THE INTEREST OF D.H., J.B., and K.B., Minor Children,

T.B., Mother,
Appellant,

E.S., Father of D.H.,
Appellant.

FILED
MAY 23 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, Alan D. Allbee, Associate Juvenile Judge.

The mother appeals a juvenile court order terminating her parental rights to her three minor children. The father of one of the children appeals the juvenile court order terminating his parental rights. **AFFIRMED.**

David A. Roth of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellant mother.

Kellyann Lekar of Roberts, Stevens & Lekar, P.L.C., Waterloo, Waterloo, for appellant father.

Thomas J. Miller, Attorney General, Tabitha Gardner, Assistant Attorney General, and Steven J. Halbach, Assistant County Attorney, for appellee State.

Linnea Nicol, Juvenile Public Defender, Waterloo, guardian ad litem for minor children.

Dennis M. Guernsey, Waterloo, for A.B., father of J.B. and K.B.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

STREIT, P.J.

I. Background Facts and Proceedings.

A mother appeals the juvenile court decision terminating her parental rights to her three minor children. The father of one of the children appeals the termination of his parental rights. The State filed a motion to expedite the appeal. This case was transferred to this court on March 29, 2001.

Tina is the mother of Donnie, born in June 1985; Destiny, born in September 1990; Journey, born in August 1996; and Kristina, born in September 1998.[1] Eric is the father of Destiny.

The parents have a long association with the Iowa Department of Human Services (DHS). Tina voluntarily requested services in 1990 or 1991. She was having some mental health problems and in 1992 was involuntarily hospitalized for a short period of time. Donnie and Destiny were adjudicated to be children in need of assistance (CINA) under Iowa Code section 232.2(6)(n).

In 1993 Eric began living with Tina. In June 1993 he was charged with domestic abuse assault for hitting Tina with an electrical cord. Eric was also charged with indecent contact with a child, exhibiting obscene material to a minor, and lascivious acts with a minor. Allegations arose that Eric showed pornography to Donny and encouraged Donny to have sexual relations with Destiny while he watched. There were also allegations Eric had sexual contact with a neighbor child. Eric pled guilty to the charges. While on probation, Eric admitted to having fantasies about sexual contact with minors.

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[1]This appeal does not include Donnie, who was placed in the sole custody of his father.

Tina and Eric separated. Tina had a lengthy period of compliance with prescribed medication for her mental condition. During this period of time she participated in services. In August 1995 DHS issued a founded report of denial of critical care due to unsanitary conditions in the home. Tina became involved with Alonzo, who had a criminal history. Journey was born in August 1996. Tina quit taking her medication and became uncooperative with service providers.

Eric did not participate in services. Eric married Tammy, who had her parental rights to her own children terminated. Eric requested supervised visitation with Destiny, and in June 1996 the juvenile court determined it would be in Destiny's best interests to re-establish contact with Eric. Eric did not take advantage of this opportunity for contact with his daughter. In July 1997 the CINA case was dismissed because the time for continuing supervision had expired under section 232.101.

Kristina was born in February 1998. New juvenile proceedings were initiated in April 1998, when the children were removed from Tina's care due to her mental health problems and homelessness. Destiny was placed in foster care, while Journey and Kristina were placed with the paternal grandmother. The children were adjudicated CINA under sections 232.2(6)(b) and (n).

Tina was uncooperative with services. She was inconsistent in attending visitation. In September 1998 Tina was temporarily committed to a mental health institute, where she was diagnosed with schizophrenia, chronic paranoid type. She was released with a recommendation of outpatient treatment. In November 1998 social workers advised Tina she needed to separate from Alonzo because

of his own mental health issues and criminal history. A few days later Tina married Alonzo. In December 1998 Tina was arrested for domestic assault against Alonzo. A no-contact order was entered. In January 1999 Tina's visitation was suspended because she was not following through with mental health treatment.

Eric expressed an interest in having Destiny placed in his home. The juvenile court determined DHS should provide parent skill services, family therapy, and sexual abuse perpetrator's treatment. Eric had been participating in supervised visitation. Eric began to participate in parent skill development and family therapy.

Tina continued her relationship with Alonzo. In March 1999 Alonzo was arrested for domestic abuse assault against Tina. Later that month Tina and Alonzo were both arrested for violating the no-contact order. In May 1999 Journey and Kristina were removed from the paternal grandmother's home because she was allowing Tina to have contact with the children. The children were placed in foster care. They were later placed in pre-adoptive homes.

In June 1999 the State filed a petition to terminate Tina's parental rights to Destiny, Journey, and Kristina, and Eric's parental rights to Destiny. Eric appeared for a psychosexual evaluation, but because of his reading difficulties, he was not able to take the tests necessary for the evaluation. Eric did not progress in family therapy because he minimized the nature of the charges against him for sexual acts with minors.

The juvenile court entered a termination order on November 2, 1999. The court terminated Tina's parental rights to Destiny under sections 232.116(1)(d), (e), and (h). Her parental rights to Journey and Kristina were terminated under sections 232.116(1)(d) and (g).[2] Eric's parental rights to Destiny were terminated under sections 232.116(1)(e) and (h). The court stated:

> Tina [ ] has failed to acknowledge the presence of her serious mental disorder and has refused mental health treatment. She is unable to see how her mental disorder negatively affects her decision-making and her ability to adequately parent her children. Eric [ ] has failed to acknowledge fully his prior sexual deviance and has not taken steps to remediate this problem. Failure to fully acknowledge sexual abuse perpetration results in an inability to successfully complete treatment and thereby reduce or eliminate the potential for reoffending.

Tina and Eric have appealed.

II. Scope of Review.

The scope of review in termination cases is de novo. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997). The grounds for termination must be proven by clear and convincing evidence. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999). Our primary concern is the best interests of the children. *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000).

III. Tina.

Tina contends the State failed to present sufficient evidence to justify termination of her parental rights. In particular, she asserts the State failed to present evidence on all of the elements of sections 232.116(1)(d) and (h). She does not raise any arguments concerning the termination of her parental rights to

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[2]Alonzo's parental rights to Journey and Kristina were also terminated. He has not appealed.

Destiny pursuant to section 232.116(1)(e), or to Journey and Kristina pursuant to section 232.116(1)(g). Failure to argue an issue may be deemed to be a waiver of the issue. *In re J.J.A.*, 580 N.W.2d 731, 740 (Iowa 1998). Tina's failure to raise any arguments regarding sections 232.116(1)(e) and (g) means she has waived these issues, and we may affirm the termination of her parental rights under these sections.

There is clear and convincing evidence in the record to show the children could not be returned to Tina's care. Tina will not admit she has a mental illness and refuses to take prescribed medication for her illness. We agree with the juvenile court's finding, "Without mental health treatment including psychotropic medication, if prescribed, the emotional condition of the children's mother renders her incapable of adequate supervision of her minor children." Also of some concern is the fact Tina testified she wanted to reunite with Alonzo, despite the history of domestic violence in their relationship. We determine her parental rights were properly terminated.

IV. Eric.

A. Sufficiency of the Evidence.

Eric claims the State did not present sufficient evidence to warrant termination of his parental rights. He points out that he has had no further criminal convictions since 1993. Eric asserts Destiny could safely be placed in his care.

There is clear and convincing evidence in the record to show Destiny could not be safely placed in Eric's care. Eric has continued to minimize his

conduct that led to his convictions for indecent contact with a child, exhibiting obscene material to a minor, and lascivious acts with a minor. Eric's behavior led to the sexual abuse of Destiny by another child. During his probationary period he admitted to having fantasies about sexual contact with minors. Eric's therapist testified she would be concerned about Destiny's safety if she were placed in his care. In addition, if Destiny were placed in Eric's care, Tammy would assist in parenting the child. As noted above, Tammy's parental rights to her children have been terminated. Eric's parental rights were properly terminated.

B. Best Interests.

Eric asserts termination of his parental rights is not in Destiny's best interests. Destiny has stated she would like to live with her father. Eric asks us to honor that request.

Even if the statutory requirements for termination of parental rights are met, the decision to terminate must still be in the best interests of the children. *In re M.S.*, 519 N.W.2d 398, 400 (Iowa 1994). In determining the best interests of a child, the court looks to the child's long-range and immediate interests. *In re C.K.*, 558 N.W.2d 170, 172 (Iowa 1997). The court must consider the physical, mental, and emotional conditions and needs of the child in deciding to terminate parental rights. *In re C.W.*, 554 N.W.2d 279, 282 (Iowa Ct. App. 1996).

We find termination of Eric's parental rights is in Destiny's best interests. Eric's behavior led to Destiny being sexually abused by another child. Then followed many years when Eric did not receive treatment for his problems, and had no contact with Destiny. Eric only recently expressed an interest in caring

for Destiny. Destiny needs permanency in a safe environment, and it is not clear Eric can provide her with this.

C. Reasonable Efforts.

Eric contends the State did not engage in reasonable efforts to reunite him with Destiny. He asserts his requests for additional and unsupervised visitation should have been granted. He also claims DHS failed to facilitate the psycho-sexual evaluation.

Reasonable services must be provided to attempt to reunite a family before the State can terminate parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1997). While the State has an obligation to make reasonable efforts, it is a parent's responsibility to demand services if they are not offered prior to the termination hearing. *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa Ct. App. 1997).

The services offered by the State were reasonable under the facts of this case. Eric asked to receive parent skill services, family therapy, and sexual abuse perpetrator's treatment, and these were offered to him. While Eric faults DHS for his failure to obtain a psycho-sexual evaluation, Eric did not accept the first evaluator scheduled by DHS, then arrived too late for his appointment with a different evaluator, and the appointment was canceled. Eric appeared for a re-scheduled appointment, but because of his reading difficulties was unable to take the test. It is not clear what else DHS could have done in this situation. Because of Eric's criminal history, DHS acted reasonably in denying his requests for additional or unsupervised visitation.

D. Ineffective Assistance.

Eric asserts he received ineffective assistance because his counsel failed to demand additional services prior to the termination hearing. The test for ineffective assistance of counsel in termination cases is generally the same as in criminal proceedings. *In re A.R.S.*, 480 N.W.2d 888, 891 (Iowa 1992). In order to establish an ineffective assistance claim, it must be shown that (1) counsel's performance is deficient, and (2) actual prejudice resulted. *Id.* Here, we have found the services provided to Eric were reasonable under the facts of the case. Eric was not prejudiced by his counsel's performance.

V. Expedited Appeal.

The State filed a motion to expedite this appeal, and the Iowa Supreme Court ordered this issue submitted with the appeal. We grant the motion to the extent all cases involving termination of parental rights are treated expeditiously. See Iowa R. App. P. 17.

We affirm the decision of the juvenile court.

AFFIRMED.