IN THE COURT OF APPEALS OF IOWA

No. 4-324 / 94-432

FILED
AUG 25 1994
CLERK SUPREME COURT

IN THE INTEREST OF A.A.C., Minor Child,

R.L.C., Father,

Appellant.

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

R.C., the father, appeals from a termination of his parental rights to A.A.C. pursuant to Iowa Code sections 232.116 (1)(c), (1)(e), (1)(h) and 232.117 (1993). **AFFIRMED.**

John M. Carroll, Davenport, for appellant.

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, Judy Sheirbon, Assistant Attorney General, and Gerda Lane, Assistant County Attorney, for appellee-State.

Stephen P. Wing of Dwyer, Wing, Zamora, Taylor & Walters, Davenport, for appellee-mother.

Catherine P. Alexander, Bettendorf, guardian ad litem, for minor child.

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

CADY, J.

The father of a nine-year-old child appeals from a juvenile court decree terminating his parental rights. We affirm the juvenile court's decree.

A.A.C. is the child of R.C. and S.C. R.C. and S.C. were divorced in May 1990. S.C., the mother, received physical custody and R.C., the father, was granted regular and frequent visitation. A.A.C. was adjudicated CINA in December 1991, after she told her therapist her father was sexually abusing her during his visitation. Following the CINA adjudication, A.A.C. continued in the custody of her mother and a protective order prohibiting contact between the R.C. and A.A.C. remained in effect. R.C. appealed from the adjudication which was affirmed by the court of appeals in November 1992. In re A.A.C., No. 2-455/92-409 (Iowa App. Nov. 30, 1992).

A.A.C. received extensive therapy due to profound emotional distress and incidents of sexual acting out. She was eventually diagnosed as suffering from a disassociative disorder and post traumatic stress disorder. The father was ordered to obtain sexual abuse offender and substance abuse treatment. The protective order was modified to allow contact between the father and A.A.C. for purposes of joint attendance at therapy if this was deemed necessary.

By August 1993, the father had not completed therapy and continued to deny the sexual abuse. Joint therapy between father and daughter had not taken place despite the

recommendation that the father's involvement in A.A.C.'s therapy where he accepted responsibility for the abuse, would benefit the child. The mother filed a termination petition.

Following a hearing, the district court found the father's behavior during the proceedings had been characterized by substance abuse, attempted treatment programs, relapse, problems with the law and difficulty maintaining stable employment and residence. The court stated the father had been defiant, oppositional, intimidating and uncooperative and that the risk of A.A.C. suffering further sexual abuse and emotional trauma would be high if she was returned to the father's custody. Thus, on February 16, 1994, the father's rights to A.A.C. were terminated pursuant to Iowa Code sections 232.116 (1)(c), (1)(e), (1)(h), and 232.117 (1993). The court awarded guardianship and custody of A.A.C. to the mother.

The father appeals on two grounds. First, he asserts the evidence was insufficient to terminate his parental rights. In support of this contention, he claims he has been cooperative at all times, has completed a substance abuse program, has stable employment and residence, and is willing to take part in A.A.C.'s therapy. R.C. asserts he is not requesting A.A.C.'s actual return to his custody and argues that A.A.C. will need to utilize him for therapeutic treatment in the future. Second, he contends the unique circumstances of this case fall within the provisions of

Iowa Code sections 232.116(3)(a), (3)(c) and (3)(d) (1993) and the district court should have avoided termination under them.

I Scope of Review

Appellate review of termination proceedings is guided by several well known principles which we restate here.

Termination of the parent child relationship is reviewed de novo. In re M.M., 483 N.W.2d 812, 814 (Iowa 1992). Accordingly, we review both the facts and the law and adjudicate rights anew. Id. We accord weight to the juvenile court's fact finding especially when considering the credibility of witnesses whom that court "heard and observed first hand." In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). We are not, however, bound by those findings. Id.

Our preeminent concern in termination cases is the best interests of the child. In re L.L., 459 N.W.2d 489, 493 (Iowa 1990). In determining what is best for the child we look to the child's long range and immediate interests. In re Dameron, 306 N.W.2d at 745. So, we necessarily consider what the future likely holds for the child if returned to the parent. Id. The parent's past performance may provide insight into the quality of care the parent is capable of providing in the future. In re L.L., 459 N.W.2d at 494.

This court recognizes that a parental interest exists in maintaining the integrity of the family; however, this interest is not absolute. In re Dameron, 306 N.W.2d at 745. It may be forfeited by conduct of the parent. Id.

The State has a duty to assure every child within its borders receives proper care and treatment and it must intercede when parents abdicate that duty. Id. To that end, our statutory termination provisions are preventive and remedial. In re L.L., 459 N.W.2d at 494. They are designed to prevent probable harm to the child and they do not require delay until after the harm has occurred. In re M.M., 483 N.W.2d at 815.

II. Sufficiency of the Evidence

The juvenile court terminated R.C.'s parental rights pursuant to Iowa code sections 232.116(1)(c), (e), and (h). R.C. argues the evidence was insufficient to terminate his parental rights. He asserts he has been cooperative throughout the proceedings and has complied with the case permanency plan's requirements. He additionally claims termination of his rights would prevent future reconciliation between himself and A.A.C.

After reviewing the evidence, we agree with the district court's conclusion that the emotional harm suffered by A.A.C. as a result of R.C.'s conduct far outweighs any possible future benefit which R.C. might offer A.A.C. Throughout the history of this case R.C. has been uncooperative. The case plan required him to participate in and complete sexual offenders therapy and substance abuse therapy. To date, R.C. will not admit he abused A.A.C. and has started and quit several therapy programs. According to his current psychologist, Dr.

Timothy Murphy, unless R.C. admits he abused A.A.C., it will be impossible for him to complete therapy and aid A.A.C. in her recovery. Furthermore, Murphy stated the sole reason R.C. is seeking treatment is to regain contact with A.A.C. He is not interested in personal growth and maturation.

Additionally, R.C. had difficulty completing a substance abuse program and has been convicted of theft and deceptive practices. Furthermore, R.C. has not maintained stable employment and has provided no support for A.A.C. for over two years.

The Department of Human Services has offered programs to R.C. and given him time to overcome his problems. Yet he has failed to show much improvement. He has been particularly intransigent in sexual abuse therapy, the most vital area for assisting his daughter. The requirement that a parent acknowledge and recognize abuse before any meaningful change can occur is essential to meeting the child's needs. In re A.B., 492 N.W.2d 446, 449 (Iowa App. 1992).

Finally, Dr. Cress, A.A.C.'s psychologist, and the social worker responsible for A.A.C.'s case, testified R.C. remains a threat to A.A.C.'s physical and emotional well being. Each of them recommended that no contact occur between R.C. and A.A.C.

III. Sections 232.116(3)(a), (c), and (d)

The father contends the juvenile court failed to adequately consider Iowa Code sections 232.116(3)(a), (3)(c), and (3)(d) in reaching its decision to terminate his parental rights. These code sections provide:

> 3. The court need not terminate the relationship between the parent and child if the court finds any of the following:
>
> a. a relative has legal custody of the child.
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> * * * * * * *
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> c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship. [or]
> d. 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 of the child.

The mother concedes section 232.116(3)(a) is applicable as A.A.C. is in her legal custody. She denies it is necessary to place the child in a facility for inpatient care and asserts there is no clear and convincing evidence the termination would be detrimental to A.A.C. due to the closeness of the parent child relationship.

Regarding section 232.116(3)(d), there is no evidence it is necessary to place A.A.C. in a hospital, facility, or institution for care. A.A.C.'s past treatment has been exclusively on an outpatient basis during which she resided with her mother. Furthermore, although Dr. Cress testified A.A.C.'s therapy needs may continue, there is no indication they will be conducted on an inpatient basis. Thus, section 232.116(3)(d) is not applicable under the facts of this case.

The primary dispute centers on section 232.116 (3)(c). Section 232.116(3) contains no mandatory language. In re C.L.H., 500 N.W.2d 449, 454 (Iowa App. 1993). Our court has previously stated the words "need not terminate" are clearly permissive. Id. "'It is within the sound discretion of the court, based upon the unique circumstances before it and the best interest of the child, whether to apply section 232.116(3)[] to save the parent-child relationship.'" Id. (quoting In re J.V., 464 N.W.2d 887, 890 (Iowa App. 1990).

We find terminating R.C.'s parental rights would not be so detrimental to A.A.C. as to warrant the reversal of the district court's termination order. As a result of the no contact order, A.A.C. has not seen R.C. for over two and one half years. R.C. refuses to admit he abused A.A.C. and therefore cannot complete the necessary therapy for him to resume visitation with A.A.C. Furthermore, Dr. Cress testified termination would ease A.A.C.'s fears of further injury by her father, and might increase her self-esteem. He also opined A.A.C. did not have a close relationship with R.C. and would suffer no real loss from termination of R.C.'s parental rights.

While, A.A.C. has occasionally commented to her mother she would like to see R.C. and she still loves him, these appear to be singular incidents and do not provide clear and convincing evidence the termination would be detrimental.

In light of R.C.'s response to offered services, the threat of future injury to A.A.C., and her precarious emotional state, it is in A.A.C.'s best immediate and long term interest to terminate R.C.'s parental rights. Accordingly, we affirm the juvenile court's order.

AFFIRMED.