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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-63 / 89-1356

IN RE S.H., T.H., and J.T., Minor Children,

U.W., Mother,

Appellant.

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Appeal from the Iowa District Court for Linn County, Michael J. Newmeister, Judge.

The natural mother of three children appeals the juvenile court order terminating her parental rights. **AFFIRMED.**

Gerald J. Kucera of Tom Riley Law Firm, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee, the State of Iowa.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

This is an appeal by a mother, U.W., challenging a trial court order terminating her parental rights to daughters born in 1979 and 1985 and a son born in 1981. She contends there is not clear and convincing evidence that the children could not be returned as provided in Iowa Code section 232.102. She also contends that the termination is not in the best interests of the children.

The fathers of the children do not appeal from the order terminating their rights.

The mother and the three children first came to the attention of the Iowa Department of Human Services in February 1986. The son born in 1981 was an extremely active child. The mother had trouble disciplining and controlling him. Services in the home were utilized. In April of that year, there was a report that the oldest daughter had been sexually abused by a man who lived in the home. The mother knew of the abuse earlier but had not reported it. The mother was a German national who had a traumatic childhood and a series of relationships with several abusive men.

On February 1, 1987, the mother hit her son's hands with a belt. The next day, finding food taken from the cupboards and spilled in the kitchen, she slapped her son's face a number of times while holding him on the floor with her knees. The belt incident resulted in some swelling and possible bruising of the child's hands. The slapping

resulted in some bruising and swelling. The injuries were reported by school personnel. All three children were removed from the home.

Prior to these events, the mother, as well as school personnel (the child was in kindergarten), had had difficulty disciplining him. There also was an instance prior to the February 1988 removal when the mother spanked one of her daughters with a spatula.

After removal, the State determined the mother should reach several generally-defined goals, including:

> 1. [The mother] will demonstrate an understanding of the children's emotional needs and specific ways to meet those needs. She must become able to meet those needs.
>
> 2. [The mother] will demonstrate the ability to consistently conduct day to day family life (meals, bedtime, laundry, shopping, etc.) with all four children in a calm, efficient, effective and flexible manner.

To help the mother accomplish these goals, the State utilized a large number of personnel and services, including services of the University of Iowa Hospitals, Mercy Hospital in Cedar Rapids, Lutheran Social Services, and Kirkwood Community College. The mother was directed to read materials, to attend sessions for counseling, and to improve her parenting skills. On most occasions when the mother had visitations with her children, her every encounter with the children was monitored, recorded, and critiqued. The appendix contains copies of 242 pages of

handwritten case notes detailing the children's and mother's actions during supervised visitations.

We find the mother made an effort and has spent considerable time attempting to follow most State directives. We recognize there have been a few occasions when she did not follow all assignments. The mother also has manifested a frustration with a process that has not resulted in the return of her children.

The State tells us after all these efforts the children cannot be returned home because if they are they will suffer harm. To support this contention, the State called a series of witnesses who recommended termination. We review the testimony of these witnesses.

Lila Starr, a social worker with the Department of Human Services, recommended termination. She testified the children were bonded to each other. She indicated she believed the children would make a good adjustment in an adoptive home. She did not elaborate on the basis for her recommendation.

Rebecca Usher, a caseworker for Children's Home in Cedar Rapids, determined the children would be at risk if returned because of the large number of children in the home and the mother's temper. She determined the mother was no more able to parent the children than she was in October 1988 when this witness began working on the case.

Sandra Prior, Case Manager for Mercy Home Health Care, recommended termination. She had been supervising visitation for a year and a half. She indicated a basis for her opinion was the mother did not properly utilize a discipline technique she called "a time out." The witness testified the mother forcefully sat the children down and was not flexible in using the time out technique.

Matthew Hanlon, Supervisor of Mercy Home Health Care, testified the children should not be returned because the mother did not have the ability to manage all four children at once and she had not made any progress since the children were removed.

Randall C. Alexander, Assistant Professor of Pediatrics at the University of Iowa, recommended termination because the mother was unable to meet the children's needs, the mother's stress level was high, and the children remained at risk for denial of critical care.

Linn Noble, a psychologist at the Child Development Clinic at the University of Iowa, recommended termination because of the mother's high stress level.

There is conflicting evidence as to the bonding between the children and their mother. We consider the age of the children, the time they were in their mother's custody prior to removal, and the other evidence introduced at trial, and find there is considerable bonding between the mother and most particularly the older children. While the

nearly three years the children had been in foster care has resulted in some loss of that relationship, we are not as convinced as are several of the State's witnesses that termination and adoption will not be difficult for these children. There is substantial authority indicating that children suffer from multiple placements during their childhood, and the severance of biological ties is not done without trauma to the children. See Beyer & Mlyniec, Lifelines to Biological Parents: Their Effect on Termination of Parental Rights and Permanence, 20 Fam. L.Q. 233, 234-36 (1986). We also recognize these children are special need children and there may be difficulty finding them adoptive homes.[1]

Termination of parental rights is a drastic measure and we treat it as such. The threshold issue we need to address is whether the trial court was correct in finding there was clear and convincing evidence the parental rights should be terminated. See Santosky v. Kramer, 455 U.S. 745, 71 L. Ed. 599, 102 S. Ct. 1388 (1982). Our review is de novo. In re D.W., 385 N.W.2d 570, 573 (Iowa 1986).

The mother says there is not clear and convincing evidence supporting termination. She questions some of the experts' ideas about child rearing and how realistic they are with regard to child rearing in this case. The attorney for the mother argues when three or four children are in a household, some people might consider it chaotic

1. Devine, Study: Recruit Singles to Adopt Special Children, Des Moines Register, April 18, 1989, at 2A.

but that does not mean that those parents cannot be good parents.

The mother also contends at the time of trial she was in a good, solid marriage, with a baby in the family, there was no sign of abuse, and the circumstances from the past had changed for her. She contends the trial court did not give enough credence to the fact that the matters which triggered the acceleration of the stress had all changed. She says in February 1987 she was a single parent trying to handle three children, was going to school full time, and was trying to maintain a social life. She says she is now married to a stable person and is no longer a full-time student. Since she has married, she stays at home with the family and there is no longer an extensive social life.

She asks consideration of the fact that her son was diagnosed shortly after the abuse as having ADD, and after he was placed on Ritalin he performed well in school and was much better with all of those around him. She points to the fact that from February of 1987 when the children were removed, until the termination in August of 1989, there were no incidents of her abusing the children. She says her fourth child, born in April 1988, is in her care and appears to be doing satisfactorily. She contends the court and social workers did not place sufficient significance to the fact she was a recent German immigrant. She charges some readings assigned to her had

to be interpreted because she did not understand them. She points out the Foster Care Review Board was concerned that she did not understand her previous case plan, and they requested a new one. The mother asserts some of the providers were not realistic in their expectations. As an example, she cites a time when she was working at the Cedar Rapids Gazette and getting little sleep. She had a child less than a year old, and yet she contends a social worker expected her to continually read a large number of materials and books. At the same time, the mother claims she was getting mixed signals from social workers who indicated it was necessary for her to have the job to increase the family income.

The mother testified that child raising was different in the States than in Germany. She said her parents were strict and she has a difficult time in understanding the culture and expectations in the United States.

The State admits the mother has exhibited a pattern of participation to some extent, but contends she had no follow through or ability to incorporate learned parenting techniques during visitation. The State argues the professionals involved in the case saw no progress in the mother's inability to handle the everyday problems in her life and certainly saw no indications the children would be safe if returned.

The State contends in December 1988, it became clear the mother could not handle the stress of a job and new baby, let alone the return of her other three children. At that time visits were missed, the mother's stress level was high, and she made threats to a social worker and accused her of selling the children on the black market. The State contends the mother continues to be a very emotional person who can be smiling one minute and crying the next. It argues she continues to focus on one child at a time and cannot supervise the children collectively. It contends she has inappropriately disciplined her son. The State criticizes her for suggesting the children be separated and the two oldest be placed with their father, whom she admits was physically abusive to both her and the children. The State contends the mother continues to blame the service providers for not solving her problems, is very defensive and resists suggestions of different ways to handle her children's behaviors, and continues arguing about adult problems in front of the children.

The State also contends the mother does not have adequate housing. We find the fact that she has inadequate housing is the result of her poverty. We do not consider the adequacy of her housing in our determination.

We carefully examine the arguments made by the mother and the State. Over three years have passed since the State intervened and removed these children from their

mother's home. We find during two and a half years of this time, the State has expended considerable resources on what it considered to be an attempt to reunite the family. We find during that same period the mother has continually manifested a desire to have her children returned. She has made reasonable attempts to comply with State directives. She has visited doctors, worked with social workers, read books, attended classes, maintained employment, visited her children, and attempted to utilize some of the things she was learning. She has been frustrated by the procedure. We are critical of the mother in some respects. We find she has not been totally truthful with social workers; she has manifested impatience with the system. She has been resistant to some suggestions. But we can also understand some of the frustrations she has felt. For example, in one instance a social worker wanted her on medication (apparently a form of tranquilizer) and she was criticized for not taking it. The mother resisted because she did not believe in this form of medication and because she did not wish to take medication during her pregnancy. The record reflects the mother was justified in her attitude toward medication.

This is a depressing record. Despite the mother's efforts, the mother's desire to have the children, and the expenditure of substantial State resources, the family has not been reunited. The children, who still have special

needs, remain in foster care. The mother, according to the State's experts, suffers from stress, preventing her from regaining custody, and her children will be in danger if the children are returned home.

Other than the experts who testified against return, the crux of the State's evidence is that the mother failed to follow the correct course when one of her children was sexually abused. She used excessive force in disciplining on three occasions. She spanked her daughter with a spatula. She dealt with a hyperactive child by striking him with a belt and holding him down and slapping his face. The latter two incidents left marks on the child, but no medical treatment was required. The mother has adequately taken care of the baby. She is an emotional person. The State experts have testified the children will suffer harm if returned home.

The question of whether there is clear and convincing evidence supporting the termination is very close. Aside from the opinions of the State experts, the evidence would not support a finding that the children cannot be returned home. The expert testimony is troubling because, despite the experts' definite opinions that the children cannot be returned home, the experts cite little evidence supporting the conclusions they have reached. The trial court that saw the witnesses and heard the evidence ordered termination. We affirm the trial court.

It is with sadness we recognize that our system has not been able to supply the resources to save this family. The purpose of child in need of assistance procedures is to save families. The mother has the desire to keep her children and has worked within the system to attempt to have her children returned to her. Our system has failed to save this family. Termination offers no guarantees for these children.

AFFIRMED.