IN THE COURT OF APPEALS OF IOWA

FILED
MAY 30 1995
CLERK SUPREME COURT

No. 5-196 / 94-2029

IN THE INTEREST OF M.P.H., F.L.K., and J.L.H., Minor Children.

T.K., Mother,

Appellant,

STATE OF IOWA,

Appellant.

Appeal from the Iowa District Court for Woodbury County, Robert J. Dull, District Associate Judge.

Mother appeals an order terminating her parental rights; the State cross-appeals the juvenile court's refusal to terminate the father's rights. **AFFIRMED IN PART, REVERSED IN PART.**.

Randy S. Hisey, South Sioux City, Nebraska, for appellant mother.

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; Charles K. Phillips, Assistant Attorney General; and Dewey P. Sloan, Assistant County Attorney, for appellant State.

Joe Flannery of O'Brien, Galvin, Moeller & Neary, Sioux City, for appellee A.H., father of J.L.H.

Mike O'Brien of Juvenile Law Center, Sioux City, for minor children.

Heard by Donielson, C.J., Huitink, J., and Schlegel, S.J.*

*Senior Judge from the Iowa Court of Appeals serving by order of the Iowa Supreme Court.

DONIELSON, C.J.

The mother of three children appeals the termination of her parental rights. The State cross-appeals from the juvenile court's refusal to terminate the parental rights of the father of the youngest child. We affirm with respect to the mother's appeal and reverse the juvenile court's decision not to terminate the father's parental rights.

I. STANDARD OF REVIEW.

We utilize de novo review in determining if there is clear and convincing evidence to support the termination of parental rights. *In re S.A.*, 502 N.W.2d 23, 25 (Iowa App. 1993). A child's rights and needs are paramount in termination proceedings. *Id.* The primary concern is the best interests of the children.

> 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) (citations omitted).

II. TERMINATION OF TERESA'S PARENTAL RIGHTS.

Teresa is the mother of Maria, Faith, and Jesse. Maria was born December 5, 1988, Faith was born March 2, 1992, and Jesse was born on July 1, 1993.[1] The temporary custody of the children was transferred to the Iowa Department of Human Services ("DHS") on October 22, 1993. The children were adjudicated children in need of assistance on November 30, 1993. On May 10, 1994, a petition for termination of all their parents' parental rights was filed.[2] The petition was amended June 17, 1994. On November 4, 1994, an order was entered terminating Teresa's parental rights.

Teresa was arrested on federal charges of conspiracy to distribute cocaine in February 1991. As a condition of her supervised pretrial release, Teresa was to submit to drug testing. She tested positive for cocaine use in April and May 1991, and she failed to follow through with recommended substance abuse treatment.

Maria was removed from her mother's care and placed in foster care from May 1991 through November 1991 due to Teresa's arrest on charges of child endangerment, simple assault, open container, public intoxication, and failure to use a child restraint. Teresa was initially uncooperative with the provision of DHS

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[1]Teresa's parental rights as to Faith are no longer in issue as Faith died December 27, 1994.

[2]The parental rights of Maria and Faith's fathers are not at issue in this appeal.

services and Maria was adjudicated a child in need of assistance on August 8, 1991. When Teresa became cooperative with DHS, Maria was returned to her custody in November 1991 and juvenile court intervention was terminated in May 1992.

Teresa was incarcerated for approximately four months from October 1992 until February 1993 on the federal drug charges. Upon her release from prison, Teresa was subject to supervised probation. Conditions of her release included participation in a substance abuse program and submission to random urinalysis testing. Between February and December 1993, Teresa was required to participate in an evening outpatient program. She failed to do so.

While incarcerated in the fall of 1992, Teresa learned she was pregnant with Jesse. Jesse was born in July 1993. Shortly after his birth, Teresa tested positive for cocaine use on three occasions. Teresa was arrested for cocaine use in August 1993, and, as a result, was given the choice of participating in inpatient substance abuse treatment or going to jail. Teresa chose inpatient treatment.

Upon completion of a thirty-day program, she was transferred to a halfway house. In October 1993 Teresa absconded from the halfway house and relapsed in her use of cocaine and alcohol. During this time she failed to keep a scheduled medical appointment for Jesse and he had to be hospitalized for pneumonia.

When Teresa failed to return to the halfway house, she was discharged and a federal warrant for her arrest was issued. In December 1993 Teresa was arrested and her probation was revoked. She was reincarcerated. As of the October 1994

termination hearing, Teresa had again been placed in a halfway house where she was to remain for a few weeks before being placed on supervised release.

Since her drug-related arrest in 1991, Teresa has had three opportunities to put her children's needs before her substance abuse problems. She chose to continue using cocaine and alcohol during her pretrial release in 1991, after her release from prison in 1992, and after undergoing inpatient treatment during the fall of 1992.

The record reflects there is clear and convincing evidence to support the termination of Teresa's parental rights. Termination was sought pursuant to Iowa Code sections 232.116(1)(d), (g), and (k) (1993). In her brief Teresa does not specifically challenge that the statutory grounds to terminate were established. Instead, she argues it was not in the best interests of the children to terminate her parental rights and termination would be detrimental to the children in light of their close parent-child relationship.

The evidence reveals the children have serious health and behavioral problems. During their lives they have been in the care of numerous caretakers. Teresa's drug use and repeated incarcerations make it impossible for her to effectively care for her children's needs. Given her absences from the children's lives, the record does not reflect a particularly close bond between the children and Teresa. It is in their best interest to terminate her parental rights. Clear and convincing evidence supports the termination of Teresa's parental rights, and we affirm that portion of the juvenile court's decision.

III. TERMINATION OF ALBERTO'S RIGHTS.

Alberto is the father of Jesse. During her first incarceration Teresa informed Alberto she was pregnant. Despite the knowledge that he was going to be a father, Alberto violated his probationary status. Alberto was arrested and incarcerated for violating his parole in April 1993. As of the time of the October 1994 termination hearing, he was still imprisoned.

Teresa and Alberto shared correspondence and communications during their respective periods of incarceration. However, they made no plans for their baby. Following his son's birth and Teresa's reincarceration, Alberto made no arrangements for anyone to care for Jesse. Alberto provided no financial, emotional or physical support for Jesse before or after his birth.

Teresa's caseworker testified Teresa told her in December 1993 or January 1994 that Alberto was Jesse's father. The caseworker indicated case permanency plans had been sent to Alberto since March 1994. However, Alberto did not contact DHS about his son until late June 1994 when he was served with notice of the petition to terminate his parental rights.

We agree with the State's argument that Alberto was responsible for taking himself out of a care-taking role for his son. He proceeded to violate the conditions of his parole, and ensure his return to prison, despite the fact he knew Teresa was pregnant with his child. His conduct is that of an individual who means to relinquish

or surrender the parental rights, duties, or privileges inherent in the parent-child relationship.

Alberto's purported efforts to improve himself and keep in contact with his son's caretakers are not sufficient to overcome the fact that he effectively deserted his son by violating his parole and allowing himself to be reincarcerated. The State proved by clear and convincing evidence that Alberto had abandoned and/or deserted Jesse. Iowa Code §§ 232.2(1), (14); 232.116(1)(b) (1993). We reverse the decision of the juvenile court and order the termination of Alberto's parental rights.

AFFIRMED IN PART, REVERSED IN PART.