IN THE COURT OF APPEALS OF IOWA

No. 1999-610 (9-871) / 99-1154
Filed March 29, 2000

IN THE INTEREST OF F.G., G.G., J.H., L.H., and S.M., Minor Children,

F.G., Sr., Father of F.G. and G.G.,
Appellant,

T.S., Mother,
Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Constance Cohen, Associate Juvenile Judge.

Father and mother appeal separately from a juvenile court order terminating their parental rights. Father contends the court erred in (1) denying his motion to continue the termination proceedings until his release from prison, and (2) failing to enter a permanency order. Mother contends the court erred in terminating her rights. **AFFIRMED.**

Christopher A. Kragnes, Sr. of Law Offices of Christopher A. Kragnes, Sr., P.C., Des Moines, for appellant-father.

Marla Suddreth of Borseth & Genest Law Office, Pleasant Hill, for appellant-mother.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Cory McClure, Assistant County Attorney, for appellee-State.

Richard E.H. Phelps II of Phelps Law Office, Mingo, until withdrawal, guardian ad litem for minor children.

Heard by Huitink, P.J., and Streit and Miller, J.J.

MILLER, J.

Teresa appeals the termination of her parental rights to her five children. She contends the State did not offer adequate services to correct the circumstances which led to the children being adjudicated as in need of assistance and there was not clear and convincing evidence to support the trial court's termination of her parental rights. Fredis, Sr. appeals the termination of his parental rights to his two children. He claims (1) the trial court abused its discretion in denying his motion to continue the termination hearing, and (2) the trial court should have entered a permanency order instead of a termination order. We affirm.

I. Factual and Procedural Background

Teresa is the mother of five children whose names and birth dates are as follows: Sergio, Jr., 2-25-85; Fredis, Jr., 1-2-88; Gabriella, 1-19-89; Leslie, 9-26-90; and Juan, 5-17-92. It appears that there are three different putative fathers, although paternity has never been affirmatively established. Fredis, Sr. is the father of Fredis, Jr. and Gabriella.

Beginning in 1990, several founded reports from the Department of Human Services (DHS) were made against Teresa due to physical abuse and denial of critical care and lack of supervision. She continued to abuse alcohol and drugs, leaving her children with other caregivers. She did not take advantage of the many services offered to her.

On November 24, 1997, the State filed a petition alleging one of the children, Juan, to be a child in need of assistance (CINA). Teresa was ordered to comply with various services, including family preservation. She was unable

to comply, resulting in the rest of her children being placed in family foster care. On March 2, 1998, the State filed petitions alleging Leslie, Gabriella, and Fredis, Jr. to be children in need of assistance. On April 27, 1998, the State filed another CINA petition alleging Sergio, Jr. to be in need of assistance. The CINA petitions were based upon allegations that Teresa denied critical care to her children because she was using drugs and having sex in front of the children, was not receptive to services, did not allow Family Preservation Services to work with the family, and provided UA samples positive for marijuana. *See* Iowa Code §§ 232.2(6)(c)(2) and 232.2(6)(n).

On April 22, 1998, the four youngest children were adjudicated to be CINA for the reasons set forth in the petitions. Sergio, Jr. was adjudicated CINA on June 29, 1998. The CINA dispositional order filed July 2, 1998, continued placement of the children outside of Teresa's home. Sergio was placed in his father's home under Department of Human Services (DHS) supervision, and the four remaining children were continued in the custody of DHS for placement in foster homes.

Review hearings were held on August 24, 1998, and February 24, 1999. The children were confirmed to be CINA, with foster care continued. The juvenile court also ordered the State to file a termination petition at the conclusion of the February 1999 review hearing.

The State filed a petition to terminate parental rights on March 19, 1999. A hearing was held on three days on April 23, May 10, and May 27, 1999. In an order dated June 10, 1999, the juvenile court terminated the parental rights of Fredis, Sr. with respect to Fredis, Jr. and Gabriella, pursuant to Iowa Code §§

232.116(1)(b), (d), and (e). In the same order the court also terminated the parental rights of Teresa with respect to all five children, pursuant to Iowa Code §§ 232.116(1)(c), (d), and (e). At the time of the termination proceedings Teresa was incarcerated for possession of a controlled substance with the intent to deliver, a class "B" felony. Teresa began serving her sentence of no more than twenty-five years in September 1998. At the same time, Fredis, Sr. was incarcerated in the State of Texas for aggravated assault. His first parole hearing was set for October 1999.

Teresa appeals, contending there was no clear and convincing evidence to support the trial court's termination under the code sections cited. Fredis, Sr., appeals, claiming (1) the trial court abused its discretion in denying father's motion to continue the termination hearing, and (2) the trial court should have entered a permanency order instead of a termination order. The other two fathers do not appeal.

II. Scope and Standard of Review

Appellate review of proceeding to terminate a parent-child relationship is de novo; thus it is our duty to review the facts as well as the law and adjudicate rights anew on those propositions properly preserved and presented to us. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We accord weight to the fact findings of the juvenile court, especially when considering the credibility of the witnesses, whom that court heard and observed firsthand, but we are not bound by those findings. *Id.*

Central to a determination of this nature are the best interests of the child. *Id.* In this connection, we look to the child's long-range as well as immediate

interests. *Id.* Hence, we necessarily consider what the future likely holds for the child if returned to his or her parents. *Id.* 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 that parent is capable of providing. *Id.*

There is a rebuttable presumption that the best interests of the child are served by custody of the natural parents. Iowa Code § 232.1 (1999); *see also Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394-95, 71 L. Ed. 2d 599, 606 (1982) (stating "fundamental liberty interest of natural parents in the care, custody and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."); *Alsager v. District Court*, 406 F.Supp.10, 16 (S.D. Iowa 1975) (holding parents possess a fundamental liberty and privacy interest in maintaining the integrity of their family unit), *aff'd in part,* 545 F.2d 1137 (8th Cir. 1976); *In re Chad*, 318 N.W.2d 213, 218 (Iowa 1982). The state bears the burden of proving the necessary elements by clear and convincing evidence. *In re Chad*, 318 N.W.2d at 219; *In re T.B.B.*, 460 N.W.2d 881, 882 (Iowa App. 1990).

Termination of parental rights is a drastic, final step which, when improvidently employed, can be fraught with danger. *Alsager*, 406 F.Supp. at 24. Termination must only occur where more harm is likely to befall the child by staying with his parents than by being permanently separated from them. *Id.* The state has a legitimate interest in protecting the welfare of its minor citizens, but that interest must be balanced against the parents' countervailing interest in

being able to raise their children in an environment free from government interference. *Alsager*, 406 F.Supp. at 22.

II. Teresa

Teresa appeals the termination of her parental rights pursuant to Iowa Code § 232.116(1)(c). She contends she was not offered adequate services "to correct the circumstances which led to the [CINA] adjudication." *See* Iowa Code § 232.116(1)(c)(2).

The State is required to provide reasonable services to preserve Teresa's family. *In re E.K.*, 568 N.W.2d 829, 831 (Iowa App. 1997). However, it is the parent's responsibility to demand services if they are not offered, *In re H.L.B.R.*, 567 N.W.2d 675, 679 (Iowa App. 1997), and to do so prior to the termination hearing, when the case plan is entered. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). Teresa made no such demand or request. Further, because the circumstances that lead to incarceration are solely Teresa's responsibility, the DHS cannot be faulted for being unable to provide services while she is incarcerated. *See In re E.K.*, 568 N.W.2d at 831.

The juvenile court noted in its termination order that

> Throughout the course of this case, the State made reasonable efforts to eliminate the need for removal. These services included: Department of Human Services child protective treatment, pre-school handicapped program, in-home counseling, Gerard family preservation, foster care, Broadlawns behavioral clinic, Blank psychiatry, Children and Families of Iowa, Generations supervision, Employee & Family Resources substance abuse evaluations, psychosocial evaluation, Alternative Treatment Associates, and Des Moines Child Guidance.

Our de novo review of the record discloses abundant evidence supporting the juvenile court's finding of fact. The record clearly and convincingly

establishes that the State provided Teresa and her children with an abundance of services adequate to correct the circumstances which led to the CINA adjudication, if she had only taken advantage of them.

Teresa further contends that because she *may* be discharged within a few months, has improved herself by taking GED courses, completed a chemical dependency class, earned a certificate for re-entry into society, and addressed self-esteem and anger management issues while in prison, there is no clear and convincing evidence that the circumstances which led to the CINA adjudication continue to exist despite the offer or receipt of services. *See* Iowa Code § 232.116(1)(c)(2). The juvenile court found her efforts would appear to be more genuine "had they appeared before she was incarcerated. Furthermore, the mother admitted that she did not voluntarily seek out these classes; rather, they were required." The court also noted that

> Teresa [ ] has a long history of putting her needs before her children. She would not even get up to get them to school, opting instead to sleep until 11:00 a.m. to 12:00 noon each day. She often left the children with multiple caregivers and has failed to complete any classes or exhibit any positive parenting skills to this court. It is clear that Teresa [ ] would require a substantial amount of time after her release from prison to establish a pattern of sobriety and responsibility to the extent that she could care for children.

A good prediction of the future conduct of a parent is to look at past conduct. *See, e.g., In re N.F.*, 579 N.W.2d 338, 341 (Iowa App. 1998). Our independent review of the record convinces us the juvenile court was correct in its assessment that, despite the offer and receipt of services, Teresa's inability to supervise and provide for her children continued at the time of her incarceration and the subsequent termination hearing. The juvenile court did not err in

terminating her parental rights pursuant to the Code of Iowa, section 232.116(1)(c).

Teresa also appeals the termination of her parental rights pursuant Code Section 232.116(1)(d). She contends there was not clear and convincing evidence she had not maintained significant and meaningful contact with her children during the previous six months. Teresa had been incarcerated since at least September 1998. As noted above, this situation was of Teresa's doing. The fact she could not have any contact with her children was the result of her drug addictions and her criminal activity and resulting incarceration. The DHS cannot be faulted for not providing her contact with her children. We find no evidence that Teresa requested any visitation with her children while she was in prison. Most importantly, the record discloses Teresa did not make an effort to maintain significant and meaningful contact with her children in the months prior to her incarceration. Upon our de novo review of the record, we find the juvenile court did not err in terminating Teresa's parental rights pursuant to Iowa Code section 232.116(1)(d).

Teresa also contends the juvenile court erred in terminating her parental rights pursuant to Iowa Code 232.116(1)(e). However, we need not reach that argument. *See In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999) (holding when the juvenile court terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm).

III. Fredis, Sr.

Fredis, Sr. first contends the juvenile court abused its discretion in denying his motion for a continuance. The motion sought to continue the termination hearing until after his first parole hearing, then scheduled for October 1999, some five months after the motion was made and some six and one-half months after the termination hearing commenced, in hopes parole would be granted by the State of Texas.

The legislature has determined the interval for which patience for parents may last. *In re R.J.*, 436 N.W.2d 630, 636 (Iowa 1989). "This period must be reasonably limited because patience on behalf of the parent can quickly translate into intolerable hardship for the children." *Id.* When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). Plans which extend the twelve-month period during which parents attempt to become adequate in parenting skills should be viewed with a sense of urgency. *In re A.C.*, 415 N.W.2d 609, 614 (1987). The State, as *parens patriae*, has the duty to assure that every child within its borders receives proper care and treatment and must intercede when parents abdicate that responsibility. *In re A.L.*, 492 N.W.2d 198, 200 (Iowa App. 1992).

The record discloses that the last time Fredis, Sr. had contact with his two children was sometime in 1990 or 1991. The termination hearing began on April 23, 1999. On May 27, 1999, Fredis, Sr. asked the court to continue the hearing, which had begun more than one month earlier and was apparently near conclusion, until after October 1999. The juvenile court did not abuse its

discretion in deciding the children could not wait many more months for Fredis, Sr. to be available and perhaps even more time thereafter for him to develop a relationship with children who did not know him and to become adequate in parenting skills.

Fredis, Sr. also contends the juvenile court should have entered a permanency order instead of terminating his parental rights. He argues that when paroled, he will be ready, able, and willing to take custody of his children, and will comply with all services the court may require. He does not contend there is a lack of clear and convincing evidence to support the juvenile court's termination order.

We have frequently noted that a good prediction of the future conduct of a parent is to look at the past conduct. *See, e.g., In re N.F.*, 579 N.W.2d 338, 341 (Iowa App. 1998). We cannot preserve in law a relationship which does not exist in fact, with the children committed indefinitely to the parentless limbo of foster care. *See In re E.B.L.*, 501 N.W.2d 547, 551 (Iowa 1993). As the juvenile court noted, "the putative fathers [of the children] have abandoned or deserted their children. Fredis [ ], Sr. has had absolutely no contact with Gabriela or Fredis since they were first removed from the care of their mother." In fact, Fredis, Sr. has not had contact with his children since at least 1991. The juvenile court also noted that Fredis, Sr. has not provided any financial support for his children. We find, contrary to Fredis, Sr.'s contention, it is in the children's best interests to terminate his parental rights and not enter a permanency order. The juvenile court did not err in doing so.

V. Conclusion

Upon our de novo review of the record, we concur with the statement of the juvenile court that:

> It is clearly in the children's best interests that parental rights be terminated with respect to all of the children in interest. First and foremost, these children really do not have any emotional attachments to their respective parents. All five children have special needs and attend individual therapy. They require a high level of supervision and structured parenting. None of the parents . . . are capable of providing the supervision and structure the children require. They have waited a long time . . . and they should not have to wait any longer. The children are adoptable and they deserve to have a forever family as soon as possible.

The evidence in this case clearly and convincingly rebuts the presumption that the best interests of the children are served by custody of the natural parents. The termination order of the juvenile court is affirmed.

AFFIRMED.