IN THE COURT OF APPEALS OF IOWA

No. 6-504 / 96-733

FILED
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CLERK SUPREME COURT

IN THE INTERESTS OF C.F. and D.W.,
Minor Children,

B.W., Mother,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson, Associate Juvenile, Judge.

Mother appeals from a district court ruling terminating her parental rights to her minor children. **AFFIRMED.**

Kelli Rae Taylor of Reilly, Petersen & Hannan, P.L.C., Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Diane M. Stahle, Special Assistant Attorney General, Maureen McGuire, Assistant Attorney General, and Martha Heinicke, County Attorney, for appellee State.

Considered by Habhab, P.J., Huitink, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

SCHLEGEL, S.J.

B.W. appeals the order terminating her parental relationship with C.F., born April 9, 1992, and D.W., born January 29, 1991. She contends that the only reason the court terminated her parental rights was due to her incarceration. The parental rights of the fathers of the two children have also been terminated, but they have not appealed.

The neglect of these two children came to the notice of the Department of Human Services (DHS) during January of 1994, when they were left with a twelve-year-old cousin while B.W. went out drinking, without giving the caretaker any information where she might be reached. She returned shortly after the children had been removed from her home, smelling of alcohol, and telling the authorities that she had been with friends, drinking and smoking marijuana.

Although the children were returned to her on February 1, 1994, on February 28, 1994, she once again left the children in the care of a neighbor at approximately 11:30 p.m. while she was to go to the store. At 8:30 a.m. on March 1, 1994, she had not returned, and the children were again placed in shelter care. Later that day, B.W. contacted the DHS asking about her children. She met with the case worker and at the time smelled of alcohol. She admitted that she went to a local tavern and then to a friend's house where she played cards, drank beer, and smoked marijuana. The children were found to be in need of assistance in February 1994 and were placed in foster care on March 3, 1994, where they remain.

Pursuant to a court order, B.W. completed a substance abuse evaluation and psychological profile. She entered inpatient treatment for alcohol and cocaine dependency, but was terminated from treatment on June 4, 1994, due to behavioral problems. She was given a bus ticket to return to her home in Council Bluffs from Mt. Pleasant following her termination from treatment, but failed to return home. In December 1994, she was placed in jail for two months for failure to appear in court on a prostitution charge. She returned to jail from April to May 1995 on the same charge. On August 2, 1995, her probation was revoked and she was sentenced to an indeterminate two-year prison term. Her expected release date was December 1995.

B.W. contends that she has quit doing drugs while she was incarcerated. She states that she will subject herself to such counseling as is required by the DHS. She claims she no longer has an addiction to drugs or alcohol.

The juvenile court found there was clear and convincing evidence that these children had been abandoned or deserted in accordance with section 232.116(1)(b), 1995 Code of Iowa. The court further found:

> [T]here is clear and convincing evidence that [D.W.] is four years of age or older, he has been adjudicated a child in need of assistance pursuant to Section 232.96 of the Code, he has been removed from the physical custody of his parents for at least 12 of the last 18 months or for the last 12 consecutive months and any trial period home has been less than 30 days and at the present time he cannot be returned to the custody of either of his parents as provided in Section 232.102 pursuant to Section 232.116(1)(e), 1995 Code of Iowa. The Court further finds that there is clear and convincing evidence that [C.F.] is three years of age or younger, that she has been adjudicated to be a child in need of assistance pursuant to Section 232.96 of the Code, that she has been

> removed from the physical custody of her parents for at least six months of the last twelve months or for the last six consecutive months and any trial period at home has been less than thirty days and there is clear and convincing evidence that she cannot be returned to the custody of her parents as provided in Section 232.102 of the Code and pursuant to Section 232.116(1)(g), 1995 Code of Iowa.

Based upon those findings, the court terminated the parental rights of the fathers and of B.W.

We agree with the ruling of the trial court. We also find that the parents of these children have abandoned the children, as the same is defined in section 232.2(1) of the 1995 Code of Iowa. The evidence shows that for a number of reasons, and in a number of ways, B.W. relinquished or surrendered the parental rights, duties, and privileges inherent in the parent-child relationship. Her failure to be attentive to the plight of the children during almost eighteen months shows that she had the intent to abandon them. Her actions in remaining unavailable for visitation with the children for such an extended time are actions that evidence that abandonment.

Looking at the parent's behavior to determine abandonment was approved by the Iowa Supreme Court in *In re D.M.*, 516 N.W.2d 888, 891 (Iowa 1994).

The trial court found "that there is clear and convincing evidence that these children have been abandoned or deserted in accordance with Section 232.116(1)(b), 1995 Code of Iowa." Section 232.116(1)(b) provides:

> 1. [T]he court may order the termination of both the parental rights with respect to a child and the relationship between the parent and child [when]:

* * *

b. The court finds that there is clear and convincing evidence that the child has been abandoned or deserted.

Iowa Code section 232.2(1) defines abandonment of a child as

> [T]he relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

The supreme court has stated:

> We have characterized abandonment as a "giving up of parental rights and responsibilities accompanied by and intent to forego them." *In re Burney*, 259 N.W.2d 322, 324 (Iowa 1977). Two elements are involved in this characterization. First, the giving up of parental rights and responsibilities refers to conduct. Second, the intent element refers to the accompanying state of mind. *In re Goettsche*, 311 N.W.2d 104, 106 (Iowa 1981). In addition,
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> > parental responsibilities include more than subjectively maintaining an interest in a child. The concept requires affirmative parenting to the extent it is practical and feasible in the circumstances. *Id.*

D.M., 516 N.W.2d at 891.

As the trial court observed and found:

> There is clear and convincing evidence that [B.W] continues to suffer from a chemical dependency problem and refuses treatment, that the children in interest have not seen her since May of 1994 and only after [B.W.] had been placed in jail and these proceedings were instituted did she request any visitation with the minor children since that time, nor has she been concerned about their welfare. The Department of Human Services has offered chemical dependency services which have been unsuccessfully received by [B.W.] on at least two occasions. Further, it appears that since these children have been taken into

> protective custody, she had a baby in December of 1994 that was placed in foster care by the Department of Human Services in Polk County as the child was born apparently cocaine addicted.

We agree with the trial court that there is more than sufficient evidence that B.W. has abandoned these children. Under the provisions of the statutes involved and their interpretation in *In re D.M.*, 516 N.W.2d 888, 892 (Iowa 1994), we hold that B.W. abandoned these children and that the termination of her parental rights as to them must be affirmed.

AFFIRMED.