IN THE COURT OF APPEALS OF IOWA

No. 5-069 / 94-1546

FILED
FEB 28 1995
CLERK SUPREME COURT

IN THE INTEREST OF J.M., A Minor Child,

K.M., Mother,

Appellant,

M.M., Father,

Appellant.

Appeal from the Iowa District Court for Mahaska County, Michael Stewart, Judge.

Mother and father appeal from the termination of their parental rights. **AFFIRMED.**

Jeffrey A. Smith of Heslinga, Heslinga & Dixon, Oskaloosa, for appellant mother.

Allen A. Anderson of Spayde, White & Anderson, Oskaloosa for appellant father.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Vickie Siegel, Assistant County Attorney, for appellee State.

Randy S. DeGeest, Oskaloosa, for minor child.

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

DONIELSON, C.J.

This is an appeal from the termination of Michael and Kathy's parental rights. We utilize de novo review in determining if there is clear and convincing evidence to support the termination. See In re S.A., 502 N.W.2d 23, 25 (Iowa App. 1993). Upon our review of the parties' arguments and the record, we affirm the termination of Michael and Kathy's parental rights.

Kathy and Michael have been married to one another three times and have three daughters together. Their parental rights to the two oldest daughters were terminated in 1989. Jessica, the subject of this appeal, was born January 8, 1988. Michael and Kathy have received services from the Department of Human Services (DHS) since 1986. Areas of concern about their parenting centered around Michael's chronic alcoholism, Kathy's codependence, Kathy's temper, and Michael and Kathy's domestic violence and instability.

In July 1991 Kathy was facing a jail term and Michael was drinking heavily. Kathy voluntarily placed Jessica in the care of Kathy's niece and her niece's husband, the Richmonds. In August 1991 Kathy gave the Richmonds temporary sole custody of Jessica.

In October 1991 a child in need of assistance (CINA) petition was filed. The petition alleged Michael and Kathy were going to seek Jessica's return and Jessica would suffer inadequate supervision if returned to their care.

Hearings on the petition were held on January 8, 1992, March 11, 1992, June 8, 1992, and August 12, 1992. An order adjudicating Jessica a child in need of assistance was filed August 19, 1992. Kathy and Michael were ordered to obtain substance abuse and psychological evaluations. They were granted supervised visitation. Jessica remained in the Richmonds' care.

On December 23, 1992, the juvenile court filed a dispositional order continuing the placement of Jessica with the Richmonds. The court noted the lengthy history of services offered to Kathy and Michael and found further family preservation services would be "fruitless" due to the parents' prospective noncooperation and nonutilization. Kathy was ordered to participate in individual counseling and both parents were to participate in appropriate substance abuse treatment. DHS was to continue to supervise visitation with Jessica and provide parenting skill education to the parents. The court order provided that upon application by the parents, family therapy should be provided for them.

A review order filed June 10, 1993, indicated the parents had been attending counseling but no improvement was noted. Michael's drinking and the domestic violence had continued. The parents had kept approximately one-half of the scheduled visitations with their daughter. Jessica was ordered to remain in the care of the Richmonds. The

court ordered continued individual, family and substance abuse counseling.

A incident occurred in February 1994 involving Michael and his intoxicated use of a firearm. Following that incident, a petition was filed to terminate Michael and Kathy's parental rights on April 7, 1994. Termination was sought pursuant to Iowa Code sections: 232.116(1)(e) (1993) (child four years of age or older, adjudicated CINA, removed from parents' custody for at least twelve months and cannot presently be returned); 232.116(1)(f) (child adjudicated CINA, parental rights to other children previously terminated, parents unwilling or unable to respond to services, and additional rehabilitation period would not correct problem); and 232.116(1)(k) (child adjudicated CINA, custody transferred from parents, parent has a severe, chronic substance abuse problem which presents a danger to self or others as evidenced by prior acts, and prognosis indicates child will not soon be returned).

Hearings on the termination petition were held on July 6, 7 and 26, 1994. The juvenile court terminated Kathy and Michael's parental rights, and they appealed.

A child's rights and needs are paramount in termination proceedings. S.A., 502 N.W.2d at 25. The primary concern is the best interests of the child.

> 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).

The record reveals Michael has a chronic alcohol abuse problem. He has been institutionalized several times for treatment. Evidence indicated he regularly consumes as much as twenty-four cans of beer a day.

Michael testified he believed he had gone to jail approximately twenty times for public intoxication, and he estimated he had been convicted of operating a vehicle while intoxicated five times. He has a long history of relapses following relatively short periods of sobriety. His alcoholism has resulted in domestic violence and threats of suicide. Michael testified he did not think his drinking was a problem in connection with the termination of his parental rights to his and Kathy's other two daughters.

In February 1994 Michael was arrested for possession of a firearm as a felon. He had been intoxicated and demanded a fifteen-year-old juvenile load a weapon and take him to a residence. At the time of the termination hearing Michael was still living in a half-way house and admitted he was not in a position to care for Jessica.

Kathy was codependent. She was unable to recognize that Michael's drinking problem caused problems for her and affected their ability to parent Jessica. Despite her own bad temper and prior arrests for assault, Kathy did not recognize that she had any problems which necessitated counseling. There was evidence Kathy could not put her child's need for stability and protection ahead of her and Michael's needs. In the midst of Michael's alcoholism and the parents' domestic abuse, it is highly likely Jessica's needs would suffer.

It was undisputed the first three elements of Iowa Code section 232.116(1)(e), the first two elements of Iowa Code section 232.116(1)(f), and the first element of Iowa Code section 232.116(1)(k) were established. We have reviewed the remaining elements and conclude there were established as well. There was clear and convincing evidence Jessica could not be returned to the custody of her parents. Iowa Code § 232.116(1)(e)(4) (1993). Problems with Michael's alcoholism, domestic violence, and Kathy's temper continued to be as serious as they had been when Jessica was determined to be a child in need of assistance.

There was clear and convincing evidence Michael and Kathy lacked the ability or willingness to respond to services and an additional period of rehabilitation would not correct the situation. Iowa Code § 232.116(f)(3-4) (1993). Finally, there was clear and convincing evidence Michael had a severe, chronic substance abuse problem which

presents a danger to himself or others, and Jessica will not be able to be returned to his custody within a reasonable period of time. Iowa Code § 232.116(1)(k)(2-3) (1993).

In their joint brief the parents contend reasonable efforts were not made to reunite them with their child. Reasonable efforts to reunite the parent and child are required prior to termination. See In re C.L.H., 500 N.W.2d 449, 453 (Iowa App. 1993); Iowa Code § 232.102(7) (1993). Michael and Kathy have been receiving DHS services since 1986. Despite the provision of services, they failed to make sufficient progress, and their parental rights to their two older daughters were terminated in 1989.

In light of the termination of their parental rights to their other daughters, it is not surprising the juvenile judge in this case predicted family preservation efforts would be "fruitless." However, additional services were provided in an effort to reunite Michael and Kathy with Jessica. While Kathy may have participated in these services, the record indicates she really only went through the motions and never recognized her own parental shortcomings and the need to address them. Kathy continued to deny the deleterious effects of Michael's alcoholism on the family. Reasonable efforts were made to reunite Jessica with her parents, but they were either not willing or able to change in ways that would best meet Jessica's needs.

The parents argue they should be given another chance pursuant to Iowa Code §232.116(3) (1993). Under this statute the decision not to terminate parental rights is discretionary, not mandatory. See In re C.L.H., 500 N.W.2d 449, 454 (Iowa App. 1993). The record does not reflect a close parent-child relationship between Jessica and her parents such that termination would be detrimental to Jessica. Jessica has been in the care of her cousin since July 1991, and by all accounts she is doing well and regards her custodial family as her own. Jessica's relatives wish to adopt her and offer her stability. Jessica's best interests are best served by the termination of Michael and Kathy's parental rights.

AFFIRMED.

Habhab, J., concurs; Sackett, J., specially concurs.

SACKETT, J. (specially concurring)

I concur with the majority's decision to terminate. I have concern that even with substantial expenditures for services, the help offered did not correct the problems. I realize the parent bears responsibility when this happens. We need also ask what more could have been done to preserve the biological unit. In this case the record reflects that an adoptive family is ready for this child. There are too many children whose parental rights have been terminated who have not been given adoptive families. We must continue to assess our programs to be certain they provide meaningful help to struggling parents.