IN THE COURT OF APPEALS OF IOWA

FILED
JUL 2 6 2000
CLERK SUPREME COURT

No. 0-293 / 00-0108
Filed July 26, 2000

IN THE INTEREST OF

K.P. and K.M.,
Minor Children,

S.P., Mother,
Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott, District Associate Judge.

Mother appeals the juvenile court's order terminating her parental rights. She contends under Iowa Code section 232.116(1)(f) (1999), the court should not have terminated her parental rights to K.M. because she was actively participating in rehabilitative services and making improvements in her lifestyle. She also asserts that the court erred in terminating her rights as to K.P. based on a failure to maintain contact with him. **AFFIRMED.**

Corey J.L. Walker of Walker, Knopf & Billingsley, Newton, for appellant.

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

Steven J. Holwerda of Selby, Updegraff, Smith & Holwerda, Newton, guardian ad litem for K.P., minor child.

Phil Reser, West Des Moines, guardian ad litem for K.M., minor child.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

MILLER, J.

Appellant/Mother Samantha appeals the order terminating her parental rights to her six-year-old son Kyle and two-year-old daughter Kelli, contending the State did not prove by clear and convincing evidence all the required elements of certain provisions of the Code. Samantha also contends termination is not in Kelli's best interest. We affirm.

Scope and Standard of Review

Appellate review of proceedings 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.*

Background Facts and Proceedings

With these standards in mind, we believe the record fairly reveals the following facts. Samantha was born in December 1974. Samantha is the mother of three children, Kaci, born in January 1995, and the children subject to this

appeal, Kyle, born in August 1993, and Kelli, born in April 1997. Kaci and Kyle were each adjudicated to be a child in need of assistance (CINA) in July 1995 because Samantha was not caring for the children, was having loud parties, maintained a filthy home, the children were not kept clean and the children were suffering from poor health. From July 1995 to January 1997, Kyle was placed in the custody of his maternal great-grandparents under supervision of the Department of Human Services (DHS). Samantha's parental rights to Kaci were terminated in April 1996. The State's petition to terminate her parental rights to Kyle was denied by the juvenile court in a January 1997 order. The court found the State had proved by clear and convincing evidence each of the elements of Iowa Code sections 232.116(1)(f), (g), and (h). Samantha had not had stable housing or employment within the past seventeen months, she had not responded to many of the services offered, had made little progress in those she had responded to, and had not visited Kyle regularly. Although it found Kyle would suffer harm if returned to Samantha, it declined to then terminate her parental rights to him, implicitly finding it was not then in his best interest to do so and stating she "deserves one more chance to show that her parental rights should not be terminated." Kyle was continued in the custody of the DHS with placement with his natural father, and Samantha was granted visitation.

In July 1998, Samantha's visitation with Kyle was discontinued by the court due to her lack of progress with the services offered, domestic abuse, drug abuse, and mental health issues.[1] In November 1998 Samantha's third child, Kelli, was adjudicated CINA as defined by Iowa Code sections 232.2(6)(c)(2) and

[1] Samantha has been diagnosed as manic depressive, but not take the medication prescribed to treat the illness. She also suffers from a multiple personality disorder.

(g) after stipulation by the parties. At about that time Samantha and Kelli's father,[2] Dion, continued their lifestyles of sporadic employment and short stays at different residences. Kelli's paternal grandmother agreed to take Kelli for thirty days while Samantha looked for work in Cedar Rapids. After thirty days of minimal communication from the couple, whom she believed to be living in a car, the grandmother turned the children over to the DHS.

Kelli was adjudicated CINA in November 1998. The parents initially complied with the case plan, but soon resumed their nomadic lifestyle. At one point Samantha joined the United States Army and moved to the East Coast, ignoring and disrupting services the State was trying to provide, but it was only a few months before she left the Army and returned to Iowa. When Samantha returned the couple moved into a hotel room in Tama, Iowa, where she and Dion were living when the petition to terminate parental rights was filed in this case in November 1999.

At the resulting termination hearing, the State and the children's Guardians ad Litem presented evidence the parents had not complied with several aspects of the case plan including individual therapy, couples therapy, parent skill development and domestic abuse treatment. After hearing, the juvenile court terminated Samantha's parental rights to Kyle pursuant to Iowa Code sections 232.116(1)(d), (e), and (f); Samantha's parental rights to Kelli pursuant to Iowa Code sections 232.116(1)(f) and (g); and Dion's parental rights to Kelli pursuant to Iowa Code section 232.116(1)(g). Samantha appeals both

[2] Each of the children have a different father. Kaci and Kyle's fathers have not contested termination of their parental rights. Kelli's father's parental rights were terminated at the same time Samantha's parental rights to Kelli were, but his appeal has been dismissed.

terminations, although she continues to live with Dion, whose appeal from the termination of his parental rights to Kelli has been dismissed.

Merits

Kelli

Samantha contends the State did not prove by clear and convincing evidence all the required elements of each subsection of Iowa Code sections 232.116(1)(f) and (g) with respect to her parental rights to Kelli. Specifically, she argues because she was actively participating in services at the time of the termination hearing, the State did not prove (1) she continues to lack the ability or willingness to respond to services which would correct the situation; (2) an additional period of rehabilitation would not correct the situation; and (3) the child cannot be returned to her custody as provided in section 232.102 at the present time. *See* Iowa Code §§ 232.116(1)(f)(3), (f)(4), and (g)(4) (1999).

Despite Samantha's contentions to the contrary, her life in 1999 looked exactly like her life in 1995. Between July of 1995 and the December 1996 termination hearing Samantha had six residences and five or six jobs. In calendar year 1999, she had had at least five residences and five jobs, including about three months in the Army, before the December 1999 termination hearing. In 1995 relatives were caring for Kyle so he wouldn't have to live in a car. In 1998 relatives were caring for Kelli so she wouldn't have to live in a car. Thus, Samatha's pattern of transience and switching, quitting or losing jobs every few months continued for over a half decade and left her in basically the same position at the end of that time as at the beginning. Her third child was a CINA for many of the same reasons as her first child.

At the time of termination hearing Samantha was unemployed and had just moved out of a hotel she had been living in for the previous four months. Her husband, who was referred to as able-bodied and unemployed in the 1996 order, was described as recently employed in 1999. Thus, extreme instability in housing and employment have been problems for both Samantha and Dion since 1995 and, to the extent they can claim to have done anything about these problems they can only claim to have done so in the few weeks immediately preceding the termination hearing. We have frequently noted 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). As aptly noted by the trial court:

> If it were not for the history which seems to be repeating itself in this year's termination hearing, one might think that Dion and Samantha [ ] were on the verge of meeting their goals and resuming their roles as parents. Yet a review of recent history compels the conclusion that they are not ready still and probably will not become ready to resume that role as responsible parents . . . . Not only have each of these parents had a child terminated from their parental rights before, but a hearing three years ago resulted in findings which could be made again today....
>
> .Given the history of rapidly changing employment positions and residences that this couple have demonstrated over the years, the court cannot find that their professions of an intent to make the present job and the present home a permanent one or a stable one are reliable enough. After repeated findings of instability in those areas of their lives, they can still not point to a residence or a single job which has lasted more than two months.

Based upon the parents' past history and minimal efforts to grow as parents made only during the few weeks before the termination hearing, we find the State did prove by clear and convincing evidence that (1) Samantha continues to lack the ability or willingness to respond to services which would correct the situation; (2) an additional period of rehabilitation would not correct the situation; and (3)

Kelli cannot be returned to her custody provided in section 232.102 at the present time. *See* Iowa Code §§ 232.116(1)(f)(3), (f)(4), and (g)(4) (1999). We find that the grounds for termination found in Iowa Code sections 232.116(1)(f) and (g) have been proved by clear and convincing evidence.

Samantha further contends the order of the trial court terminating her parental rights to Kelli should be reversed because termination would not be in Kelli's best interest, citing a DHS worker's testimony that a bond exists between mother and daughter. However, that DHS worker testified that although Kelli recognizes her parents, the bond is not much different than when that worker goes to pick Kelli up from the day-care center. In contrast, the same DHS worker described Kelli's relationship and bond with her foster family as "more like a parent/child relationship just because of what I would see as respect and follow-through, and not just a place where I go to play and to eat."

Samantha contends that as she continues to improve her parenting skills the bond between mother and daughter will grow. However, even if we set aside our skepticism and assume Samantha will in fact improve her parenting skills, we cannot preserve in law a relationship which does not exist in fact, with the child committed indefinitely to the parentless limbo of foster care. *See In re E.B.L.*, 501 N.W.2d 547, 551 (Iowa 1993). To keep the child in temporary or even long-term foster care while Samantha struggles to gain control over her own life is not in the child's best interests. *See In re T.T.*, 541 N.W.2d 552, 557 (Iowa App. 1995). We must be cognizant of the "relentless passage of time" for children waiting in foster care for parents to gain sufficient skills, and when a parent is incapable of changing to allow the child to return home, termination is necessary.

Id. A parent must be able to meet the present needs of children, as well as have the capacity to adapt to their future needs. *In re E.B.L.*, 501 N.W.2d at 552. Samantha has demonstrated no ability over the past five years to meet her children's needs, nor has she shown the capacity to adapt to their future needs. We therefore find it to be in Kelli's best interest to terminate Samantha's parental rights, and affirm the termination order as to Kelli.

Kyle

Samantha contends her parental rights to Kyle should not be terminated for the same reasons she contended above her parental rights to Kelli should not be terminated. She also contends that because her lack of contact with Kyle since July 22, 1998 has been because the court's order of that date ended her visitations with him, the State has not proved by clear and convincing evidence she has "not maintained significant and meaningful contact with the child during the previous six consecutive months and [has] made no reasonable efforts to resume care of the child despite being given the opportunity to do so," a required element for termination of parental rights under Iowa Code section 232.116(1)(d). Because of Samantha's extensive past history of not being in a position to parent as detailed above, and the fact that her lack of visitation with Kyle since July 1998 is a result of her own choices, acts and omissions, we find, as the juvenile court did, all elements of Iowa Code sections 232.116(1)(d), (e), and (f) have been proved by clear and convincing evidence. Samantha does not contend termination is not in Kyle's best interest. We therefore affirm the termination of her parental rights to Kyle.

AFFIRMED.