IN THE COURT OF APPEALS OF IOWA

FILED
AUG 26 1987
CLERK SUPREME COURT

Filed August 26, 1987

IN THE INTEREST OF A.M.S.,
A Child;

A.M., Natural Mother,

Appellant.

7-245
86-1542

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Appeal from the Iowa District Court for Jasper County (No. J5-413B) - Thomas W. Mott, District Associate Judge.

Natural mother appeals from the trial court's order terminating parental rights. **REVERSED AND REMANDED.**

James W. Cleverley, Jr., of Diehl, Clayton, Cleverley & Williams, Newton, for appellant.

Thomas J. Miller, Attorney General; Valencia Voyd McCown, Assistant Attorney General; and James R. Wilson, Assistant County Attorney, for appellee State.

Considered by Donielson, P.J., and Schlegel, and Sackett, JJ.

SACKETT, J.

A.M., the natural mother of A.M.S., appeals from the trial court's order terminating her parental rights. A.M.S. was born June 24, 1982. A.M. has a second child, C.S., born February 2, 1984. C.S. currently lives with A.M. and her husband, C.S.'s natural father. The natural father of A.M.S. has shown no interest in the child and does not challenge the termination. Both A.M.S. and A.M. have below average intelligence.

Both A.M.S. and C.S. were adjudicated children in need of assistance and removed from the natural mother's home. C.S. has been returned to the custody of her natural father, A.M.'s husband, and currently is living with them. In addition to having below average intelligence, A.M.S. is a child with special needs. Human services was involved with the natural mother since before the child's birth. A.M.S. was removed from the home at her mother's request in September, 1984.

The state argues parental rights should be terminated as there is clear and convincing evidence the child cannot be returned to her mother because her mother is unable to meet the child's special educational and medical needs. The natural mother is mentally slow and has had difficulty learning appropriate and consistent methods of dealing with her child. The natural mother and her husband contend they have the ability to meet the child's needs.

The trial court found:

> [A.M.S.'s] mother, [A.M.], has intellectual functioning near the borderline of mental retardation. She seems to have a facility for recollection of dates, places, ages, and she appears to have a facility for calculating elapsed times. She has a driver's license, and drives her own car. She has a savings account. She has, however, been unable to learn appropriate and consistent methods of dealing with [A.M.S.] Her housekeeping has improved to the point where there are no longer frequently spoiled food and feces ground into the floor covering. Since she married [T.C.M.] there is generally improved hygiene in her home. The dishes are washed, the floors are vacuumed,

> and appropriate, nutritious meals are prepared for the family, including [C.M.] Most of these improvements in the home life are due to [T.C.M.'s] efforts. [A.M.] does not follow through on elementary suggestions for her personal hygiene and budgeting. She was, for example, unable or unwilling to make simple check marks on a chart prepared for her to keep track of [A.S.M.'s] performance at home after school.
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> More importantly, [A.M.] is unable to recognize when [A.M.S.] is having the onset of a spell, before she has it. When [A.M.S.'] needs, especially in this regard, are not met, she rapidly regresses to a worse position, from which it is hard for her to recover. Despite the offer and provision of extensive assistance, [A.M.] will never be able to properly care for [A.M.S.]. Without proper, conscientious, consistent, and energetic care, [A.M.S.] will not achieve nor even approach her developmental potential. With the assistance of appropriate foster parents, such as those with whom she has been placed since removal from [A.M.'s] home, [A.M.S.] has an excellent opportunity to realize her fullest potential.

Our review is de novo. In Interest of Chad, 318 N.W.2d 213, 216 (Iowa 1982); In Interest of Miller Children, 228 N.W.2d 60, 61 (Iowa 1975); In re Loeffelholz, 162 N.W.2d 415, 419 (Iowa 1968); In re Augustus, 158 N.W.2d 625, 616 (Iowa 1968); In Interest of L.P., 370 N.W.2d 839, 840 (Iowa App. 1985); In Interest of C.W., 342 N.W.2d 885, 886 (Iowa App. 1983). We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses but we are not bound by them. In Interest of W.G., 349 N.W.2d 487, 491 (Iowa 1984); In Interest of T.D.H., 344 N.W.2d 268, 270 (Iowa 1983); Long v. Long, 255 N.W.2d 140, 143 (Iowa 1977); In Re Loeffelholz, 162 N.W.2d at 419, L.P., 370 N.W.2d at 840.

The record supports the finding made by the trial court. The question is whether there is in fact clear and convincing evidence A.M.S. cannot be returned. Grounds for termination of parental rights must be proven by clear and convincing evidence. In Interest of Dameron, 306 N.W.2d 743, 745 (Iowa 1981). Our termination statute is preventative as well as remedial. Id. at 745. It mandates action to prevent probable harm to children and does not require delay until after the harm has been done. Id.; Long, 255 N.W.2d at 143.

There is a parental interest in the integrity of the family unit. This interest, however, may be forfeited by certain parental conduct. T.D.H., 344 N.W.2d at 270. Mental disability standing alone is not a sufficient reason alone for termination of the parent-child relationship. See In Interest of Wardle, 207 N.W.2d 554, 563 (Iowa 1973). Mental disability in a parent does not operate in a vacuum so far as the best interest and welfare of one's child is concerned, but is usually a contributing factor in a person's inability to perform the duties of parenthood according to the needs of one's child. Id. In Wardle the court states:

> Before reaching a conclusion the problem of whether Roxanne, described as a bright child, would function to her full potential if she were to remain with her mother remains to be considered. Since being in the foster home Roxanne's speech has improved. The teacher at the nursery school felt her vocabulary was inadequate for a child of her age and that unless improved, the child would experience difficulty in school.
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> There is a probability Roxanne would be placed in a home having certain advantages which she may never experience if left with Miss Wardle, including the possibility of a better social background with economic security. But, these advantages, regardless of how desirable, cannot serve as a basis for terminating a parent-child relationship even when coupled with Roxanne's behavior problem.

Wardle, 207 N.W.2d at 564.

This is a difficult case because well-meaning people want A.M.S. to develop to her full potential. She probably will have the opportunity for greater development in another home. However, the fact some one else may do a better job of raising a child is not and should not be grounds for termination of parental rights.

The younger child, C.S., was returned to her father and lives in the same family unit to which A.M.S. would return. Siblings should not be separated and lose the benefit of constant association with one another except where the circumstances require it. Augustus, 158 N.W.2d at 629. Siblings should

not be separated without good and compelling reasons. Miller, 228 N.W.2d at 63. But see Long, 255 N.W.2d at 142 (The court discusses the issue of consistency of allowing a mother and stepfather to retain custody of a newborn son while terminating rights to an older allegedly abused child in the decision affirming termination of parental rights to the older child), and in Wardle, 207 N.W.2d at 564 (The court determined the record justified the conclusion the mother could care for the needs of the daughter but not of the son).

The mother and current husband have maintained a stable unit. The husband assists with the child care and is ready to help assume responsibility for the second child. The mother has cooperated and received services. The home atmosphere has improved and they now have their own home. While the husband has been primarily responsible for the improved environment, it has still happened. We do not find there is clear and convincing evidence the child cannot be returned.

This case is clearly distinguishable from Loeffelholz, where there was a determination the problems which caused the neglect did not get better and parental rights were terminated. Loeffelholz, 162 N.W.2d at 419. It is also distinguishable from Dameron. In Dameron the termination was ordered because the parents did not follow through with the marriage counseling they agreed to accept, the father failed to maintain a regular job, the mother failed to seek training and employment, and cooperation with personnel offering services was characterized as superficial to nonexistent. Dameron, 306 N.W.2d at 743. Additionally, neither parent abstained from alcohol as ordered and alcohol abuse remained a continuing problem. Id.

We reverse the termination and remand to the trial court.

REVERSED AND REMANDED.