IN THE COURT OF APPEALS OF IOWA

No. 1999-230 (9-454) / 99-391
Filed November 10, 1999

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CLERK SUPREME COURT

IN THE INTEREST OF
I.L. and A.L.,

Minor Children,

T.B., Mother,

Appellant.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile Court, Judge.

Mother appeals the termination of her parental rights to her two children. **AFFIRMED.**

Frank Burnette of Burnette & Kelley, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips and Tabitha Gardner Assistant Attorney Generals, Jaki Livingston, Assistant County Attorney, for appellee-State.

Christine Bisignano, Des Moines, guardian ad litem for minor children.

Heard by Sackett, C.J., and Zimmer, and Miller, JJ.

ZIMMER, J.

A mother, Tonya B., appeals the termination of her parental rights to her two children. She contends the court erred in determining the children could not be returned to her care. She also argues the requirement that she divorce her husband to reclaim her children violated her constitutional right to practice her religion. We affirm.

Tonya is the adoptive mother of Andre and Itaisha. She has reared three natural children of her own and has often served as a foster parent. In 1996, she sought to adopt two more of her foster children. In October of that same year, she met a man, George, and delayed the adoption process until after she married him several months later, so that he too could adopt the children. George was twenty-seven years old at the time of the marriage in January 1997, and Tonya was forty. Before they married, George revealed to Tonya he had been the victim of sexual abuse as a child and was a sexual abuser of children as a teenager.

A home study was conducted as part of the adoption process and George voluntarily disclosed to the social worker he had been a sexual abuser of children, although he was never charged or convicted. He admitted he continued to have sexual thoughts about children, including Andre and Itaisha, but had not committed further abuse since he was seventeen. As a result, the foster children were removed. A no contact order with the foster children was entered and George left the home in late February of 1997. Due to two violations of that order, Andre and Itaisha were also removed from Tonya's care on March 14, 1997. A second no contact order

issued involving Andre and Itaisha. In May of 1997, the children were adjudicated children in need of assistance (CINA).

The State filed a petition to terminate parental rights on July 25, 1998. On February 16, 1999, the juvenile court granted the petition under Iowa Code section 232.116(1)(e) (1997). The juvenile court based its termination order on the fact that Tonya knew George was a child sexual abuser at the time of their marriage, but still allowed him to bathe and care for the children. She seemed willing to assume the risk of her children being abused in order to continue her marriage. The court also stated Tonya and George either refused or did not cooperate with services and Tonya did not perceive her children were at risk for sexual abuse if she continued her relationship with George in the family home.

On appeal, Tonya argues: (1) the trial court's findings of fact are not supported by clear and convincing evidence, and (2) Tonya's constitutional right to free exercise of religion was violated when she was not allowed any other alternative to avoid termination except divorcing her husband, contrary to her religious beliefs.

I. Scope of Review. We review proceedings to terminate a parent-child relationship de novo; we may review the facts as well as the law and adjudicate the parents' rights anew. *In the Interest of M.N.W.*, 577 N.W.2d 874, 875 (Iowa App. 1998). Our primary concern is the best interests of the child; we look at both the child's long-range and immediate interests. *Id.* The State need not delay until harm has actually occurred to a child, rather, "[o]ur statutory termination provisions are preventative as well as remedial." *In the Interest of A.B.*, 554 N.W.2d 291, 293 (Iowa

App. 1996). The grounds for termination must be proven by clear and convincing evidence. *In Interest of J.L.W.*, 570 N.W.2d 778, 780 (Iowa App. 1997).

II. Sufficiency of the Evidence. Tonya's parental rights were terminated under Iowa Code section 232.116(1)(e), which reads:

> e. The court finds that all of the following have occurred:
> (1) The child is four years of age or older.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

Tonya urges there was not clear and convincing evidence the children could not be returned to her. She complains the buzzword 'pedophile' caused evidence in her favor to be ignored. Tonya also contends she can provide for her children's safety by setting up certain parameters for George, i.e., not allowing him to bathe or discipline the children, situations which he admitted cause arousal.

We find clear and convincing evidence Andre and Itaisha cannot be returned home because of Tonya's commitment to George, an individual with an admitted history of child sexual abuse and other bizarre sexual behavior. He admits continued sexual attraction to children. Although we credit George with self-reporting his history of abuse, we also recognize his insight into his problems is limited. George made little progress with services in the time between the children's removal from the home and the termination hearing. A therapist reported George had difficulty dealing

with his abuse issues and resisted group therapy. The therapist also noted George is unable to recognize situations that are dangerous for him and naturally gravitates toward situations that create a risk for him to re-offend. We agree with the State that it would be naive to assume a pedophile can maintain control day after day in a house full of children. The professionals who testified in this case had serious reservations about George living in the home.

Certain aspects of George's past abuse and of the current situation strongly militate against these children returning home. Although George eventually admitted his abusive past, he was not immediately forthcoming. George perpetrated extensive abuse as a teen, yet went undetected. He claims he had a 'consensual' sexual relationship with a brother-in-law's nephew at age fifteen when the nephew was nine or ten. George also admitted to sexually abusing a sister, a nephew and a cousin, along with other children. The abuse is not remote in time; according to various versions of his story, he stopped abusing children either at age sixteen, seventeen, or eighteen. This history becomes particularly disturbing when coupled with the fact that Andre and Itaisha are special needs children who are unlikely to report abuse.

Along with the clandestine character and extent of George's abuse, Tonya's inability to recognize a potentially abusive situation places these children in a particularly difficult situation. Such lack of insight supports termination of parental rights. *See In re C.C.*, 538 N.W.2d 664, 667 (Iowa App. 1995) (finding mother's continuation of abusive relationship supported termination of her parental rights). Her therapist's report reveals Tonya lacks self-insight and may use denial as a coping

mechanism. Her faith in George that he will not re-offend makes her less vigilant. She is at risk for making bad decisions about her children due to narcissistic traits and impulsiveness. Tonya has indicated she will not leave George or require him to leave her. She has received services for some nineteen months before the termination hearing, in addition to the training she received as a foster parent, and still fails to recognize her children would be at risk. The children simply cannot return under such circumstances. We find clear and convincing evidence that the children are unable to be returned to Tonya's care.

III. Free Exercise Claim. Tonya argues the State is impermissibly requiring her to choose between divorcing her husband and regaining custody of her children, in violation of her First Amendment right to freely exercise her religion, which opposes divorce. Iowa's constitution contains a similar provision in Article I, section 3.

Although the State conced s error was preserved, we disagree. No mention is made of the free exercise clause in the juvenile court's ruling. Despite her mention of her religious beliefs at trial, Tonya filed no post-trial motion to enlarge or amend the juvenile court's findings. We do not review claims raised for the first time on appeal, even if constitutional issues are involved. *See Hy-Vee Food Stores, Inc. v. Iowa Civil Rights Com'n*, 453 N.W.2d 512, 527 (Iowa 1990) (refusing to address arguments raised for the first time on appeal); *State v. Webb*, 516 N.W.2d 824, 828 (Iowa 1994) (declining to consider an issue raised for the first time on appeal, even though it was of constitutional dimension).

Even if error was properly preserved, we find meritless Tonya's claim that her children should be permitted to remain with her because her religion does not permit her to divorce her husband, despite the fact that he is an admitted pedophile and presents a risk to her children. Of course, fundamental constitutional interests inhere in family and parenting circumstances. *Callender v. Skiles,* 591 N.W.2d 182, 190 (Iowa 1999). However, parental interests in family integrity are not absolute and may be forfeited by certain conduct. *Id.; see also In re C.C.,* 538 N.W.2d at 666. As mentioned above, we have held that continued involvement in an abusive relationship may require termination of parental rights. *See In re C.C.*, 538 N.W.2d 664; *see also In re L.B.*, 530 N.W.2d 465, 468 (Iowa App. 1995) (finding children could not be returned to mother because she failed to recognize abuser's presence was a danger).

Although Iowa has not addressed this issue in a religious freedom context, other states have dealt with the same or similar issues. Unequivocally, those courts have found the State may intervene to prevent or stop certain conduct that presents a health or safety hazard, despite an individual's religious beliefs. *E.g., People v. Hodges,* 13 Cal.Rptr.2d 412 (Cal.Super. 1992) (state's compelling interest in health and safety of its children justified interference with defendants' religious practices); *In re T.M.B.*, 491 N.W.2d 58 (Neb.1992) (holding juvenile court's assumption of jurisdiction over children whose stepfather applied 40 to 60 strikes with a belt per week did not violate mother's and stepfather's First Amendment free exercise rights); *Moore v. State,* 912 P.2d 1113 (Wyo. 1996) (finding statute prohibiting adult from taking indecent liberties with minor did not unconstitutionally impinge upon any

actor's free practice of religion). Clearly, the State's requirement that Tonya avoid a relationship with an admitted pedophile before her children will be returned to her is not constitutionally impermissible.

AFFIRMED.