IN THE COURT OF APPEALS OF IOWA

No. 8-681 / 98-818

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF J.C.M., Minor Child,
STATE OF IOWA,

Appellant.

Appeal from the Iowa District Court for Linn County, Robert E. Sosalla, District Associate Judge.

State appeals from district court order denying the termination of mother's parental rights. **AFFIRMED.**

Thomas J. Miller, Attorney General; and Charles K. Phillips, Assistant Attorney General, for appellant-State.

John Broz, Cedar Rapids, for appellee-mother.

James L. Benz, Cedar Rapids, guardian ad litem for minor child.

Heard by Huitink, P.J., and Mahan, and Zimmer, JJ.

ZIMMER, J.

State appeals from a district court order denying the termination of mother's parental rights. We affirm.

Betty M. is the mother of James M., born February 7, 1993. In March 1995, the State filed a petition alleging James to be a child in need of assistance on grounds of failure to supervise and possible exposure to sexual abuse. The petition was amended in February 1996 to include an additional ground that James was not being provided adequate food, clothing, or shelter. James was removed from Betty's custody in March 1996 as a result of deplorable living conditions, and he was adjudicated a child in need of assistance in May 1996. The department of human services (hereinafter "DHS") established a case permanency plan to deal with the situation.

From March 1996 to September 1996, Betty maintained her visitation schedule with James. In September 1996, James' father, Lester C., was being investigated for inappropriate contact of a sexual nature with James during a visitation. At this time, Betty became upset with the investigation and remarked that perhaps she should discontinue her visits with her children until the investigation was completed.

In the fall of 1996, Betty was hospitalized for complications related to diabetes. After being released from the hospital, she moved several times in and out of state and had no contact with DHS or James until May 1997. After May 1997, Betty made an effort to comply with the case permanency plan and was cooperative

with DHS. Though her visitation rights were reduced in conjunction with the decision to terminate, she took advantage of most of her opportunities to meet with James.

The State filed a petition to terminate Betty's and Lester's parental rights on April 30, 1997. Following a hearing on the petition in January 1998, the juvenile court terminated Lester's parental rights because he deliberately refused to comply with the case permanency plan and there remained a potential for James to be sexually abused. The court also found clear and convincing evidence justifying the termination of Betty's parental rights pursuant to Iowa Code sections 232.116(1)(d)(3) and (1)(e) because Betty failed to maintain significant and meaningful contact with James and James could not be returned to her custody. The court, however, declined to terminate Betty's parental rights at that time because it concluded this would not be in James' best interest.

James' guardian ad litem recommended the court not terminate Betty's parental rights because he was impressed with Betty's progress since May 1997, and he believed James could be returned to Betty within a year at most. The court agreed that Betty's conduct since May 1997 indicates she is maturing as a parent. Although declining to terminate her parental rights at that time, the court cautioned that if James could not be reunited with his mother within a relatively short period of time, the court would likely terminate her parental rights. The State appeals.

I. Scope of Review.

We utilize de novo review in determining if there is clear and convincing evidence to support the termination of parental rights. *See In re S.A.*, 502 N.W.2d 23,

25 (Iowa App. 1993). A child's rights and needs are paramount in termination proceedings. *Id.* The primary concern is the best interests of the children. Though our review is de novo we will give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *In re W.G.*, 349 N.W.2d 487, 491–92 (Iowa 1984), *cert. denied sub nom. J.G. v. Tauke*, 469 U.S. 1222 (1985).

II. Grounds for Termination

A. Iowa Code § 232.116(1)(d). The State argues the district court should have terminated Betty's rights because of her failure to maintain a significant and meaningful relationship with James within the meaning of Iowa Code section 232.116(1)(d). Betty contends the court erroneously found there was sufficient evidence to terminate her parental rights and that the court improperly focused on events occurring during the six months before the petition to terminate was filed rather than the six months prior to the termination hearing.

The mother's argument would have us determine whether Iowa Code section 232.116(1)(d)(3) allows a court to terminate parental rights where the parent has failed to maintain a significant and meaningful relationship with the child six months prior to the filing of the termination petition or six months prior to the termination hearing. We need not address this issue in light of our determination that on the record sufficient grounds exist to terminate Betty's parental rights whether we focus on the six months prior to the termination hearing or we focus on the six months prior to the filing of the termination petition.

B. Iowa Code § 232.116(1)(e). The State argues James could not be returned to his mother within the meaning of Iowa Code section 232.116(1)(e) and therefore her parental rights should be terminated. To terminate parental rights under this section, the State must show by clear and convincing evidence: (1) a child four years of age or older; (2) adjudicated in need of assistance; (3) has been removed from his or her parent for twelve of the last eighteen months; and (4) cannot be returned to his or her parent because the definitional grounds of a child in need of assistance still exist. *See* Iowa Code § 232.116(1)(e); *In re Interest of A.B.*, 554 N.W.2d 291, 294 (Iowa App. 1996).

On review of the entire record, we agree with the juvenile court the State has met its burden by clear and convincing evidence. For reasons explained below, however, we determine termination under sections 232.116(1)(d) and (e) is not presently warranted.

III. Best Interests of the Child.

Having proven grounds exist for the termination of parental rights, such termination is not automatic. The court must still consider whether termination is in the best interest of the child. *See In the Interest of M.S.*, 519 N.W.2d 398, 400 (Iowa 1994).

After careful review of the record, we agree with the juvenile court that termination is not currently in the best interest of James. The record shows Betty has made significant improvements since May 1997. Extensive renovations have been made to the family home, Betty has undergone psychological, sexual abuse, and

parental instruction counseling, and she has obtained additional employment. She has met with James on most of her scheduled visitation days. In general, it appears she has been meeting her obligations under the case permanency plan.

We recognize children should not be forced to suffer the parentless limbo of foster care while endlessly awaiting the maturity of their natural parents. *See In the Interest of D.J.R.*, 454 N.W.2d 838, 845 (Iowa 1990); *In the Interest of T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). However, in light of Betty's recent improvements there is sufficient reason to allow her to continue her rehabilitation. *See In the Interest of S.J.*, 451 N.W.2d 827, 831 (Iowa 1990) (child's best interest would not be served by terminating mother's parental rights where mother showed willingness to work to improve parenting skills and faithfully exercised visitation rights during child's separation from her).

We note these improvements distinguish this case from prior decisions which have not permitted prolonged rehabilitation periods. Noting past and current conduct are reliable indicators of parental fitness, our supreme court terminated the rights of a parent where there was no evidence parenting skills or the parent-child relationship had improved during the child's separation from the parent. *See In the Interest of D.J.R.*, 454 N.W.2d at 845. Betty has shown marked improvement and made significant steps towards reunification beyond simply professing a desire to do so. *Id.*

The state argues our decision should be guided by *In the Interest of A.C.*, where our supreme court rejected an extended rehabilitation situation similar to that presently before us. *See In the Interest of A.C.*, 415 N.W.2d 609 (Iowa 1987).

However, the court did not reject out of hand extended rehabilitation and foster care. Rather, the court determined under the facts in that case that rehabilitation could not equip the mentally disabled mother to care for her children. *Id.* at 614. Thus, any further delay in terminating parental rights would simply serve no purpose. This present case is again distinguishable in that Betty has demonstrated improvement and the ability, through continued progress, to begin caring for James.

In affirming the juvenile court's decision, we re-emphasize the court's admonition that the reunification goal must be achieved within a relatively short period of time. Betty and James should be afforded the opportunity to be reunited, but not at the expense of James' long term interests.

AFFIRMED.