IN THE COURT OF APPEALS OF IOWA

No. 6-360 / 96-0109

IN THE INTEREST OF D.T.L. AND T.N.L, Minor Children,

J.S., Mother,
Appellant,

D.L., Father,
Appellant.

FILED
JUN 27 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, John G. Mullen, Judge.

A father and a mother appeal from a juvenile court order terminating their parental rights to two minor children. **AFFIRMED.**

Lauren M. Phelps, Davenport, for appellant mother.

Donna M. Humpal of M.W. Liebbe Law Office, Davenport, for appellant father.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, Maureen McGuire, Assistant Attorney General, and William Davis, County Attorney, for appellee State.

Jack E. Dusthimer, Davenport, guardian ad litem for minor children.

Heard by Sackett, C.J., and Huitink and Vogel, JJ.

HUITINK, J.

D.L. and J.S. appeal the juvenile court's order terminating their parental rights to their children, D.T.L. and T.N.L. We affirm.

D.T.L., born to D.L. and J.S. on June 27, 1993, was removed from their home on April 4, 1994, after he fell down the stairs and received a skull fracture. At the time of the accident the parents were in the process of moving and were not adequately supervising the child. On July 18, 1994, D.T.L. was adjudicated a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b) and 232.2(6)(c)(2). The juvenile court based its ruling on the patterns of neglect, failure to cooperate with remedial services, substance abuse by the parents, and domestic violence. On August 29, 1994, a dispositional order was entered placing D.T.L. in foster care. At the time the order was entered, J.S. was pregnant with T.N.L. The juvenile court ordered her to abstain from the use of drugs and alcohol and to seek substance abuse treatment. The order also required both parents to complete inpatient treatment and any aftercare recommended by the treatment program. Additionally, the father was required to participate in the Domestic Violence Batterer's Education Program within thirty days following his release from inpatient treatment. The mother was also required to participate in the Domestic Violence Advocacy Program following her release from treatment.

On October 24, 1994, J.S. was found in contempt for violating the juvenile court order by failing to successfully complete an inpatient treatment program and for

using cocaine. The record reveals the mother absconded from three different programs. Incarceration for one hundred eighty days was ordered with the opportunity for J.S. to purge herself of the contempt by entering an inpatient treatment program.

On December 26, 1994, T.N.L. was born and was removed from her parents' care prior to discharge from the hospital. The reason for the removal was that both the child and J.S. had tested positive for cocaine and opiates at birth. On February 22, 1995, T.N.L. was adjudicated a child in need of assistance pursuant to Iowa Code sections 232.2(6)(b), (c)(2), (g), (n), and (o). She was placed in foster care pending a dispositional hearing. On March 27, 1995, a dispositional order was entered that required D.L. and J.S. to both complete a substance abuse evaluation, the recommended treatment, and to attend thirty consecutive meetings of AA or NA in order to qualify for visitation. Until that time, both parents were prohibited from having contact with the children. Both parents were ordered to participate in domestic violence treatment and then family-centered services at the time visitation resumed.

On December 18, 1995, an order was entered terminating the parental rights of both D.L. and J.S. as to D.T.L. and T.N.L. The court noted that despite many opportunities to complete substance abuse treatment in order to purge herself of her earlier contempt citation, J.S. failed to successfully complete any recommended treatment. D.L. also failed to participate in batterer's education. Neither parent complied with the required attendance at thirty consecutive AA or NA meetings. The

juvenile court also noted J.S.'s compliance with earlier orders began only one week prior to the termination hearing.

The record also indicates J.S. has been badly beaten by D.L. and she admitted supporting their respective drug habits through shoplifting. The juvenile court found both parents were indifferent to remedial services and the adjudicatory harm resulting from their substance abuse. D.L., in particular, denied any abuse or neglect and the need for remedial services. After two years of remedial services, the juvenile court concluded that neither parent understood the relationship between their destructive lifestyles and the adjudicatory harm resulting to their children. The juvenile court accordingly terminated both parents' parental rights pursuant to Iowa Code sections 232.116(1)(c), (d), (g), (h), and 232.117.

J.S. appeals the juvenile court's order based on her assertion that the State failed to make reasonable efforts at reunification and that the juvenile court failed to acknowledge her efforts to comply with its treatment orders. She also argues the juvenile court failed to recognize that she was a victim of domestic violence. The gist of her argument is that the juvenile court effectively excused the Department of Human Services from providing any remedial services by imposing impractical conditions for J.S.'s eligibility for needed services.

D.L. also appeals alleging the State failed to make reasonable efforts at reunification. He claims the juvenile court's dispositional order effectively ended all

remedial services by imposing impossible conditions on his receipt of remedial services.

The State is required to make reasonable efforts to reunite the parent and child prior to termination. *In re C.L.H.*, 500 N.W.2d 449, 453 (Iowa 1993). In proceedings to terminate parental rights, the reasonableness of services the State has offered in an effort to preserve the family should be very carefully scrutinized. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993).

The failure of the parents to comply with the Department of Human Services case plan cannot be an independent ground to terminate parental rights. *In re J.L.P.*, 449 N.W.2d 349, 352 (Iowa 1989). However, that failure can be considered as evidence of the parents' attitude toward addressing the problems that resulted in the loss of custody in the first place. *Id.* It is too late to challenge a reunification plan at the termination hearing. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994).

D.L. contends the Department of Human Services and Family Services were unwilling to provide him with the assistance he needed in order to see his children again. We note, however, the March 1995 dispositional order expressly required D.L. to complete substance abuse treatment and a batterer's education program. The record also indicates that although D.L. completed a substance abuse program in November 1994, he failed to comply with recommended aftercare and to attend the court-ordered thirty AA or NA meetings. The record additionally indicates Family Resources attempted several times to make arrangements for D.L. to attend a

batterer's group and substance abuse counseling. D.L.'s failure to comply cannot be reasonably attributed to the State's failure to make reasonable efforts to remedy the adjudicatory harm. We expressly reject any notion the juvenile court's conditions for additional services were so onerous as to make any prospect of reunification impossible.

J.S. contends her compliance with the juvenile court's orders should be measured with greater deference than D.L.'s compliance because she is a victim of domestic violence. She cites D.L.'s manipulations and control over her as reasons for her failure to complete required substance abuse treatment and domestic violence counseling. However, a careful reading of the case plan and dispositional order reveals the juvenile court's recognition of the relationship between domestic violence and the adjudicatory harm suffered by these children. Contrary to J.S.'s contentions, we find the juvenile court exercised considerable restraint in its accommodation of this circumstance. J.S. was offered services and support specifically designed to address the very circumstances to which she attributes the failure of her remedial efforts. Under these circumstances, we are unable to find her failure to follow the court's orders are fairly attributable to her victim status.

J.S. also argues the court ignored her recent efforts to obtain substance abuse treatment. We, like the juvenile court, find that her efforts were too little and too late. The juvenile court correctly assigned little evidentiary weight to her belated efforts to comply with its earlier dispositional order.

We also find both parents demonstrated minimal interest in visiting their children prior to March 1995. D.L. kept only nineteen out of thirty-two scheduled visits with D.T.L., while J.S. only kept fifteen. Of twelve scheduled visits with T.N.L., both parents have visited with her only four times.

We are unable to find that either of these parents were denied reasonable efforts to reunite them with their children. On the contrary, both parents were offered a variety of substance abuse treatment options and counseling for domestic violence. D.L.'s and J.S.'s persistent refusal to accept the necessary services have rendered any further reunification efforts futile. We cannot expect these children to endlessly await their parents' maturity or their belated compliance with the juvenile court's remedial orders. *In re T.D.C.*, 336 N.W.2d 738, 744 (Iowa 1983). We therefore affirm the juvenile court's decision to terminate their parental rights.

AFFIRMED.