IN THE COURT OF APPEALS OF IOWA

No. 1-089 / 90-1687

FILED
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CLERK SUPREME COURT

IN THE INTEREST OF D.E.W. AND K.E.W., Children,
T.W., Mother, and J.M., Father,
Appellants.

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Appeal from the Iowa District Court for Scott County, Arlen J. Van Zee, District Associate Judge.

The parents of two children appeal order terminating their parental rights. **AFFIRMED.**

Stephen W. Newport, Davenport, for appellant mother.

Michael T. Hines of McCarthy & Lammers, Davenport, for appellant father.

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, and Judy Sheirbon, Assistant Attorney General, for appellee State.

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

SCHLEGEL, J.

The natural mother, T.W., and the natural father, J.M., of two children, K.E.W. and D.E.W., appeal the termination of their parent-child relationships pursuant to Iowa Code sections 232.116(1)(g) and 232.116(1)(h). In their separate appeals, both T.W. and J.M. challenge the existence of clear and convincing evidence to support the finding that the children could not be returned to them. We affirm the terminations.

I. D.E.W. is a girl born in January 1987, and K.E.W. is a girl born in July 1988. Their unmarried parents, twenty-nine-year-old T.W. and thirty-two-year-old J.M., have lived together off and on. This family came to the attention of the Department of Human Services (DHS) in August 1988.

On August 9 DHS received a report from a hospital that one-month-old K.E.W. required surgery to remove an open safety pin from her stomach. On August 15 DHS filed a child in need of assistance (CINA) petition and an application for temporary removal. The CINA petition charged that the parents had not provided a reasonable degree of care in supervising their children. See Iowa Code § 232.2(6)(c)(2) (Supp. 1987).

The CINA petition also alleged that the parents desired to be relieved of care. See Iowa Code § 232.(6)(k) (Supp. 1987). This latter allegation stemmed from the fact that T.W. was to enter a residential correctional facility

because of a forgery conviction. Because T.W. did not want to leave the children alone with J.M., T.W. sought with the help of her probation officer to have the children placed in foster care.

When DHS executed a temporary removal order on August 15, D.E.W. was dirty and urine-soaked, and K.E.W. and her abdominal scar were likewise dirty. The upstairs apartment's windows were open and without screens. After a brief removal, on August 24 DHS returned the children and implemented a number of services.

On August 30 T.W. informed DHS that J.M. had beaten her. After drinking and using drugs, he had blackened her eye and pulled hair out of her head. Fearful for her children's safety, T.W. also related an incident in which J.M. had punished D.E.W. Again while drinking, J.M. whipped D.E.W. because she had pulled her pants down. The child needed to use the toilet, but he apparently believed the nineteen-month-old was doing something sexual.

Investigations revealed that both parents had problems with sexual deviancy. T.W. had prostituted and had had intercourse with two of her brothers, once while she was pregnant. J.M. had raped T.W. anally several times. J.M. also had a preoccupation with cleaning his children's vaginal areas with Q-tips.

The children were immediately removed on August 30 and have been in foster care continuously. A doctor examined D.E.W. in September 1988 and discovered scarring around her

anus which indicated she had suffered what was described as a "chronic rectal assault." DHS filed a supplemental CINA petition alleging D.E.W. had been sexually abused. See Iowa Code § 232.2(6)(d) (Supp. 1987). The sexual abuse investigation did not, however, reveal the perpetrator.

DHS completed a home study and submitted a case permanency plan. Chief among DHS concerns were the parents' substance abuse, domestic violence, sexual deviancy, and lack of parenting skills. The juvenile court heard this case in early January 1989. It allowed the State to amend its petition in conformity with the evidence with the additional allegation that the children had been or were imminently likely to be physically abused or neglected. See Iowa Code § 232.2(6)(b) (Supp. 1987). In its February 1, 1989, order the court adopted the DHS recommendations and held that the children were in need of assistance because of lack of parental supervision and physical abuse or neglect.

The parents have attended various counseling programs for their problems with substance abuse, domestic violence, sexual deviancy, and parenting skills. While they completed some of these programs, in no instance did they demonstrate that the problems identified had been cured. Both continued to have alcohol or other substance abuse problems. J.M. continued to rationalize, minimize, or refuse to recognize his violent behavior. The parents' stormy relationship continued on and off after the removal

of the children with further incidents of domestic violence. There was much contention over whether the parents continued to live together and whether they were truthful to service providers and DHS about their living arrangements.

T.W.'s parenting skills improved only slightly. Service providers noted her eagerness; however, they indicated that T.W. simply did not understand the basic child care skills and lacked good judgment. This has posed a particularly difficult problem since the March 1990 birth of T.W.'s son J.C.W. One social worker concluded emphatically: "[T.W.] cannot adequately supervise her children at one time without help. She can focus on only one at a time and she does not use good judgment . . . ." In contrast to T.W., J.M. has the capacity to care for the children. J.M., however, has been "resistive, uncooperative and belligerent" in the face of efforts to help him and in practicing the skills.

Of further concern is D.E.W.'s physical and emotional state. After removal, there was an incident of sexual acting out in which D.E.W. pulled another child's pants down and attempted to insert her finger into the other child's rectum. On another occasion she tore the stuffing from a doll's pubic area and cried, "owie." Visitation with her parents has been difficult: her "behavior goes from demandingly infantile to strikingly adult-like."

Citing their failure to resolve any of the problems identified, the juvenile court terminated the parent-child relationships. In its October 16, 1990, order, the court held that there was clear and convincing evidence that the relationships should be terminated pursuant to Iowa Code section 232.117, citing grounds in sections 232.116(1)(g) and 232.116(1)(h).

We review the proceedings for termination of the parent-child relationship de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222 (1985); Iowa R. App. P. 4. We 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. W.G., 349 N.W.2d at 491-92; Iowa R. App. P. 14(f)(7). "Our overriding concern is the best interests of the child." In re J.V., 464 N.W.2d 887, 888 (Iowa App. 1990) (citing Iowa Code § 232.116(2) (Supp. 1989); Iowa R. App. P. 14(f)(15)).

II. Iowa Code sections 232.116(1) provides, in relevant part, that the court may terminate parental rights when:

> g. The court finds that all of the following have occurred:
> (1) The child is three years of age or younger.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least six months of the last twelve months . . . .

> (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.
>
> h. The court finds that both of the following have occurred:
>
> (1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both of the parents.
>
> (2) There is clear and convincing evidence that the circumstances surrounding the abuse or neglect of the child, despite the receipt of services, constitutes [sic] imminent danger to the child.

The facts show, and there is no dispute, that subsections (1), (2), and (3) of section (g) and subsection (1) of section (h) have been proved. The only issues are whether there is clear and convincing evidence that the children cannot be returned under section 232.102 or that circumstances surrounding abuse or neglect constitute imminent danger to the children.

We explained the relationship between sections 232.102 and 232.116 in In re J.V.:

> Section 232.102 governs the transfer of custody and placement of children. Subsection (4)(b) requires the court to find by clear and convincing evidence that the child cannot be returned to parental custody because the child would be exposed to "some harm which would justify the adjudication of the child as a child in need of assistance" and "reasonable efforts have been made to prevent or eliminate" the harm. If custody is transferred to foster care authorities, subsection (6) requires "every effort" be made "to return the child to the child's home as quickly as possible consistent with the best interest of the child."

464 N.W.2d at 890. Our de novo review reveals that the State has met the criteria of sections 232.102 and

232.116(1)(g)(4). In spite of numerous services and visitation, it is readily apparent that none of the problems identified in the CINA adjudication have been cured. This being the case, the children would be likely to suffer lack of supervision, neglect, and abuse which would cause them to be adjudicated children in need of assistance. We hold that there is clear and convincing evidence that the children cannot be returned without being exposed to a harm which would justify another CINA adjudication.

Our de novo review of the record further shows that the State has satisfied the criteria set out in section 232.116(1)(h)(2). It is apparent from the record that, at least with respect to J.M., the domestic violence and physical abuse problem has not been resolved. To the extent that T.W. is unable to identify or to rectify the problems of abuse, she likewise is unable to protect them from imminent danger. We hold that there is clear and convincing evidence that the circumstances surrounding the abuse or neglect of the children, despite the receipt of services, constitute imminent danger to the children.

III. We hold that there is clear and convincing evidence supporting the grounds for termination specified in Iowa Code sections 232.116(1)(g) and 232.116(1)(h). We therefore affirm the order terminating the parent-child relationship between parents T.W. and J.M. and children D.E.W. and K.E.W.

AFFIRMED.