IN THE COURT OF APPEALS OF IOWA

No. 1998-1 (8-601) / 98-1064
Filed November 30, 1998

IN THE INTEREST OF J.A., Jr.,
Minor Child,

J.W., Mother,
Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Dickinson County, David C. Larson, District Associate Judge.

Mother appeals the order terminating her parental rights to her son. **AFFIRMED.**

Priscilla E. Forsyth, Spirit Lake, for appellant.

Thomas J. Miller, Attorney General, and Marne E. Woods, Assistant Attorney General, for appellee-State.

Jon M. Martin of Martin Law Office, Spirit Lake, guardian ad litem for minor child.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

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VOGEL, J.

Jane, the mother of Jeffrey, appeals the order terminating her parental rights. She contends the district court erred in finding (1) her son could not be returned to her care, and (2) the State had made reasonable efforts to preserve the parent-child relationship. We affirm.

Jeffrey, Jr., born in May 1993 is the son of Jane and Jeffrey, Sr. Jeffrey Sr.'s parental rights are not involved on appeal.

Jane left Jeffrey in the temporary care of a neighbor in August 1994. After a week passed without her return, the neighbor contacted the Department of Human Services, who took custody of Jeffrey. When Jane returned, Jeffrey was returned to her. The State initiated child-in-need-of-assistance proceedings, and Jeffrey was adjudicated CINA in February 1995. Jane was provided Homemaker Health Services and a protective payee. Following a review hearing in July 1995, the court continued the services, and additionally ordered Jane to obtain a substance abuse evaluation. The status quo was maintained following another review hearing in January 1996.

In April 1996, the State applied for a modification of disposition, requesting that Jeffrey be removed from Jane's care. The State asserted in part that Jane was not taking advantage of day care services, she had disappeared from her home on several occasions without informing anyone of her whereabouts, and she had written a number of bad checks and was facing criminal charges. By stipulation of the parties, the court placed Jeffrey in foster care. Jane and Jeffrey, Sr. were allowed visitation, and were required to attend substance abuse counseling and cooperate with drug

testing. A review hearing was held in August 1996, with Jeffrey remaining in foster care. Jane and Jeffrey, Sr. separated and Jane began living with another man, Curtis.

The State filed a petition to terminate Jane's and Jeffrey, Sr.'s parental rights on January 2, 1997. Hearing was not held on the petition until May, 1998. In the interim, two review hearings made no significant changes in the prior court orders. The court terminated Jane's parental rights pursuant to Iowa Code section 232.116(1)(e)(1997). The district associate judge acknowledged Jane and her fiancé, Curtis, might be able to utilize services and work toward reunification, but the court was not willing to prolong the out-of-home placement without some reasonable chance of reunification. The court found Jane had a history of unstable personal relationships. The court noted that even Jane's mother believed it was in Jeffrey's best interests to remain with his foster family, which was interested in adopting him.

We review proceedings to terminate parental rights de novo—we review the facts as well as the law and adjudicate parents' rights anew. *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). We give weight to the findings of the juvenile court, particularly with respect to the credibility of witnesses, but are not bound by them. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995); Iowa R. App. P. 14(f)(7).

Our primary concern in a termination proceeding is the best interests of the child. *In re R.R.K.*, 544 N.W.2d 274, 275 (Iowa App. 1995). Those best interests are determined by looking at the child's long-range as well as immediate interests. We consider what the future likely holds for the child if that child is returned to his or her

parents. Insight for that determination may be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care that the parent is capable of providing. *In re L.L.*, 459 N.W.2d at 493; *Dameron*, 306 N.W.2d at 745; *In re T.T.*, 541 N.W.2d 552, 555 (Iowa App. 1995). Case history records are entitled to much probative force when a parent's record is being examined. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1993).

Jane contends the court erred by finding the State had met its burden of proving that Jeffrey could not be returned to her care at the time of the termination hearing. She concedes it was unlikely that she could have taken custody when the petition was filed, but argues the evidence showed she made drastic improvement from that time onward, and was in fact capable of taking custody of Jeffrey, with the help of her fiancé and his parents and grandparents, by the time of the hearing. She specifically contends she had overcome her drug abuse problem and depression, had a stable relationship with her fiancé, and was employed.

"[T]he general assembly has carefully crafted a legislative framework for State intercession into the parent-child relationship while protecting wherever possible the integrity of the family unit." *I.L.G.R.*, 433 N.W.2d at 689. Under the statutes the State must act to prevent probable harm to a child and need not delay until harm has actually occurred. The termination statutes are preventative as well as remedial. *Dameron*, 306 N.W.2d at 745. "So the statutory presumption that a child's best interest will be served by leaving the child with the child's parent is not conclusive." *L.L.*, 459 N.W.2d at 494. The requirement of Iowa Code section 232.116(1)(e)(4) is

met when the child cannot be returned to the parental home because the definitional grounds of a child in need of assistance under section 232.2(6) exist. *In re A.M.S.*, 419 N.W.2d 723, 725 (Iowa 1988); *In re R.R.K.*, 544 N.W.2d at 277. If any one of the grounds listed in section 232.2(6) can be proven by clear and convincing evidence, there is a sufficient basis for termination. *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990); *In re R.R.K.*, 544 N.W.2d at 277.

Although we acknowledge the improvements Jane has made in her life and her love for Jeffrey, we find clear and convincing evidence Jeffrey could not be returned to her custody. Both psychological and psychosocial evaluations were conducted on Jane in January of 1998. Both assessments concluded that Jane was unwilling or unable to resume custody of Jeffrey in the near future. The testimony supports that Jane does not understand Jeffrey's ADHD condition and would be unable to provide the structure and stability he needs. Jane's lack of motivation increases the risk of lack of proper supervision or denial of critical care if Jeffrey were returned to her. We find definitional grounds under Iowa Code section 232.2(6) continued to exist in Jane's home at the time of the termination hearing. We conclude termination of her parental rights to Jeffrey is proper under Iowa Code section 232.116(1)(e).

Jane secondly maintains that the State failed to make reasonable efforts to reunite her with Jeffrey after the early stages of the CINA proceedings. She specifically complains of a purported DHS policy which discourages reunification efforts after a termination petition has been filed. Reasonable efforts to reunite parent and child are required prior to the termination of parental rights. *In re T.C.*, 522

N.W.2d 106, 108 (Iowa App.1994). *See generally* Iowa Code § 232.102. Generally, DHS must make reasonable efforts to provide services to eliminate the need for removal. *See* Iowa Code § 232.102(9)(a). The record contains ample evidence of the number and breadth of services provided to Jane. Although services other than visitation were not provided after the petition to terminate her parental rights was filed, we find DHS made more than reasonable efforts to reunite Jane with Jeffrey. When the statutory time periods in section 232.116 have run and a parent has made only minimal progress, the child deserves to have termination of parental rights "promptly pursued." *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa App. 1997). To keep children in temporary or even long-term foster homes is not in their best interests, especially when the children are adoptable. *In re J.L.P.*, 449 N.W.2d 349, 353 (Iowa 1989); *In re T.T.*, 541 N.W.2d 552, 557-58 (Iowa App. 1995).

We find, as did the trial court, Jeffrey is adoptable. His current foster parents have expressed their desire to adopt him. They have provided the safe, stable environment Jeffrey needs and are able to work with his ADHD. We conclude termination of Jane's parental rights is in Jeffrey's best interest.

AFFIRMED.