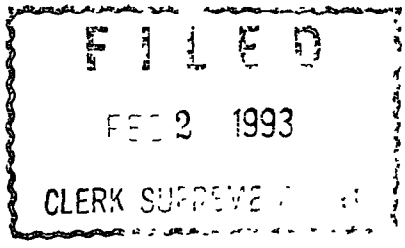
IN THE COURT OF APPEALS OF IOWA

No. 2-581 / 92-1055



IN THE INTEREST OF K.S., A Child,

J.P., Mother,

Appellant,

L.M.S., Father,

Appellant.

Appeal from the Iowa District Court for Warren County, Norman R. Hayes, Juvenile Associate Judge.

Both parents appeal from the juvenile court's termination of their parental rights as to K.S. **AFFIRMED.**

Richard B. Clogg of Elgin, Clogg & Patin, Indianola, for appellant, J.P.

Robert L. Stuyvesant of Stuyvesant & Benton, Carlisle, for appellant, L.M.S.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Charles K. Phillips, Assistant Attorney General, for appellee State.

John R. Hoyman, Indianola, attorney and guardian ad litem for K.S.

Heard by Donielson, P.J., and Sackett, J., and McCartney, S.J.*

*Senior Judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

McCARTNEY, S.J.

The parents, J.P., the mother, and L.M.S., the father, appeal from the ruling of the juvenile court referee that their parental rights to their child, K.S., be terminated. We affirm the ruling.

K.S. was born to the appellants on November 13, 1990. A twin sister to K.S. passed away shortly after birth.

K.S. weighed three pounds at the time of his birth and was at least three months premature.

As a consequence of numerous medical problems, K.S. was kept in the hospital intensive care unit for approximately two months after birth. When he was released from the hospital, he was immediately taken into foster care as a consequence of intervention by the Department of Human Services (DHS).

K.S. suffers from severe brain damage including atrophy of the right posterior temporal region, intracranial bleeding, seizure disorders, as well as suspected damage to his heart and lungs. These multiple serious physical problems required blood transfusions, and he has, from the time of birth to the time of trial, been on an apnea monitor. He has severe problems with breathing and is susceptible to sudden infant death syndrome, hence the monitor.

These physical problems experienced by K.S., together with certain problems experienced by his parents which became apparent to the medical staff of the hospital where

K.S. was born, led that staff to determine that K.S. needed "extraordinary care" which could not be provided by his mother and father. Shortly after his release from the hospital and his placement into foster care by DHS, the little boy was adjudicated a child in need of assistance pursuant to section 232.2, 6(c)(2) and 6(e) of the Code. Thereafter and in February of 1991, a dispositional hearing resulted in a court ruling that K.S. was to remain in foster care pending further review.

During this period of time, his parents were not permitted extensive contacts with K.S., and any visits were limited and monitored. DHS prepared an assistance plan for the appellants and began providing services to them as well as to K.S.

The initial program provided the parents was participation by them in a Parent-Infant Nurturing Center (PINC), the purpose of which was to provide them with the parenting skills necessary to cope with the awesome responsibility of caring for K.S., given his many physical handicaps.

Both parents resisted this assistance, showed hostility and anger toward the personnel at the center, and failed to attend the classes except in a sporadic way. They were terminated from the program because of these attitudes and absences.

Both parents have limited abilities, the mother is the ward in a guardianship which handles her monthly welfare

allowance, and the father has a named payee for his monthly welfare check. Both parents have over the years received extensive services from society and, although they appear to live together in an adequately-maintained apartment (for their own needs), it is apparent from the record that theirs is a volatile relationship. The special advocate for K.S. had deep concerns as to their abilities, and other witnesses testified as to their inability to adequately feed, bathe, handle, or diaper K.S. or operate the apnea monitor. Although they were allowed back into the PINC program later in 1991, there was no improvement in their parenting skills. Their limited understandings made it impossible for them to comprehend or attend to the needs of K.S.

Our review is de novo. In Interest of Dameron, 306 N.W.2d 743 (Iowa 1981). Although not bound by juvenile court findings, we give the same weight because of the opportunity of such court to hear and observe the witnesses first hand. Id.

The controlling issue is to determine the best interests of the child and how to best serve him.

The appeal is based upon the contentions of the appellants that there was no clear and convincing evidence that K.S. could not be returned to the parents. Section 232.116(1)(g) of the Code provides that termination is warranted if the child is under three years of age and has been adjudicated a child in need of assistance pursuant to

section 232.96. In addition, the statute provides that the custody must have been transferred from the parents for placement pursuant to section 232.102 for at least six of the last twelve months. Finally, the court must find "clear and convincing evidence that the child cannot be returned to the custody of the child's parents . . . at the present time."

We find that there is clear and convincing evidence that K.S. cannot be returned to the appellants at the present time nor for that matter at any foreseeable future time. We further find that he should not be held in limbo but that his care and nurture should be settled and fixed.

His multiple medical problems with the consequential need for special care and handling make it abundantly clear that the parents, J.P. and L.M.S., will need an almost superhuman effort to attend to K.S. in order to permit him to develop whatever level of competency is available to him. The parents, however, can barely attend to their own needs, again as set forth above. They have not shown any development in their ability to parent this little afflicted boy. They, too, have been the recipients of numerous services provided by various social agencies, and it appears they will continue to need services, let alone develop skills necessary to adequately protect and nourish K.S. His seizures, his susceptibility to sudden infant death syndrome, and the care and use of the apnea monitor together with his other physical problems all militate

against his return to his parents. In their second try at the PINC center program, the parents were found to be passive and defensive, with questionable interest. They parroted expected answers rather than developing their skills to a point where K.S. could be returned to them.

It is not an overstatement, reviewing the record, that K.S. would be at great risk to his life were he to be returned to the appellants at this time or at any future foreseeable time.

Based upon the foregoing, we agree with the ruling of the juvenile court referee terminating parental rights. We accordingly affirm its findings and its order.

AFFIRMED.

Donielson, P.J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent.

Appellant mother gave birth to twins. One twin died. The second child, the subject of these proceedings, lives but suffers multiple medical problems that require extraordinary constant vigilance.

The mother, though not married, maintains a stable relationship with the child's father. The child has never been in the care of either of his parents. The child was put in a foster home when released from the hospital about two and one-half months after birth. The location of the foster home was not made known to the parents. The parents have been given only limited and supervised visitation.

The parents clearly love the child and want to be his parents. They have never harmed him.

The reason the parents have been segregated from their child and the reason their parental rights are being terminated is because they are mentally handicapped and, because of this handicap, they will have some difficulty in caring for their special needs child.

The juvenile court in terminating parental rights found:

> It is a tragic situation but still a fact of life that these parents, due to their own limitations over which they have no control, but compounded by their negative attitude toward any assistance, are unable to care for a child with the serious special needs of this child. The fact that they clearly love the child and wish to do right by it is not sufficient. Their own mental and physical limitations are too great and the

> child's needs too serious for the child to be placed in their custody at the present time or in the foreseeable future. It is clearly and convincingly established by the evidence that the child's best interests will be served by terminating the parental rights and placing the child where it can receive the specialized care it desperately needs. These needs cannot be met by the parents.

I agree with the majority these parents, because of their mental handicaps and the child's problems, will need assistance parenting this child. I do not, however, as does the majority, find these parents should lose all legal rights to this child.

The issues concerning terminating the parental rights of handicapped parents cause grave concern. As judges we are forced to attempt to balance the rights of the handicapped parents not to have their parental rights terminated and lose their children with the rights of their biological children to have a fair chance in our society.

The majority states the controlling issue is the best interest of the child. The problem with this statement, however gallant it may appear on its face, is that if we are truly controlled by the best interest of the child, then it is incumbent on us to put the child in only the "best" home. Under this directive, only the most worthy in our society should be allowed to parent.

Additionally, the majority does not elaborate as to what it determines is this child's best interest. What it

thinks is in the best interest of the child may be different than what I think is in the best interest of the child, and may be different from what the biological relatives think is in the best interest of the child; the list can go on indefinitely.

Unfortunately, I think we too often equate termination of parental rights with adoption and a better life for the child. The harsh reality is that termination of parental rights does not assure adoption, especially with children that have the profile of this child. This child has special needs and his biological parents have limited intellectual abilities. If he is not adopted, he will remain in the state's care. I continue to be convinced that the state, despite great efforts, is generally a poor parent.

However, the bottom line really is, are we as a society willing to provide the resources to help handicapped parents parent. The parenting programs supplied for these parents were not tailored to the parents' special needs. We have measured these parents' ability by standards set for people with normal intelligence.

I am particularly impressed by the testimony of the mother's obstetrician, Ellen B. Roose, M.D., who has worked with the mother since 1990. Dr. Roose has concern, compassion, and understanding for the problems frequently experienced by persons of limited intelligence. Dr. Roose

testified she found the mother to be conscientious about appointments and medical care and able to follow through on assigned directions, if the directions were given to her in language she understood. (Emphasis supplied.) Dr. Roose felt the parents could care for the child. Dr. Roose was asked about what additional services could have been provided to allow the parents to care for the child, and she testified:

> Q. What other programs can we try? I mean, you say that they need extra instruction and, you know, we've tried the PINC program twice, and I just wondered if you had any thoughts on what else -- what other services the State could offer. A. I don't -- because I don't know what the State has available, I can't say. I guess personally I think that if there were a place -- and I'm not saying that it even exists, but if there were a place where someone was there 24 hours a day for them [the mother] and [the father] and [the child] could live as a family, okay, somebody being there so that [the child] was taken care of should [the mother] and [the father] not be able to but they be allowed to and someone who was available to answer questions and to aid them if they needed it, ...

While this record is full of papers, reports, evaluations, and forms, and, obviously, considerable resources have been expended, I find reasonable service tailored to the parents' special needs has never been offered to these parents. They never were allowed to spend time with their child except under the most controlled circumstances. They never were allowed to care for their child in a residential living situation where supplemental parenting assistance would be available.

While mentally handicapped parents do not measure up to stereotypes of more intelligent parents, the mentally handicapped exhibit love, care, and devotion for the children.

Should mentally handicapped be denied the help they need to parent? I think not.

I hope someday we will see it is as important to assist the handicapped in parenting their children as it is to provide physical accommodations such as parking, etc., for the handicapped. And when mentally handicapped parents are allowed to parent their children, we may learn they possess parenting qualities intelligent parents do not.

Involuntary termination of parental rights, where a judge's pen severs the legal ties that are created by biological relationship, are procedures of recent origin and procedures for which we have little or no history or direction. We must seriously look at the direction we are heading.