IN THE COURT OF APPEALS OF IOWA

No. 0-066 / 99-1266
Filed April 12, 2000

IN THE INTEREST OF
J.O., C.O., C.O., S.O., and B.O.,
Minor Children,

J.O., Mother,
Appellant,

P.O., Father,
Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Tama County, Stephen C. Gerard II, District Associate Judge.

Mother and father separately appeal the termination of their parental rights to their five children. **AFFIRMED.**

Stephen T. Brennecke of Brennecke Law Office, Grinnell, for appellant-mother.

Nancy L. Burk, Toledo, attorney for appellant-father.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Brent D. Heeren, County Attorney, for appellee-State.

John S. Livingston, Gladbrook, attorney and gurardian ad litem, for minor children.

Heard by Mahan, P.J., and Vaitheswaran, J., but decided by Huitink, P.J., and Mahan and Vaitheswaran, JJ. Zimmer, J. takes no part.

MAHAN, P.J.

Mother and father separately appeal the termination of their parental rights to their five children. The parties contend the juvenile court erred when it found (1) they had abandoned their children, (2) they had failed to maintain significant and meaningful contact with their children, (3) they had failed to make reasonable efforts to resume providing for the care of the children, and (4) the children could not safely be returned home. In addition, the mother contends the court erred in terminating her rights with regard to the oldest daughter and the father contends the court erred in failing to find compelling reasons existed to overcome the statutory time for termination of parental rights. We affirm.

Patrick and Janeen are the parents of: Jenifer, born December 1983; Christopher, born June 1987; Christina, born March 1990; Shirley, born June 1991; and Briana, born May 1994. Since 1984, there have been ten founded child abuse reports against Patrick or Janeen, or both, that involved either physical abuse or the denial of critical care of the children.

In February 1996, Jenifer and Christopher were adjudicated as children in need of assistance pursuant to Iowa Code section 232.2(6)(b). They continued in foster care, but were returned home in March 1997, under the protective supervision of the Department of Human Services (DHS) with services continuing to the family. Christina, Shirley, and Briana were adjudicated as children in need of assistance pursuant to Iowa Code section 232.2(6)(b) in July 1996. This court affirmed the adjudication of all five children in May 1997. In November 1997, the children were removed and now remain in foster care. In August 1998, Patrick

and Janeen moved to Utah. In January 1999, the State filed petitions to terminate parental rights of all five children and the hearing was held from June 28, 1999 to July 2, 1999. Patrick and Janeen's parental rights for all five children were terminated under Iowa Code section 232.116(1)(b), (d), (e) and the additional section (h) for all the children except Briana. Patrick and Janeen appeal.

I. Standard of Review. Termination proceedings are reviewed de novo. Iowa R. App. P. 4; *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). Although we are not bound by them, we give weight to the trial court's findings of fact, especially when considering credibility of witnesses. Iowa R. App. P. 14(f)(7); *M.M.S.*, 502 N.W.2d at 5. The primary interest in termination proceedings is the best interests of the child. Iowa R. App. P. 14(f)(15); *In re R.K.B.*, 572 N.W.2d 600, 601 (Iowa 1998); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). The State has the burden to prove the allegations of the petition by clear and convincing evidence. Iowa Code § 232.96 (1999).

II. Termination. The parents contend they did not abandon their children pursuant to Iowa Code section 232.116(1)(b) when they moved to Utah. Section 232.116(1)(b) provides the termination of the parental rights and relationship between the parent and child may be terminated when the court finds clear and convincing evidence the child has been abandoned or deserted. *In re D.M.* 516 N.W.2d 888, 891 (Iowa 1994). The abandonment of a child is defined as:

> the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is

> evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

Id. The giving up of parental rights and responsibilities refers to conduct. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996). The intent element refers to the accompanying state of mind. *Id.*

We do not disagree with the juvenile court's finding Patrick and Janeen's move to Utah may have caused the children, especially the younger ones, to feel they have been abandoned. However, we are not convinced Patrick or Janeen ever intended to abandon their children as is required for termination of their parental rights under this section. Patrick and Janeen sought out parenting services through the Utah Department of Family Services and their church. They also addressed their physical and mental health needs. The record indicates they did make efforts to comply with the case permanency plan and seek out services for the reunification of their family.

We do not find Patrick or Janeen abandoned their children under Iowa Code section 232.116(1)(b), however, when parental rights are terminated on more than one statutory ground, we need only find grounds to terminate under one of the sections in which the juvenile court cites to affirm. *In re S.R.*, 600 N.W.2d 63, 64 (Iowa App. 1999). We find the grounds for termination under section 232.116(1)(d), (e), and (h) have been met.

Patrick believes in using corporal punishment on his children and also believes he has the right to use such punishment. He admits to using it on all his children except Briana. Patrick admitted to violating a court order against physical discipline when he used such discipline on Christina and Shirley

because he felt it was more important in raising the children than in obeying the court order. When asked by a therapist to put some of his thoughts down on paper, Christopher wrote the following:

> Things that make me mad at my parents.
>
> My dad coming home and beating on us kids just because he had a bad day.
>
> Beat on us because we didn't have our chores done
>
> Dad hitting us with a belt. duct taping me to a chair and table, hand cuffing me behind my back. Dad would put duct tape on all of our mouths even the dog got its mouth duct taped. Dad would make us all lay in a row on the floor face down than he would start hitting us with a belt.
>
> One time when I went to bed without finishing my sentence, Dad came up stairs and hit me with a belt real hard to wake me up. then made me finish the sentence, Mom lied to D.H.S about it she lies all the time.
>
> One time my dad took me to waterloo to the Gray Hound Park and made me through my cat out the car window. The car was moving and my cat was going to have kittens. I was crying and begging him not to make me but he didn't care. I had to throw my own cat out the window, she is probably dead now. I hate my dad.
>
> I accidentally dropped a bowl and broke it so dad started throwing dishes, cans, and sharp lids off of cans, cups, etc at me and Jenifer. One hit Jenifer right by her eye.
>
> I hid some tin cans in a hospital bag and Dad hit me in the head with the bag and cut my head, I was bleeding and all he said was shut up and go put a towel on it. I still have a bump on my head after all this time from it.
>
> Dad slammed me up against the refrigerator and then picked me up and slammed my head into the ceiling, because I broke a vase.
>
> Dad beat us nearly everyday and Mom, you never knew what she was going to be like from one minute to the next. She was nice and happy, or mad, or bawling us out and blowing up, or taking off in the car.

> I gave mom the choice to either stay with dad or make a home for me and my sisters. She chose Dad so they can just have each other. I don't want to have anything to do with them, ever!
>
> I want my foster parents to adopt me and my sisters. We can be a family and not get beat on and called names. We wouldn't have to change schools all the time. We would feel like we belong to something instead of wanting to run away all the time. I can do better at school now. I can read now.
>
> My dad is always nasty looking and people stare and try to stay away from him. He is mean and tries to lie and make trouble with everyone. He talks about suing everyone and getting their money. He says DHS can't do this and he laws are on his side. He thinks he's smart and everyone else is stupid. It's never his fault. He thinks its his God given right to abuse us. He'll never change.
>
> I don't want my sisters there. Maybe someone in Utah won't know how he is and one of them will get killed. It's not safe at home with my parents.
>
> Both my parents are big liars. My mom will lie to protect my dad. She don't care about what happens to us kids. Dad lies to win. I don't get think he loves us or wants us kids. He just wants to win so he can get food stamps.

Patrick made it clear to the court he would do whatever he believes to be in the best interests of raising his children regardless of what the court orders. The juvenile court found physical and emotional trauma was caused to the children as a result of corporal punishment inflicted. Janeen does not believe there has been any physical abuse of the children since 1995, although she admits Patrick sometimes is a little forceful. With regards to an incident in which Christopher was duct taped to a chair and handcuffed, Janeen claimed such punishment was only used as a last resort and is not a form of corporal punishment but passive restraint. There was evidence neither parent will acknowledge responsibility for any incidents of abuse. After review of the record,

we agree with the court's determination Patrick and Janeen used corporal punishment on their children to an extent that is unreasonable and constitutes abuse. Although the courts have acknowledged in rearing children parents have the right to inflict reasonable corporal punishment, they must not punish with undue severity or cruelty. *In re B.B.*, 598 N.W.2d 312, 315 (Iowa App. 1999). The court looks to the amount of force used while taking the child's age, physical condition, the gravity of the child's misconduct, and other characteristics into account in order to determine whether punishment crosses the line from corrective to abusive. *Id.* at 315-16. After reviewing the record, we conclude there was clear and convincing evidence these children were physically and emotionally abused and they cannot be safely returned to the home of Patrick and Janeen.

With regards to Jenifer, we agree with the juvenile court the benefit to her being available for adoption far outweighs any benefit she may have by maintaining her relationship with her parents. Jenifer is almost eighteen years old, and she will be able to maintain a relationship with her parents if she chooses even after the termination of parental rights or if adoption occurs. By making her available for adoption, Jenifer will have the prospect of having a relationship with at least one set of parents, if not two, that could be beneficial to her even into early adulthood.

Even if we were to not terminate Patrick and Janeen's parental rights, they intend to stay in Utah and want the children moved there. The juvenile court found the results of moving the children to Utah would be "horrendous". We

agree. It is clear Patrick and Janeen want all reunification efforts to take place in Utah where they believe they would be supported in their attempt to reunify their family. They do not believe such support exists in Iowa. It is obvious this family cannot be reunified long distance. We agree with the juvenile court that such an attempt would be disastrous. We have carefully reviewed this case and conclude these children need stability in their life. The juvenile court was correct in terminating parental rights.

In summary, we find all the grounds under which the juvenile court terminated parental rights exist except for abandonment under Iowa Code section 232.116(1)(b). We affirm the decision of the juvenile court.

AFFIRMED.