FILED
APR 22 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

59

IN THE INTEREST OF K.M. AND M.M., Children,

L.M., Natural Father,

Appellant,

J.M., Natural Mother,

Appellant.

Filed April 22, 1987

7-139
86-1264

Appeal from the Iowa District Court for Johnson County (No. 262), Robert E. Sosalla, District Associate Judge.

The father and mother of K.M. and M.M. appeal from the termination of their parental rights. **AFFIRMED.**

John Henry Schlie, Cedar Rapids, for appellant father.

Duane Rohovit, Iowa City, for appellant mother.

Thomas J. Miller, Attorney General; Daniel W. Hart, Assistant Attorney General; and Mary McCollum, Assistant Johnson County Attorney, for appellee State.

L. Jay Stein of Stein, Hibbs & Russell, Iowa City, guardian ad litem for the children.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

PER CURIAM

The natural father, L.M., and mother, J.M., appeal from a district court ruling terminating their parental rights in two minor children, M.M. and K.M. Both L.M. and J.M. argue on appeal that there was insufficient evidence to support the district court's ruling that it was in the best interests of M.M. and K.M. that L.M. and J.M.'s parental rights be terminated. J.M. argues that it was the State's inability to protect her from L.M.'s physical abuse which resulted in her inability to properly care for the children. L.M. contends that there was insufficient evidence to support the trial court's finding that M.M. and K.M. had experienced physical abuse and neglect. We affirm.

We review parent-child terminations de novo. In Interest of K.L.C., 372 N.W.2d 223, 227 (Iowa 1985). While we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

The district court originally adjudicated K.M. and M.M. as children in need of assistance pursuant to Iowa Code section 232.2(5)(b) (1983) (now Iowa Code section 232.2(6)(b) (1985)). Section 232.2(5)(b) provides that a child in need of assistance is an unmarried child "[w]hose parent . . . has physically abused or neglected the child, or is imminently likely to abuse or neglect the child." In its decree ordering termination, the court stated that the same conditions present during the earlier adjudication hearing were still present after eighteen months and ordered that L.M. and J.M.'s parental rights be terminated pursuant to Iowa Code section 232.116(5). Generally, if any one of the six grounds provided in section 232.116 for termination is established by clear and convincing evidence, the termination will be upheld. In Interest of K.L.C., 372 N.W.2d at 237. We find that clear and convincing evidence exists requiring termination on the basis of Iowa Code section 232.116(5).

The paramount concern in a determination of this nature is the best interests of the child. In Interest of J.H., 358 N.W.2d 311, 317 (Iowa 1984). In evaluating the child's best interests, we necessarily consider the child's long-range as well as immediate interests. Id. Intrinsic to this evaluation is an examination of the parent's past performance, from which valuable insight may be gleaned as to the future quality of care the parent is able to provide. In Interest of O'Neal, 303 N.W.2d 414, 423 (Iowa 1978).

The district court in the present case largely based its decision on the past performance of the natural parents. The court, however, did not point to one overriding factor, but relied on the general picture of the parents that emerged from all the evidence. The natural father, L.M., has been diagnosed as having a psychopathic personality and anti-social behavioral disorder. The record reveals that these diagnoses have manifested themselves in violent conduct towards the mother. The record reveals that on several occasions, in front of the children, the father has pointed a loaded gun at the mother. In another incident, the father attempted to choke the mother, resulting in the mother dropping their child, T.M., who has been involved in separate proceedings not connected with the present case. The record reveals that L.M. has often spanked the children and whipped them with a belt, especially when either of the children wet or soiled their pants. On one particular occasion, K.M. complained to her foster mother that her "potty" hurt and that she wanted to take off her clothes. Upon examination, the foster mother discovered K.M.'s vagina to be red. K.M. stated that L.M. had hurt her with a belt, which was corroborated by M.M.

The record also reveals that M.M. was noticed by his foster mother as having a serious burn on his buttocks. The University of Iowa Child Development Clinic reported that such a burn would have likely caused M.M. to cry. Though both L.M. and J.M. were apparently present when the burn was received, neither

could explain how M.M. was burned. M.M. later stated that his father sat him on the stove, though no actual evidence was offered at trial.

The record additionally reveals that L.M. used the children in battles with J.M. L.M. on several occasions told J.M. that if she did not return home, he would never let her see her children again. During one period in March 1984, L.M. refused to allow J.M. to leave the house with both children and took one of the children with him when he left so that J.M. never had a chance to leave with both children. Though L.M. steadfastly denied using the children as hostages, at the CHINA hearing L.M. admitted that such an idea may have been in the back of his mind.

The record additionally reveals that J.M. has been under treatment for schizophrenia for a long time and that she does not take her medication as prescribed. J.M. has been beaten and threatened by L.M. numerous times in front of the children, but places the blame on the State for most of the family problems. Before the CHINA proceeding L.M. and J.M. were married for the third time, but separated and reunited at least a dozen times. J.M. could not decide whether or not to remain with L.M. even after numerous acts of violence and threats against her. J.M. stated that L.M. hit her on the ear, causing it to be numb for two days, yet characterized the incident as "[n]ot anything really major." J.M. stated that she kept returning to live with L.M. because she missed him. J.M. testified that given her current state of mental health, she would have difficulty in caring for the children.

The record also reveals that this violent and disfunctional home life has taken its toll on the children. The parties' older child, T.M., has already exhibited violent tendencies towards others and has displayed particular aggressiveness towards his mother. M.M. and K.M. have exhibited aggressiveness towards others and themselves. M.M., according to his foster mother, has hit his foster

mother and her daughter. K.M. purposely jumped off of tables and put her fingers in doors. The foster mother also testified that M.M. and K.M. have displayed an obsession with guns, often fantasizing about scenarios which included guns and shooting their father.

The State concedes that the evidence of actual child abuse is not overwhelming. The State, however, submits, and we agree, that M.M. and K.M. have suffered significant emotional abuse and will likely suffer more severe emotional damage in the future. In In Interest of T.D.C., 336 N.W.2d 738, 743 (Iowa 1983), the Iowa Supreme Court affirmed the district court's decision terminating parental rights where the evidence in that case revealed that the mother's early care of the child and subsequent contacts resulted in severe emotional distress in the child. The court noted that while none of the mother's offenses could be classified as serious, they showed a total lack of responsibility. Id. at 744. Citing to In the Interest of Kester, 228 N.W.2d 107, 110-11 (Iowa 1975), the T.D.C. court noted that the termination statutes are not only remedial in nature, but preventative as well. Id. A court considering a termination proceeding therefore need not sit idly by and wait until harm has already been done.

Nearly fifty-seven state agencies and other organizations have offered their services to L.M. and J.M. over the past twelve years, but neither of the parties have either benefited from these services nor have they been willing to accept them. Both L.M. and J.M. have repeatedly blamed everyone else for their family problems. Given the family's past history of violence, we see little chance that there will be any change in the future. We therefore affirm the district court's termination of L.M. and J.M.'s parental rights.

Because of our holding in the present case, we need not consider L.M.'s

additional argument that the district court erred in denying his motion for new trial on the basis of newly-discovered evidence.

AFFIRMED.