IN THE COURT OF APPEALS OF IOWA

No. 4-087 / 93-1442

FILED
MAR 24 1994
CLERK SUPREME COURT

**IN THE INTEREST OF K.P., A Minor Child,**

**T.N. a/k/a T.N.D., Mother,**

Appellant,

**W.R.P., Father,**

Appellant.

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Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Associate Juvenile Court Judge.

The natural parents appeal an order terminating their parental rights to their child. **AFFIRMED.**

Carol L. Coppola of Coppola, Trout & Taha, Des Moines, for appellant mother.

Wendell J. Harms of Smith & Harms Law Offices, Des Moines, for appellant father.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Kathrine S. Miller-Todd, Assistant Attorney General, for appellee State.

Michael J. Mayer, Des Moines, guardian ad litem for minor child.

Considered by Hayden, P.J., Sackett, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving by order of the Iowa Supreme Court.

**HAYDEN, P.J.**

Tammy, the natural mother, and Willie, the natural father, appeal the termination of their parental rights to their child, Kameron, born on December 11, 1992. Kameron is the mother's seventh child. Tammy's parental rights to her other six children were terminated on November 25, 1992. Willie is the natural father of two of the mother's other children. Willie's parental rights to those two children were also terminated on November 25, 1992. This court affirmed these terminations in November 1993. In re J.C.N./D., No. 3-454/92-2038 (Nov. 29, 1993).

The Iowa Department of Human Services (DHS) has been involved with the mother since 1986 and with the father since 1989. The family has been the subject of approximately twenty-five child abuse investigations. On December 15, 1992, four days after Kameron's birth, a child in need of assistance (CINA) petition was filed on his behalf. Kameron is classified as a special needs child. The petition was based on the previous terminations and the history of abuse in the family. The mother was permitted to keep custody of Kameron as long as she participated in the House of Mercy program.

In January 11, 1993, Tammy left the House of Mercy without Kameron. Her whereabouts were unknown, and she did not return. Pursuant to an order of removal, Kameron was placed in foster care by the DHS on January 12. The juvenile court adjudicated Kameron in need of assistance in

February 1993 under section 232.2(6)(b) and (6)(c)(2) (1991). Neither parent attended the hearing. Only the mother appeared at the dispositional hearing on March 17, 1993. The juvenile court confirmed the CINA adjudication and ordered Kameron remain in temporary legal custody of the DHS. The court ordered the parents to complete parenting skills programs, attend individual therapy, attend all scheduled visitations, and maintain a safe, stable, and sanitary residence. The mother was ordered to undergo substance abuse evaluation and provide urinalysis tests. The father was ordered to successfully complete probation through the domestic abuse program.

On April 27, 1993, the State filed a petition to terminate the parents' rights to Kameron. A termination hearing was held on June 3, 1993. Neither parent attended the termination hearing. Counsels for the parents moved for a continuance of trial or permission to leave the record open. The juvenile court denied the motions. On August 31, 1993, the court terminated the parental rights of Tammy and Willie. The court found the parents continued to abuse drugs and Kameron was exposed to cocaine in utero. The court stated Willie had been convicted of drug possession charges twice in the last year and had other criminal convictions based on abuse of the mother and her oldest son. The court noted Willie had visited Kameron infrequently and was disruptive and argumentative during visits. The father was found to be resistant to services.

Finally, the court concluded the mother had been given extensive services since 1986 but was still unable to safely and properly provide for Kameron.

The parents appeal. First, they contend the juvenile court erred in denying their motions for a continuance or to keep the record open. They also claim a lack of clear and convincing evidence exists to support the termination. The father argues he was not provided with enough time or services to correct the circumstances which led to the CINA adjudication. The mother argues she was not given an opportunity to care for Kameron on her own or enough time to comply with the permanency plan. Finally, the parents contend termination is not in Kameron's best interests.

Our review of parental termination proceedings is de novo. Iowa R. App. 4; In re A.Y.H., 508 N.W.2d 92, 94 (Iowa App. 1993).

I. Motion for Continuance. At the beginning of the termination hearing counsels for Tammy and Willie moved for a continuance or for the record to remain open for a period of time to take additional testimony from both parents. Both parents failed to attend the termination hearing or contact their attorneys regarding their absences.

The grant or denial of a motion for continuance is within the discretion of the trial court. Weigel v. Weigel, 467 N.W.2d 277, 279 (Iowa 1991) (citing In re J.L.L., 414 N.W.2d 133, 135 (Iowa 1987); Countryman v. McMains, 381 N.W.2d 638, 640 (Iowa 1986)). On appellate

review we will not interfere with the trial court's decision in the absence of a clear abuse of discretion. Id. (citation omitted). We consider the following factors in determining whether the trial court abused its discretion in not granting the continuance.

> (1) whether the motion was filed by the movant immediately upon learning of the problem;
> (2) whether the reason for the motion is the movant's fault or negligence; and
> (3) whether justice is more nearly obtained by granting the request.

In re R.B., 493 N.W.2d 897, 898-99 (Iowa App. 1992); see In re C.D., 508 N.W.2d 97, 99 (Iowa App. 1993).

Tammy's attorney stated she had contact with Tammy the week prior to the termination hearing and Tammy had indicated at that time she was aware of the court date. A foster care specialist also testified Tammy stated at her May 27, 1993, visitation she was aware of the termination hearing date. Willie's attorney stated he had not had recent contact with his client. Neither counsel had a phone number for their clients. During the noon recess of the termination hearing both attorneys contacted friends and relatives of the parents in an attempt to locate and speak with them. The attorneys were unsuccessful, and neither parent appeared in court following the recess.

In this case the critical issue is whether the motion for continuance resulted from the parents' fault or negligence. Id. at 899 (citing Hawkeye Bank & Trust, Nat'l Ass'n v. Baugh, 463 N.W.2d 22, 26 (Iowa 1990); State v.

Birkestrand, 239 N.W.2d 353, 360 (Iowa 1976)). Both parents had been offered a variety of services over several years. Their participation and progress has been minimal. Problem areas had been identified and discussed with the parents, but they rejected repeated opportunities to address the deficiencies, which included incidents of abuse. In In re B.K.J., Jr. this court found the trial court did not abuse its discretion in denying a father's motion for continuance in light of his continuous failure to avail himself of services offered to him over the years. In re B.K.J., Jr., 483 N.W.2d 608, 611 (Iowa App. 1992).

The juvenile court did not abuse its discretion in refusing to grant a continuance or keep the record open to provide for testimony from the parents. We affirm on this issue.

II. Termination of Parental Rights. The juvenile court terminated Tammy and Willie's parental rights to Kameron pursuant to section 232.116(1)(c) (1991). The termination of parental rights must be supported by clear and convincing evidence. In re A.R.S., 480 N.W.2d 888, 890 (Iowa 1992). The Iowa Supreme Court has stated the statutory termination procedure is preventative as well as remedial, and such procedures are designed to prevent probable harm to a child before harm actually occurs. Id. (citations omitted). Section 232.116(1)(c) provides the court may terminate parental rights if:

> (1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of acts or omissions of one or both parents or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.
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> (2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

Iowa Code § 232.116(1)(c) (1991).

In January 1992 Tammy's six older children, including two of Willie's children, were adjudicated in need of assistance pursuant to sections 232.2(6)(b) (physical abuse and neglect) and 232.2(6)(c)(2) (failure to exercise reasonable degree of care) (1991). Four of the six children were also adjudicated in need of assistance pursuant to section 232.2(6)(n) (mental capacity, imprisonment, or substance abuse of parent resulted in child not receiving adequate care). An extensive case plan was established for this family. The record clearly shows Tammy and Willie have been offered numerous services from 1986 and 1989 respectively. The services included protective service worker, public health nurse, child protective treatment, play therapy, Broadlawns evaluation, ACES evaluation, preschool handicap program, foster care, transportation, Woodland Daycare, Capital Hill Daycare, Family Preservation services, Lutheran Social Services in-home therapy, protective payee, Family Violence Shelter,

parent growth program, emergency housing, domestic abuse classes, NCA evaluation, probation services, and Child Guidance Center evaluations, and counseling programs including in-home therapy and parent skill development.

The trial court terminated Tammy's and Willie's parental rights to the six older children in November 1992. Despite the numerous services offered with regard to the older children, the parents were unable to provide a safe, stable, and nurturing environment. In attempting to avoid harm to a child, the courts may make reasonable predictions about parents' future performance by looking to their past pattern of actions or omissions. In re J.K., 495 N.W.2d 108, 110 (Iowa 1993) (citing In re M.M., 483 N.W.2d 812, 814 (Iowa 1992)).

The juvenile court adopted the case permanency plan for Kameron in a hearing held on March 17, 1993. DHS offered to the parents the following services: House of Mercy services, an evaluation with the National Center on Alcoholism and Other Drug Dependencies-Central Assessment Center (NCA), probation services, parent growth program, Harold Hughes recovery program, foster care, Title XIX and ADC benefits, headstart services, Heartland Education services, and supervised visitations.

In an order filed on April 2, 1993, the juvenile court specified the requirements of the case permanency plan. After Kameron's birth, Tammy admitted to drug usage during her pregnancy. The juvenile court required Tammy to

participate in urinalysis testing. On March 4, 1993, Tammy tested positive for marijuana. On March 29 and April 6, she tested positive for cocaine. She tested negative on March 18, March 23, and April 16, which was the last test in which she participated. On April 15, 1993, Tammy completed a substance abuse evaluation with the NCA. It was recommended she participate in inpatient substance abuse treatment and an aftercare program. Tammy refused to participate in such treatment. A CASA worker stated in her May 24, 1993, report Tammy, despite her admission of drug usage and positive tests, refused to believe she needed drug counseling.

The court ordered the parents to attend all scheduled visitations with Kameron. Tammy began attending visitations with Kameron on February 11, 1993. She has attended all subsequent visitations. Willie attended only three scheduled visitations. He attended one visitation alone on April 15. The parents began joint visitations on April 29, 1993. Tammy and Willie attended the May 6 and May 13 visitations. Willie, however, did not attend the May 20 and May 27 visitations.

The parents were also required to establish a safe, stable, and sanitary residence free from abusive individuals. These parents have never provided a stable and permanent place to live. One caseworker testified Tammy had at least three residences between January and May 1993. At the time of the termination hearing neither

parent has provided their attorney with an address or phone number at which he or she could be contacted.

The court ordered Willie to attend and complete a parent growth program and complete probation through a domestic abuse treatment program. Willie's participation in services has been minimal following Kameron's birth. He failed to complete a parent growth program or a domestic abuse program. On March 18, 1993, Willie plead guilty in Polk County district court to possession of a controlled substance, marijuana, in violation of Iowa Code section 204.401(3) (1991). A CASA worker stated in a May 1993 report Willie had said he did not believe in services and did not believe they were worthwhile.

DHS has made reasonable efforts to provide services and reunify this family. See Iowa Code § 232.102(5) (1991). The circumstances which led to the CINA, however, continue to exist despite the offer of numerous services. Despite years of ongoing and numerous services the parents have been unable to develop appropriate skills and accept responsibility for the proper care of their child.

We conclude the requirements of section of 232.116(1)(c) are supported by clear and convincing evidence. The best interests of Kameron warrant the termination of parental rights of Tammy and Willie. We affirm the decision of the juvenile court.

Costs of this appeal are taxed one-half to Tammy and one-half to Willie.

**AFFIRMED.**

Sackett, J., specially concurs without opinion.