IN THE COURT OF APPEALS OF IOWA

000021

No. 6-750 / 96-1411

FILED
FEB 26 1997
CLERK SUPREME COURT

IN THE INTEREST OF A.S.B.,
A Minor Child,

L.J., Mother,
Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty, Associate Juvenile Judge.

A mother appeals from a juvenile court order terminating her parental rights to her minor daughter under Iowa Code sections 232.116(1)(f), (g) and (k) (1995).

AFFIRMED.

Thomas J. O'Flaherty of O'Flaherty Law Firm, Swisher, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Lance J. Heeren, Assistant County Attorney, for appellee-State.

Barbara H. Liesveld of Thinnes & Liesveld, Cedar Rapids, guardian ad litem for minor child.

Heard by Habhab, C.J., and Streit and Vogel, JJ.

HABHAB, C.J.

Lori and James are the parents of Alyssa, born May 25, 1995. Alyssa was removed from her mother's care based on an incident which occurred on May 31, 1995. A pizza delivery person reported he delivered a pizza to Lori that night and she threatened him with a knife and took the pizza without paying for it. When officers responded to the complaint, they discovered the mother was too intoxicated to care for Alyssa, so they left Alyssa in her maternal grandmother's care and filed a report with the Department of Human Services.

On June 2, 1995, the juvenile court entered a temporary removal order and Alyssa was placed in the Department's custody for foster care placement. Following a hearing, the court ruled Alyssa should remain in foster care. The State filed a child in need of assistance petition alleging Alyssa was in need of assistance under Iowa Code sections 232.2(6)(b), (c)(2), and (n) (1995). She was adjudicated in need of assistance as to James, her father, on August 15, 1995, and as to Lori, her mother, on October 5, 1995. Following a dispositional hearing, Alyssa's custody was continued with the Department for purposes of family foster care. James ultimately consented to termination of his parental rights. His parental rights are not at issue in this appeal.

The State filed a termination petition on December 27, 1995. Trial was held on March 8, 1996. The juvenile court terminated Lori's parental rights and found her primary problem was substance abuse. The court noted Lori's attempts at treatment

but also indicated these efforts usually coincided with periods in which she was facing criminal charges.

After Alyssa's removal, Lori again sought substance abuse treatment on an outpatient basis. Subsequently, she was arrested for stealing a bottle of vodka. She was arrested again and charged with first-degree theft for attempting to return stolen merchandise for cash.

Lori was incarcerated at the time of the termination hearing. She had been convicted of the first-degree theft charge. The parties stipulated she would fully serve her sentence by December 9, 2000, and would have her first parole hearing on October 19, 1996. The court believed she was a capable and loving parent when sober, but her chronic substance abuse meant Alyssa would be in danger if placed in her care and a relapse occurred. The court concluded Alyssa could not wait for Lori to win her battle against substance abuse. The court therefore terminated her parental rights under sections Iowa Code sections 232.116(1)(f), (g), and (k).

Lori appeals. She maintains the Department failed to work to maintain the parent/child relationship. She notes the social worker's admissions that Lori was a good parent when sober and she had always attended visitations. Lori claims she has demonstrated her commitment to substance abuse treatment. She believes the court erred in ruling the State proved its case under the relevant code sections.

*I. **Standard of Review.*** Our review of termination proceedings is de novo. *In re T.M.P.*, 528 N.W.2d 671, 673 (Iowa App. 1995). We give weight to the

findings of fact made by the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. *Id.* The grounds for termination must be proven by clear and convincing evidence. *In re R.K.K.*, 544 N.W.2d 274, 277 (Iowa App. 1995). Our primary concern is the best interest of the children which include both their long-range and immediate interests. *In re A.Y.H.*, 508 N.W.2d 92, 94 (Iowa App. 1994). In making this determination:

> We consider what the future holds for the child if returned to his or her parents. Insight for this determination can be gained from evidence of the parent's past performance, for that performance may be indicative of the quality of the future care the parent is capable of providing. Our statutory termination provisions are preventative as well as remedial. They are designed to prevent probable harm to a child.

In re T.J.O., 527 N.W.2d 417, 420 (Iowa App. 1994)(citing *In re R.M.*, 431 N.W.2d 196, 199 (Iowa App. 1988); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981))

II. Iowa Code § 232.116(1)(f), (g), and (k).[1] In our de novo review of the

---

[1] Section 232.116(f) provides for termination when a child has been adjudicated a child in need of assistance; the court has terminated parental rights with respect to another child who is a member of the same family; there is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation; and, there is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

Section 232.116(g) provides for termination when the child is three years of age or younger; has been adjudicated a child in need of assistance; has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the past six consecutive months and any trial period at home has been less than thirty days; and there is clear and convincing evidence that the child cannot be returned to the custody of the child's parent at the present time.

Section 232.116(k) provides for termination when the court finds the child has been adjudicated a child in need of assistance; custody has been transferred from the child's parent for placement; the parent has a severe, chronic substance abuse problem and presents a danger to self or others as evidenced by prior acts; and there is clear and convincing evidence

record we find clear and convincing evidence to establish Lori continues to lack the ability and willingness to respond to necessary services.

Past behavior of a parent is an important factor to consider when determining whether or not termination of parental rights is warranted. *In re M.H.*, 367 N.W.2d 275, 278 (Iowa App. 1985). Lori suffers from a severe and chronic substance abuse problem. She has been involved with seven inpatient substance abuse programs and four outpatient programs. She used alcohol while pregnant with Alyssa. Her parental rights to an older daughter, Tiffany, were terminated just before Alyssa's birth as she was unable to maintain sobriety. Furthermore, she has a lengthy criminal record which includes approximately forty criminal charges since 1985. The majority of these charges resulted from her abuse of alcohol or assaultive conduct.

Insight into what the future holds for a child if the child is returned home is gained from a parent's past performance. *In Interest of S.N.*, 500 N.W.2d 32, 34 (Iowa 1993). The record reveals five separate founded child abuse reports against Lori. One report was founded against Lori as the perpetrator of sexual abuse against her nephew. We note Lori has not yet completed a sexual abuse assessment or treatment as recommended by the Department. Three of the reports were founded as the result of Lori's failure to supervise Tiffany due to her intoxication. The fifth

---

that the parent's prognosis indicates the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

founded report resulted in Alyssa's removal from Lori's home. Lori was intoxicated and failed to provide adequate supervision for Alyssa.

On October 30, 1995, while participating in an outpatient substance abuse treatment program, Lori was charged with fourth-degree theft for attempting to steal a bottle of vodka. She was discharged from the substance abuse treatment program when she was incarcerated for attempting to return stolen property to receive money. She was sentence for an indeterminate term not to exceed ten years.

We agree with the findings of the juvenile court:

> [Lori]'s past performance causes the court to believe that it is very unlikely Alyssa will be safe or that her basic needs will be met if she is returned to the care of her mother. Additionally, [Lori]'s current incarceration makes it physically impossible for Alyssa to be returned to her mother at this time and there are no assurances that this situation will change any time in the near future. The court cannot allow Alyssa to remain in temporary foster care in hopes that [Lori] will be able to maintain sobriety after she is released from prison. It is tempting to conclude that allowing [Lori] to maintain her parental relationship will motivate her to remain substance free. However, the possibility of losing Tiffany did not cause [her] to avoid intoxication. Additionally, Alyssa is not a carrot to be used to cajole her mother into sobriety. She is a very young child in need of stability and a family to love and care for her each and every day of her life.

We commend Lori's attempts to conquer her substance abuse problems and encourage her efforts towards sobriety. However, we must reasonably limit the time for parents to be in a position to assume care of their children because patience with parents can soon translate into intolerable hardship for a child. *See In re A.Y.H.*, 508 N.W.2d 92, 96 (Iowa App. 1993). "Iowa case law clearly holds we do not allow

children 'to suffer indefinitely in parentless limbo.'" *In re R.C.*, 523 N..2d 757, 760 (Iowa App. 1994)(citing *In re T.A.L.*, 505 N.W.2d 480, 485 (Iowa 1993): *Long v. Long*, 255 N.W.2d 146, 149 (Iowa 1977)).

In our de novo review of the record we find the evidence clearly indicates that Lori lacks the ability and willingness to respond to services necessary to overcome her serious problems with alcohol. Alyssa has been in foster care since she was five days old, close to two years. Lori asserts she will be able to care for Alyssa after her release from prison and after she has conquered her substance abuse problems. However, in light of the severe and chronic nature of Lori's substance abuse and her repeated failure in her efforts to maintain sobriety, we find the juvenile court correctly terminated her parental rights.

III. Services Provided by the Department. Lori contends the Department failed to provide her with reasonable services as she did not receive visitation while incarcerated in Oakdale.

Reasonable services must be provided in an attempt to preserve the family unit before the State terminates parental rights. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). However, a parent must raise this issue when the services are offered prior to the termination hearing. *Id.; In re C.D.*, 508 N.W.2d 97, 101 (Iowa App. 1993). A case plan for each child is an integral element of the Department's implementation of reasonable efforts to reunify the family. *Id.* at n. 4. Challenges to the plan for reunification should come when the plan is entered. *Id.* at 807.

The record reveals the Department has provided substance abuse treatment, homemaker services, psychological evaluation, and psychotherapy for Lori. Lori did not request parenting classes or parenting skills services prior to the termination hearing. Robin Ekert, a social worker assigned to the case, testified parenting skills were not offered to Lori as she had good parenting skills when sober. Ekert testified Lori's primary problem was maintaining sobriety to consistently utilize her parenting skills. Ekert also testified Lori's alcoholism was the primary obstacle in reunification efforts.

In our de novo review of the record, we find reasonable services were provided to Lori prior to termination of her parental rights. We find there is clear and convincing evidence that termination of Lori's parental rights is in the best interests of Alyssa.

AFFIRMED.