IN THE COURT OF APPEALS OF IOWA

No. 1-336 / 91-672

FILED
AUG 27 1991
CLERK SUPREME COURT

IN THE INTEREST OF B.M.T. and **P.D.T.**, Minor Children,

R.T., Mother,

Appellant.

Appeal from the Iowa District Court for Woodbury County Brian L. Michaelson, Juvenile Referee.

Mother of two children appeals the termination of her parental rights. **AFFIRMED.**

Robert J. Rehan, Sioux City, for appellant mother.

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

Debra Y. Lulf, Sioux City, guardian ad litem, for child (appellee).

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

OXBERGER, C.J.

The case involves two children, boys born in February 1977 and May 1982. Their parents were formerly married to each other but have been separated since 1983. The boys lived with their mother from 1983 to 1989. They have had little contact with their father since 1983.

The mother has been involved in physical abuse claims on several occasions and other claims of neglecting the children's physical and emotional needs. Social workers suggest a boyfriend of the mother may have sexually abused the boys, and the mother agrees. The mother has an extensive arrest record for prostitution and other minor crimes. She was physically abused by the children's father and also by a later boyfriend. She has attempted suicide in the past, suffers alcohol problems, and has a history of emotional difficulties. With a few exceptions, she has generally resisted the efforts of social workers and counselors to help her.

In January 1989 authorities learned the mother had physically abused the older child. At that time both children were placed in foster care on an emergency basis. They have remained in foster care continuously since that time. In February 1989 they were adjudicated to be children in need of assistance.

In March 1991 the State filed a petition to terminate the parental rights of both natural parents with respect to

both children. After a hearing, the juvenile court terminated the parental rights of both parents. With respect to the mother, the juvenile court relied on Iowa Code sections 232.116(1)(c), (e), and (h). Subsections (c) and (h) both permit termination in cases of physical abuse, sexual abuse or neglect. Subsection (e) permits termination if a child has been adjudicated CINA, has been in foster care for an extended period, and cannot safely be returned to the parent's home.

The mother has appealed the termination order. The father has not appealed.

The mother challenges the sufficiency of the evidence to warrant termination of her rights with regard to the younger boy. She concedes there was evidence to warrant the termination of her rights with regard to the older boy. She challenges, however, the termination order as to both children.

The mother argues the juvenile court should have avoided termination under Iowa Code section 232.116(3)(c). That subsection permits the juvenile court to avoid an otherwise warranted termination if it would be detrimental to the child due to the closeness of the parent-child relationship. The mother suggests long-term foster care as an alternative to termination, stating it would provide stable homes and would allow her to maintain some relationship with the children.

The mother also asserts the termination should be set aside because the Iowa Department of Human Services did not offer adequate services to reunite the family.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984), cert. denied, 469 U.S. 1222, 105 S. Ct. 1212, 84 L. Ed. 2d 353 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

The primary concern in termination proceedings is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981).

> We look to the child's long-range, as well as immediate, interests. 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 R.M., 431 N.W.2d 196, 199 (Iowa App. 1988) (citing to Dameron, 306 N.W.2d at 745); see also In re A.C., 415 N.W.2d 609, 613 (Iowa 1987).

Although it is not our place to pass moral judgment, it is the function of this court to intervene when a parent's overall lifestyle is harmful to a child's best interests. See In re Rice, 236 N.W.2d 40, 43-44 (Iowa 1975).

The mother first asserts the State failed to show by clear and convincing evidence that grounds existed for the termination of her parental rights. We disagree. Iowa Code section 232.116 (1) states:

> Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds: (emphasis added)

Section 232.116 (1)(c) states:

> The court finds that both of the following have occurred:
>
> (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 the 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. (emphasis added).

The court found both children were first adjudicated to be children in need of assistance on April 15, 1987. On February 15, 1989, they were again adjudicated the same after finding physical abuse by the mother of her oldest. We find, therefore, the requirements of section 232.116(1)(c)(1) have been met.

We next consider the requirement of section 232.116(1)(c)(2). The mother asserts the State failed to provide services for her to attempt reunification of the

family unit and thereby erred in ordering termination of her parental rights to the children. We disagree.

This mother received treatment at St. Luke's Emotional Care Unit and Cherokee Mental Health Unit, parenting classes dating back to 1981, protective day care beginning in 1985, marital counseling, play therapy, alcohol and drug abuse treatment, and family preservation services. The record indicates that in spite of the services provided to her, she had a six-year history of resistance to services. This court finds that she was offered or received services to correct her circumstances subsequent to the child in need of assistance adjudication. We further find the circumstances continue to exist despite the services. The mother continues to suffer from ongoing emotional problems. Within the last six months she has attempted suicide on two occasions, yet has left the treatment services against medical advise. She has had approximately twenty-five police contacts involving prostitution, disorderly conduct, assault, and criminal mischief. She continues to have an ongoing chemical dependency. She has a continued pattern of behavior in either a physical or verbally abusive manner with both children when confronted with stressful situations.

We find adequate services were offered to the mother. The failure on her part to accept and cooperate with the State's efforts cannot now be assigned as a failure of the State.

The mother next asserts the termination of her parental rights, as a permanency option, was not in the best interests of the children. We disagree. The trial court in its reasoning considered the possibility of a long-term foster care arrangement which would allow the mother ongoing contact with one or both of the children. The court noted the oldest child and his mother do not have a close relationship, and he does not want to see his mother. Since September 1990 all visits between him and the mother have been suspended at the request of the mother, with his agreement. The evidence shows he has shown improvement psychologically and emotionally.

It does not go without notice that a closer relationship exists between the mother and her younger son. In considering the best interest of this child, however, we note the testimony of therapists which asserts this mother's continued contact with him creates confusion in the child and stagnates his personal growth and development. Further, at least on one occasion the mother's presence at a foster home disrupted the foster care placement. Currently, both children are in foster family environments described by their therapists as ideal. Both foster families have committed themselves to a long-term basis of care.

We find the termination of parental rights is in the best interest of both these children and such is the appropriate permanency option.

AFFIRMED.