IN THE COURT OF APPEALS OF IOWA

No. 8-510 / 98-0314

IN THE INTEREST OF S.T., B.C., and D.C., Minor Children,

S.S., Mother,
Appellant.

FILED
OCT 29 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

Appellant claims the juvenile court erred in terminating her parental rights rather than entering a permanency order. **AFFIRMED.**

Kellyann M. Lekar of Roberts and Stevens, P.L.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, and Steven J. Halbach, Assistant County Attorney, for appellee State.

Timothy D. Ament of Gartelos, Wagner & Ament, Waterloo, for minor children.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

Appellant Shawn appeals following the juvenile court's decision to terminate her parental rights to her children, Shawna, born in 1988; Breaunna, born in 1993; and Darren, born in 1994.[1] Shawn contends the bond she has with her children supports the entry of a permanency order and not termination. We affirm.

On March 2, 1996, Shawn began serving a ninety-day jail sentence after she was convicted of forgery, credit card fraud, and driving while her license was suspended. She left the children with relatives. The relatives were not able to care for the children. They were placed in foster care and found to be children in need of assistance under Iowa Code sections 232.2(c)(2) and (f). There is no such code section. It appears it was intended to be a finding under sections 232.2(6)(c)(2) and (f) (1997).[2] No objection having been made to the section used, we proceed as if the statute had been properly cited.

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[1] The fathers of Shawna and Breaunna did not contest termination of their parental rights, and they are not parties to this appeal. The parental rights of Darren's father, Todd, were not terminated.

[2] 6. *"Child in need of assistance"* means an unmarried child:

c. Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

. . . .

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

. . . .

f. Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

Iowa Code § 232.2(6)(c)(2) and (f).

After Shawn was released from jail in May 1996, she began to participate in parent skill development and individual therapy. She also had supervised visitation with the children.

Breaunna and Darren were placed with Darren's father, Todd, in August 1997. They have done well in this placement. Todd wants to have custody of Darren and seeks to adopt Breaunna.

In October 1997, the State filed a petition to terminate Shawn's parental rights. At the termination hearing, Shawn admitted she could not care for the children. She asked the court to enter a permanency order which would allow her to maintain continued contact with the children. The juvenile court found Shawn's lack of consistency, stability, and honesty had a detrimental impact upon the children. The court terminated Shawn's parental rights pursuant to sections 232.116(1)(c), (e), and (g).

Shawn contends the juvenile court should have entered a permanency order which would allow her to maintain some contact with her children. She claims many of her problems were the result of her inability to receive proper treatment for her mental illness. The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994).

In September 1996, Shawn was diagnosed with a mixed personality disorder. In July 1997, she had a new psychological evaluation and was diagnosed with a bipolar disorder and a personality disorder. In October 1997, Shawn was diagnosed with attention deficit hyperactivity disorder. She was then given medication for this

disorder. Since that time, her mental health has improved. She contends this improvement will enable her to maintain a better relationship with her children. Shawn also claims Todd will allow her to have contact with Breaunna and Darren. Shawn believes it will be detrimental to Shawna if she knows Shawn has contact with the other two children and not with her.

Under Iowa Code section 232.104(3), prior to entering a permanency order convincing evidence must support all of the following:

> a. A termination of the parent-child relationship would not be in the best interest of the child.
> b. Services were offered to the child's family to correct the situation which led to the child's removal from the home.
> c. The child cannot be returned to the child's home.

Iowa Code § 232.104(3).

The interests of the children control a court's decision whether to grant a permanency order. *In re N.M.*, 528 N.W.2d 94, 96 (Iowa 1995). Termination may not be in a child's interests where there is a strong parent-child bond. *See In re S.V.G.*, 496 N.W.2d 262, 264 (Iowa App. 1992).

Shawn loves her children but has not been able, even with services offered, to reclaim them, although there was a recommendation made during the course of the proceedings the children be returned to her. In the three months prior to termination, Shawn was placed on medication and there has been an improvement in her ability to listen and concentrate. Shawn's relationship with Shawna also improved.

Shawna is now ten years old. She is well acquainted with her mother and will not forget her. Shawna has exhibited conflicting emotions about her mother. There

have been problems between them that are not resolved. Terminating Shawn's parental rights to Shawna will leave scars and may ultimately distance Shawna from her two younger half-siblings. Termination of Shawn's parental rights will free Shawna for adoption, although there is no promise she will find a satisfactory adoptive home.

The younger children are with Todd. Shawn advances Todd will allow her to see them. The Department of Human Services has recommended that he not. These children were only three and four when removed from Shawn's care and are not as closely bonded to her as is Shawna.

Cutting off Shawn's parental rights cuts off her responsibilities to contribute support to the children. It also allows Todd to totally cut her out of the lives of Breaunna and Darren. If Shawn's parental rights to these children are not terminated, she, in all probability, would be entitled to visitation with the children. Breaunna and Darren are always excited to see their mother when she has visitation, but they are glad to return to Todd's care, too.

It is difficult from this record to determine whether the children will be better served through termination of their mother's parental rights or through a permanency order. The juvenile court has determined termination is the better route. Giving deference to the juvenile court on credibility issues, we affirm.

AFFIRMED.