FILED
MAY 30 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE INTERESTS OF MICHELLE, MARK AND THERESA HUMPHREY,	)	Filed May 30, 1980
Children.	)	0-32 3-61987

Appeal from Pottawattamie District Court - Ross F. Caniglia, Judge.

Children, by guardian ad litem, appeal denial of petition to terminate natural parents' parental rights pursuant to chapter 600A, The Code 1977. - AFFIRMED.

John W. Logan, of Logan & Schulte, Council Bluffs, for minor children.

Marvin L. Vannier, of Perkins, Sacks & Hannan, Council Bluffs, for mother.

Patrick M. Carr, Assistant Pottawattamie County Attorney, for State of Iowa.

Michael Gallner, of Gallner & Gallner, Council Bluffs, for father.

Heard by Oxberger, C.J., and Donielson, Snell and Carter, JJ. Johnson, J., takes no part.

PER CURIAM

Michelle, Mark, and Theresa Humphrey, presently ages seven, six, and three respectively, by their guardian ad litem, appeal the denial of the petition to terminate the parental rights of their parents, Doris and Clark Humphrey. They assert the parental rights of Doris should have been terminated for any or all of the grounds listed in section 600A.8(4), (5), and (6), The Code 1977. They assert the parental rights of Clark should have been terminated for any or all of the grounds listed in section 600A.8(4), (6), and (7), The Code 1977. We affirm.

On October 25, 1976, all three children were adjudicated to be children in need of assistance. The children were placed in the custody of the Department of Social Services with a recommendation of foster care, and it was recommended that Doris and Clark avail themselves of family counseling. Prior to that adjudication, on June 29, 1976, Doris was granted a dissolution of marriage from Clark. Doris was awarded custody of the children and Clark was ordered to pay child support in the amount of $75 per child per month.

The matter of the children's care came for review on September 27, 1977, at which time it was ordered that the children remain in the custody of the Department of Social Services with a recommendation of foster care, and Doris was ordered to continue to avail herself of various programs offered by the Department of Social Services. At that time, the Department of Social Services also drew up a list of expectations for Doris and Clark, with which Doris and Clark agreed to comply.

On December 21, 1977, in light of the Department of Social Services' dissatisfaction with the parents' progress with respect to the proposed expectations, the State filed a petition to terminate the parental rights of Doris on the grounds listed in section 600A.8(4), (5), and (6), The Code 1977, and Clark on the grounds listed in section 600A.8(3), (4), (6), and (7), The Code 1977. On April 12, 1978, after a hearing, the district court denied the petition for termination of parental rights but found that the children were still in need of assistance and that they should continue to remain in foster care subject to reasonable allowances for parental visitation. The district court also ordered Doris to continue to participate in the programs provided by the Department of Social Services to help her attain minimal parental skills, and ordered Clark to make

arrangements for child support payments. The matter was declared subject to review within ninety days. The children, by their guardian ad litem, appealed from the April 12, 1978 order, and the supreme court granted permission to appeal from that order pursuant to Iowa R. App. P. 2 on May 25, 1978.

Our review is de novo. In re Ponx, 276 N.W.2d 425, 433 (Iowa 1979). Our rule prescribing the according of weight to the trial court's fact findings, especially with regard to the credibility of witnesses, Iowa R. App. P. 14(f)(7), is particularly applicable in termination cases. In re Long, 255 N.W.2d 140, 143 (Iowa 1977). In reviewing a trial court's decision on a petition to terminate parental rights, our primary consideration is the best interests of the child. Ponx, 276 N.W.2d at 433. There is a presumption that the interests of the children are best served by leaving them with their parents, however, that presumption must give way when, under the evidence, it conflicts with the State's duty as parens patriae to assure proper treatment to every child within its borders. Long, 255 N.W.2d at 143; In re Kester, 228 N.W.2d 107, 109 (Iowa 1975). Grounds for termination applicable to the case at bar are listed in section 600A.8, The Code 1977. A court may not grant a petition for termination unless one of the grounds listed is established by clear and convincing evidence. Ponx, 276 N.W.2d at 433; In re Voeltz, 271 N.W.2d 719, 723 (Iowa 1978); § 600A.8, The Code 1977. Doubts are usually resolved in favor of the parents. In re Scarlett, 231 N.W.2d 8, 12 (Iowa 1975).

Without engaging in a discursive discussion of the facts of this case, we conclude that the asserted grounds for termination have not been established by clear and convincing evidence. While we concede that the evidence shows that Doris and Clark are far from ideal parents, we believe that the efforts they have made under impoverished circumstances precludes termination at this time. Doris has cooperated with the Department of Social Services by attending programs geared toward her attainment of minimal parental skills. While her cooperation has at times been less than full and inspired, and progress in developing her parental skills has been less quickly attained than was hoped, the evidence shows her progress has not been insignificant and is such that none of the asserted grounds under section 600A.8 has been established by clear and convincing evidence to justify termination of her parental rights at this time. We also concede that Clark has not complied with his child support requirements. However, there was evidence that Clark did on occasion contribute

money out of his small and irregular income to Doris for the care of the children. Clark has also participated in the care of the children as a babysitter when Doris had commitments outside the home. Consequently, we do not think any of the grounds of section 600A.8 asserted against Clark has been established by clear and convincing evidence to justify termination of his parental rights at this time. We affirm the trial court's order.

AFFIRMED.