IN THE COURT OF APPEALS OF IOWA

No. 9-037 / 08-2024
Filed February 19, 2009

IN THE INTEREST OF K.R.M.,
Minor Child,

C.L.M., Mother,
Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott, District Associate Judge.

A mother appeals the termination of her parental rights. **REVERSED AND REMANDED.**

Steven J. Holwerda of Holwerda Law Office, Newton, for appellant mother.

Shawn Lane, pro se appellee.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, R. Steven Johnson, County Attorney, and James W. Cleverly Jr., Assistant County Attorney, for appellee State.

Meegan Keller, Altoona, for minor child.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

POTTERFIELD, J.

A mother appeals from the juvenile court order terminating her parental rights to her child.[1] She contends the juvenile court erred in determining clear and convincing evidence existed in the record to support the termination of her parental rights. Upon our de novo review, we reverse.

I. Background Facts and Proceedings.

The mother, C.L.M., is herself adjudicated a child in need of assistance (CINA) due to her parents' substance abuse problems and C.L.M.'s behavioral issues. C.L.M. was fourteen years old when she became pregnant. She entered a program at the House of Mercy that provides assistance to adolescent pregnant women. While there, she gave birth to a son, K.R.M., in June 2007. The State filed a CINA petition immediately following K.R.M.'s birth, based upon his mother's lack of maturity and the likelihood of imminent harm. K.R.M. was adjudicated CINA on July 26, 2007. C.L.M. and infant K.R.M. resided together at House of Mercy for the first four months of K.R.M.'s life.

On October 26, 2007, C.L.M. was dismissed from the House of Mercy program because she was not complying with program requirements. She skipped school and was defiant and angry. The Iowa Department of Human Services (DHS) placed C.L.M. in Four Oaks, which has a twelve- to eighteen-month residential treatment program. Four Oaks does not have a program that accommodates young parents with their children, nor does it offer parenting classes or help. C.L.M. was placed there to work on her own trust issues that resulted from a chaotic family life where she experienced sexual abuse and had

[1] The father has not appealed the termination of his parental rights.

substance abusing parents. K.R.M. was placed in family foster care near Four Oaks to facilitate visitation between mother and son.

For the first six months of C.L.M.'s placement at Four Oaks, she continued to struggle with her own behavior — defiance, lying and impulsivity. During that time, she was suspended from high school and often did not earn her visits with K.R.M. However, in April 2008, C.L.M. started to make good progress. Her attitude and behaviors were positive and she actively participated in her treatment. C.L.M. attended daily skill groups, individual skill sessions with her advocate, and weekly therapy with her therapist. C.L.M. managed her anger better. She interacted with her peers better. She became a leader and a role model for other residents. She saw K.R.M. regularly and her parenting improved. C.L.M. worked on building a more positive relationship with her own parents, especially her mother. She was doing better at school, although she is not a good test-taker. C.L.M. proudly earned an A in her class in child development, and developed a good relationship with K.R.M.'s foster mother.

The State filed a petition to terminate her parental rights on September 11, 2008, alleging K.R.M. could not be returned to C.L.M. because "[s]he is not able to return to her home nor have a child in her care."

An October 2008 DHS report noted continued progress for C.L.M.: she met program expectations, earned home visits with her own parents, and visited K.R.M. on a consistent basis. She attended classes and behaved appropriately. C.L.M. used coping and anger management skills she had learned. C.L.M. continued to attend daily skill groups, individual skill sessions with her advocate,

and weekly therapy with her therapist. C.L.M. would soon be eligible to be released from Four Oaks.

A termination hearing was held on November 24, 2008. At the hearing, witnesses testified about C.L.M.'s progress, most noting she was a very different person than when she entered the Four Oaks program. Edward Beard, C.L.M.'s social worker, noted that C.L.M. continued to need support and structure. Luis Antonio Cruz, previously C.L.M.'s youth counselor and advocate (he had changed employment), acknowledged her progress, but noted that parenting skills were not taught at Four Oaks. Steven Seuferlein, C.L.M.'s youth counselor and shift leader at Four Oaks, testified as to the changes he had seen in her behavior. He recommended a residential facility for C.L.M. that focuses more on her mothering skills than her own behavior.

C.L.M. presented the testimony of Renae Halder, the program coordinator at Lighthouse Host Home, a transitional program for pregnant and/or parenting mothers ages sixteen to twenty-six. Ms. Halder stated the program provides support to young mothers and offers help with parenting, living skills, gaining employment, or going back to school. Women did not necessarily have to have current custody of their children to enter the program, so long as they were working on gaining custody. Women and their children were allowed to stay in the program up to two years. Ms. Halder stated that though she had not yet gone through the formal interview process, C.L.M. met the general eligibility requirements for the program and that there were currently openings available. In her own testimony, C.L.M. asked to go to the Lighthouse program with K.R.M. and to be given a chance to parent him, to work on school, and to get a job.

The juvenile court terminated C.L.M.'s parental rights pursuant to Iowa Code sections 232.116(1)(d) (2007) (requiring proof of prior adjudication, subsequent offer or receipt of services to correct situation, and proof that circumstances leading to adjudication continue to exist) and 232.116(1)(h) (child three years or younger, adjudicated CINA, removed from the physical custody of the child's parent for at least six months of the last twelve months, and cannot be returned to parent's custody).

On appeal, C.L.M. contends DHS placed her in a treatment program that they knew would take longer than the statutory timetable. She argues that the program worked as it was intended and now that she is able to work toward reunification with her child in an appropriate program, it was wrong for the juvenile court to terminate her rights without allowing her that opportunity.

II. Scope and Standard of Review.

We review termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). "Clear and convincing evidence" means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Our primary concern is the best interests of the child. *J.E.*, 723 N.W.2d at 798. In evaluating the best interests of a child, we consider both the immediate and long-term interests. *Id.* We "afford a rebuttable presumption that the best interest of a child is served when custody is with the natural parents." *In re N.M.*, 491 N.W.2d 153, 156 (Iowa 1992).

III. Discussion.

To support termination of a parent's rights, the court must determine that a child would suffer harm if returned to the parent's care. *In re J.R.*, 478 N.W.2d 409, 412 (Iowa Ct. App. 1991); *see In re Chad*, 318 N.W.2d 213, 219 (Iowa 1982). That a child would suffer harm by a return to a parent must be shown by clear and convincing evidence. *In re D.P.*, 465 N.W.2d 313, 315 (Iowa Ct. App. 1990).

The question is whether there is clear and convincing evidence that K.R.M. could not be returned to C.L.M.'s care at the time of the termination hearing without being subject to "some harm which would justify the adjudication of the child as a child in need of assistance." Iowa Code § 232.102(5)(a)(2). From our de novo review of the record, we conclude the answer is no.

All agree here that C.L.M. has made great progress. Testimony was presented showing that there is a safe placement at Lighthouse for C.L.M. where she can work toward reunification with her child and continue to receive treatment and support focusing more on her parenting. Although C.L.M. is not able to parent K.R.M. independently, she is able to do so in the structured setting offered by the Lighthouse program. The program allows a mother and her child to stay up to two years, provides parenting help and instruction, and offers school and work opportunities. The juvenile court acknowledged C.L.M.'s opportunity to seek admittance into the Lighthouse program, but did not indicate why or whether it would not have met the needs of K.R.M.

The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978);

Wisconsin v. Yoder, 406 U.S. 205, 233, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). There is a rebuttable presumption that a child's interests are best served by leaving the child in the care of the child's parents. *See In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990). Our cases have emphasized that in times of need parents should be encouraged to look for help in caring for their children without risking loss of custody. *In re Guardianship of Sams*, 256 N.W.2d 570, 573 (Iowa 1977); *Hulbert v. Hines*, 178 N.W.2d 354, 361 (Iowa 1970). It has been said that "[t]he presumption preferring parental custody is not overcome by a mere showing that such assistance has been obtained." *Sams*, 256 N.W.2d at 573. Even less so by a showing that such assistance is sought. We do not find clear and convincing evidence in the record before us that supports termination under either statutory ground: the conditions that led to K.R.M.'s adjudication as CINA do not continue (Iowa Code section 232.116(1)(d)); and K.R.M. can in fact be returned to C.L.M.'s custody in the structured setting of the Lighthouse program (Iowa Code section 232.116(1)(h)). Nor does the evidence rebut the presumption a child should be with its parent. We recognize C.L.M. continued to make progress toward case permanency plan goals even after the State filed the petition for termination. Because we do not find clear and convincing evidence supports the grounds for termination cited by the juvenile court, we reverse the termination of C.L.M.'s parental rights.

C.L.M. also contends termination is not in K.R.M.'s best interests because they are bonded. Testimony in this case was K.R.M. has difficulty with transitions. There was also testimony that the foster family with whom K.R.M. resides had decided not to adopt him if termination occurred. Thus, with

termination of parental rights, K.R.M. would lose both his mother and his foster family. We agree with C.L.M. that when there is the opportunity for K.R.M. to be reunified with his mother at the Lighthouse program, termination is not in his best interests.

The law requires a "full measure of patience with troubled parents who attempt to remedy a lack of parenting skills." *C.B.*, 611 N.W.2d at 494. We find that the juvenile court erred in not considering C.L.M.'s plan to reside at the Lighthouse program. Not every parent can demonstrate the ability to care for a child independently. C.L.M. recognized the need for support and developed a concrete plan for obtaining that support and for keeping K.R.M. safe and nurtured.

We reverse the order terminating C.L.M.'s parental rights to KRM and remand to the juvenile court to direct the State to move expeditiously toward reunification.

REVERSED AND REMANDED.

Sackett, C.J., concurs specially. Miller, J. dissents.

SACKETT, C.J. (concurring specially)

I concur in all respects with the majority's opinion. I write separately to express my opinion on two issues. First, this case illustrates that with the right support and attitude a young parent can overcome his or her deficiencies. Our refusal to terminate here is important for a number of reasons, including (1) it recognizes the mother's progress, (2) it shows other young parents whose child or children are found to be in need of assistance that if they are willing to make the effort to improve their lives, their rights will not be terminated, and (3) it shows support for programs such as the one here that assisted the mother in turning her life around and becoming a responsible person so that she is ready to parent her child.

Secondly, though the issue of the father's rights and responsibilities is not before us, I am frustrated that in terminating the father's rights the juvenile court has released him from any responsibility to support this child. I question whether terminating his parental rights and his support obligation for the child was prudent and in the child's best interests when the issue of the mother's rights had not been fully litigated and restoring her rights[2] will leave her as the only parent responsible for the child's support. *See In re K.J.K.*, 396 N.W.2d 370, 371 (Iowa Ct. App. 1986). Furthermore, the child appears to be receiving state support. Therefore, the public interest is also involved. Parents are legally obligated to support their children and courts should be slow in making children wards of the state, particularly where, as here, the current foster parents are not interested in adopting the child, so it is doubtful that even if the juvenile court was or would be

[2] I recognize that our decision is still subject to further review.

affirmed there would be an adoption in the immediate future. *See Anthony v. Anthony*, 204 N.W.2d 829, 833 (Iowa 1973); *K.J.K.*, 396 N.W.2d at 371.

MILLER, J. (dissenting)

I respectfully dissent, being convinced the State proved at least one of the two statutory grounds for termination of C.L.M.'s parental rights and that termination is in K.R.M.'s best interests.

Because I would affirm the judgment of the juvenile court, I would find it necessary to discuss one issue raised by C.L.M. but not addressed in the majority opinion. C.L.M. claims the juvenile court's ruling violated her "substantive due process rights." She argues that her placement in the Four Oaks program led her to believe that if she successfully completed the program while maintaining contact with K.R.M. reunification would occur, but then the State filed for termination when she was making progress. C.L.M.'s due process claim does not appear to have been presented to the juvenile court, and clearly was not passed upon by that court. C.L.M. has not preserved error on this claim and I would not further address it. *See In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003) ("Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal.").

As noted by the juvenile court, according to her own witnesses C.L.M. was wild, rowdy, and rambunctious as a child. She was placed in the House of Mercy so she could be taught and learn life skills and parenting skills. She refused to go to classes, exhibited anger and hostility, defied staff, and was verbally aggressive to peers. She was discharged from the House of Mercy.

C.L.M. was next placed in Four Oaks. According to her advocate at Four Oaks, the actual length of time to complete that program is individually based, the program is designed to be a six-month program, but seven months is the

shortest time within which a participant has completed it. During her first six months in the program, from late October 2007 to the end of April 2008, C.L.M. made minimal progress. Somewhat incompletely summarized, as found by the juvenile court, C.L.M.: was defiant and argumentative; would not accept responsibility for her actions but instead blamed peers, the staff, and others; acted inappropriately with peers and had poor boundaries with boys; self mutilated; became angry when confronted; shouted, cursed, threw things, and ran to her room and slammed the door when angry; was late to classes, skipped classes, and was suspended from school three times for tardiness, skipping classes, insubordination, and otherwise inappropriate behavior; required physical restraint after an episode of assaulting staff members; required physical restraint again after an episode of assaulting another girl; increased her lying over time; chose recreation over a scheduled visit with K.R.M.; failed to earn or attend visits with K.R.M.; and made little effort to develop a relationship with K.R.M.

Beginning about the end of April 2008, C.L.M.'s attitude, behaviors, and progress improved as recognized by the juvenile court and noted in this court's opinion. However, as shown by the evidence and as found by the juvenile court, although by the time of the termination hearing C.L.M. had "about achieved to the point she could take care of herself as well as other girls her age [could take care of themselves]," "she cannot take care of a child; not now, and not reasonably soon." The evidence showed that C.L.M. was not even ready to have unsupervised visitation with K.R.M.

The juvenile court found that C.L.M. would still need support and structure to meet her own needs, the addition of needed parental training "would

overwhelm her," and placing K.R.M. with her would place him at risk. It found that C.L.M. could not yet even take care of herself, let alone provide care for another person. These findings are fully supported by the record and I readily agree with them.

C.L.M. was originally placed in the House of Mercy with K.R.M., a placement that would allow her to deal with her many emotional and behavioral issues, begin to develop some basic parenting skills, and develop a bond with K.R.M. She refused to cooperate and was discharged. Although C.L.M. began to make progress in the months immediately before the termination petition was filed, she had been defiant and uncooperative and had made essentially no progress in the first ten months of K.R.M.'s life. Recent positive steps do not eliminate C.L.M.'s past refusal to utilize offered and available services, and do not eliminate her self-imposed absence from K.R.M.'s life. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000).

Our supreme court has been emphatic that after passage of a period of removal established by statute a case must be viewed with a sense of urgency. *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990). In this case C.L.M. made essentially no efforts toward reunification until after the six months established by section 232.116(1)(h)(4) had passed. At the time of the termination hearing she was not close to being able to accept responsibility for herself, much less responsibility for K.R.M.

As cogently noted in one of our cases,

> We find no provision in the statute purporting to extend the time interval for teenage parents, and we decline to furnish one. The Iowa legislature has determined that a child's rights in this

> regard are not a function of his or her parent's age. Termination should occur if the statutorily prescribed interval has elapsed and the parent remains unable to care for the [child].

In re M.R., 487 N.W.2d 99, 103 (Iowa Ct. App. 1992).

The only element of what is now Iowa Code section 232.116(1)(h) in dispute is its fourth and final element, whether the State proved by clear and convincing evidence that at the time of the termination hearing K.R.M. could not be returned to C.L.M. without being exposed to some harm that would cause him to remain a child in need of assistance. *See In re M.M.*, 483 N.W.2d 812, 814 (Iowa 1992); *In re R.R.K.*, 544 N.W.2d 274, 277 (Iowa Ct. App. 1995). To satisfy this element, it need not be shown that a child *would suffer harm* if returned to the parent; *the threat of probable harm* will justify termination of parental rights, and the perceived harm need not be the one that supported the child's removal from the home. *In re M.M.*, 483 N.W.2d at 814. As previously noted, in findings fully supported by the record the juvenile court found that C.L.M. could not yet take care of herself, much less also care for K.R.M. I would conclude the State proved by clear and convincing evidence that K.R.M. could not be returned to C.L.M. without being subject to the threat of neglect that would cause him to remain a child in need of assistance, and thus proved the grounds for termination pursuant to section 232.116(1)(h). I would find it unnecessary to determine whether the State also proved the grounds for termination pursuant to section 232.116(1)(d). *See In re S.R.*, 600 N.W.2d 63, 64 (Iowa Ct. App. 1999) ("When the juvenile terminates parental rights on more than one statutory ground, we need only find grounds to terminate under one of the sections cited by the juvenile court to affirm.").

I am also convinced the record shows that termination is in K.R.M.'s best interests. K.R.M. lived with C.L.M. only the first four months of the seventeen months he had lived at the time of the termination hearing, and during those four months his care was closely supervised and to some extent provided by persons other than C.L.M. For the next six months C.L.M. was rather sporadic and inconsistent in her visitations with K.R.M. C.L.M. contends she is bonded with K.R.M. The weight of the evidence is to the contrary. The DHS worker was unaware of any bond. C.L.M.'s Four Oaks advocate opined that C.L.M.'s relationship with K.R.M. was like that of a babysitter. Termination of C.L.M.'s parental relationship with K.R.M. would not be detrimental to him because of any substantial parent-child relationship.

Testimony does show that K.R.M. has difficulty with transitions, and that his current foster family does not intend to adopt him if termination occurs. He will thus lose his relationship and bond with his foster family whether C.L.M.'s parental rights are or are not terminated, and transition from his foster family thus should not be a factor in determining whether C.L.M.'s parental rights should be terminated.

K.R.M. has been away from C.L.M. for all but the first four months of his life. He is in need of stability, security, and permanency, and C.L.M. is not an option to meet those needs either now or within the reasonably foreseeable future. I would conclude the State proved termination of C.L.M.'s parental rights is in K.R.M.'s best interests.

In summary, I would affirm the detailed and well-reasoned findings and judgments of the juvenile court.