

IN THE COURT OF APPEALS OF IOWA

No. 9-775 / 09-1186
Filed October 7, 2009

**IN THE INTEREST OF R.S., S.S., and K.S.,
Minor Children,**

T.S., Mother,
Appellant.

Appeal from the Iowa District Court for Dallas County, Virginia Cobb,
District Associate Judge.

A mother appeals from the termination of her parental rights to three
children. **AFFIRMED.**

Donna Schauer of Schauer Law Office, Adel, for appellant mother.

Thomas J. Miller, Attorney General, Janet L. Hoffman and Kathrine Miller-
Todd, Assistant Attorneys General, Wayne Reisetter, County Attorney, and Sean
Weiser, Assistant County Attorney, for appellee State.

Steve Clarke of Des Moines Public Defender's Office, Des Moines, for
minor children.

Considered by Vogel, P.J., and Potterfield and Mansfield, JJ.

POTTERFIELD, J.

T.S. appeals the termination of her parental rights to three children, R.S., born in 2003, S.S., born in 2005, and K.S., born in 2007. We affirm.

I. Background Facts & Proceedings.

This termination of parental rights stems from child-in-need-of-assistance (CINA) proceedings after a fourth child abuse report to the Iowa Department of Human Services (DHS) concerning T.S. and her children. Reports in January 2006, May 2006, and October 2007, were founded based on failure to provide adequate shelter. The fourth report resulted after R.S., S.S., and K.S. were removed by ex parte order on January 4, 2008. T.S. had been committed to a hospital with suicidal ideations and left the children with a seventy-six-year-old¹ man who was unable to care for them due to his medical conditions. The house in which the S. family had lived was uninhabitable.² While in the hospital, T.S. agreed to the children's placement in foster care.

The children were adjudicated CINA in an April 11, 2008 order. Due to the condition of T.S.'s home, supervised visits took place elsewhere. T.S. did attend supervised visits with her children twice a week for two hours.

T.S. underwent a psychological evaluation on April 28 and 29, 2008, with psychologist Dr. William Martin. Dr. Martin prepared a lengthy report in which he

¹ The file refers to this gentleman variously as seventy-six or seventy-eight years old. T.S. would provide only a first name of the gentleman.

² It appears from this record that T.S. and her grandfather own many rental houses. T.S. is described as a "hoarder" and has a pattern of living in a place with her children and grandfather until it becomes unsanitary and uninhabitable and then moves into another unit. The fact that T.S. has many units available to her had—on more than one occasion—created difficulty for DHS in attempting to determine the welfare of the children.

stated, “[m]ost notable in the test results was the consistent evidence of denial, lack of insight, and lack of willingness to supply much detailed information.” He also noted:

Very significantly, this patient indicated that secretly when her children are returned to her, she hoped to have another child. This statement is very important and reflects the profound lack of insight evidenced in [T.S.’s] decision-making. Even with the disclosure of an elderly friend of her grandfather’s urinating and defecating on furniture, *she apparently cannot understand the negative implication for her children. Further, she apparently sees no need to parent children in a stable environment*

. . . .

It is also worth pointing out that while the patient reported a life-long interest in raising, caring for, and the sale of animals, she found ways to rationalize the neglect which required the removal of most of these animals from her care. *The lack of concern about the animals along with the [lack of concern for] optimal development of her three young children is alarming. This assessment has identified a longstanding personality disorder in [T.S.]. Diagnosis of a personality disorder reflects habitual and maladaptive methods of relating, behaving, thinking, and feeling.* Unfortunately, the patient’s narcissistic and anti-social features indicate that meeting her own needs are primary, even though she expresses a desire to have her children in her care.

. . . Her profound level of defensiveness, lack of insight, and obvious lack of cooperation in dealing with agencies who are attempting to ensure the health and welfare of her children does not bode well for their optimal development. Certainly during their formative years especially, children require structure and consistency, something that is obviously not present in [T.S.]’s approach to parenting, work, and relationships.

(Emphasis added.) Dr. Martin recommended treatment, but noted that individuals similar to T.S. “are highly resistive to engaging in supportive psychotherapy.” T.S. declined the offer of therapy.

Progress report notes from visit supervisors indicate T.S. attended supervised visits, but often failed to feed K.S. or check her diaper during the

visits. One July 15, 2008 note by case coordinator Nicole Haberl under the heading "current or potential risks" reads:

[T.S.] has been recommended for mental health therapy, she refused to go. [T.S.] refuses for the department to hold a family team meeting. [T.S.] has not been able to provide a safe, clean home for children since the open[ing] of the case. [T.S.] doesn't respond or act on any interventions that this worker or the safety support staff educates her about.

A dispositional hearing on August 18, 2008, continued children's placement with DHS with twice weekly visits at a location other than the mother's home. T.S., through counsel, reported that she had received and reviewed a list of twelve items that needed to be completed before visits could progress to being held in the home. T.S. hoped to complete those items "within the next week or so," anticipating that supervised visits in the home could then progress to unsupervised visits, and ultimately the return of the children.

A review hearing took place on October 15, 2008. DHS sought to reduce visits due to T.S.'s lack of progress. T.S. argued against the reduced visitation, contending that the items remaining on the home improvement list did not pertain to areas of the house where the children would be during visits. The court ruled that visits would be reduced to once per week at a location other than the home and asked that pictures of the house be provided "in the next couple of weeks" for the court's review.

T.S. also argued that she was receiving inadequate parenting education during the supervised visits. She acknowledged that she had declined DHS's offered therapy. Acknowledging that "it's difficult to teach parenting skills at the same time a visitation is going on," the court ordered parenting classes be

offered. The court asked that a review hearing be held in November to address specific issues.

On November 19, 2008, the court heard T.S.'s continuing request for expanded visitation. Pictures of the S. home were presented and DHS social worker Marcia Hoffman, assigned to the S. family since January 2008, testified about her ongoing safety concerns with the home. DHS recommended that supervised visits remain as set: away from the home, one time per week for two hours. The children's guardian ad litem asked that visits remain as set and that T.S. be required to maintain the safety and suitability of the house for two months before visitation be moved there. T.S. asked that visits be moved to her home and be increased to twice a week. The court asked for a report in two weeks indicating that the remainder of the work had been completed on the house and that it was safe for children; the court also asked for recommendations for a transition plan³ concerning visits.

On December 18, 2008, DHS service providers toured the house and "agreed that the home was safe and clean at the present time, however, it would need to remain that way for a period of time before the supervised family

³ In a December 30, 2008 letter described at a later hearing, the following transition plan was presented:

Specifically, that would involve the completion of the parenting classes. It looks like that if successfully completed would end on March 19th. If the home was maintained the visits could be increased per the schedule on April 1st, and that would be held at the mother's home, and if those continued to go well they could be semi supervised as of approximately May 1st, again, that depends on how things are going, and unsupervised visitation would be looked at as of June 1st this year.

interactions could be returned to the home.” Weekly drop-in visits to assess the home would occur.

On January 13, 2009, the State filed a petition to terminate T.S.’s parental rights.

On January 14, 2009, a permanency hearing commenced, but the State moved to continue the remainder of the hearing to allow T.S. to present evidence on her request for an additional six months to work toward reunification. Further hearing was set for February 4 at which evidence regarding permanency and termination would be taken.

At the February 4th hearing, T.S.’s attorney informed the court that T.S. had maintained a safe, clean house since December 30, she was attending parenting classes, and “continu[ed] to do everything she was asked.” The court ordered visits to continue at DHS discretion, “and if the circumstances are such that DHS sees the ability to vary from that plan and proceed to the next stage sooner, I would encourage that to happen.”

On February 17, 2009, T.S. gave birth to C.S.

On February 16, 2009, more than one year after her children were removed from T.S.’s care, her case worker summarized the situation as follows.

[T.S.] has not yet proved that she can maintain a safe and clean home for a significant period of time. She continues to have serious financial difficulties and lack of a consistent income. [T.S.] continues to attend the . . . parenting class each week but the instructor reports that she refuses to be an active participant in the class and shows no interest in the class’s teachings, discussion or activities. [T.S.] continues to refuse individual therapy or [family team meetings]. Because of the severity of the children’s behavior

problems^[4] and T.S.'s lack of parenting skills, Social Worker does not feel T.S. is capable of safely parenting her three children at this time.

In a letter dated February 18, 2009, the therapist for R.S. and S.S., Peggy Clark, outlined the ongoing behavioral concerns reported by the foster parents—including severe temper tantrums, the girls' "significant attachment issues," and the themes of the girls' play therapy. She summarized:

These play themes are not healthy normal "play for life rehearsal" as is observed in other unaffected children. However, [these themes] are indicative of children with emotional concerns. Also, I have seen little progress throughout the therapy process. Themes and roles have remained consistently the same, demonstrating very little change in their internal worldviews. This is often the case when children are internally fearful of their safety. . . .

Upon reviewing the issues of this case, I would at this time recommend that termination of parental rights be pursued for all three of the [S.] children. I do not make this recommendation lightly however, given the fact that their mother has not been able to demonstrate that she can provide physical and emotional stability and safety after a year and that these children are at a very critical period in their development. . . . It is already apparent that the [S.] children have a compromised attachment quality, which is being expressed through their unhealthy behaviors and interactions as well as in the therapy process. Without proper care and stability, they will continue to struggle with self-esteem/image concerns, trust in caregivers to care for them and thus use unhealthy means of meeting self needs. The use of unhealthy means to meet one's emotional needs and unhealthy worldview can then produce long lasting affects in their relationships throughout their lifetime as well as a higher propensity for many personality disorders.

The termination hearing was held on March 11, 2009. R.S. and S.S.'s therapist testified that they both suffered from attachment disorders and were in need of a permanent home. She testified that it was likely T.S. also had an attachment disorder, but even if T.S. were willing to begin therapy now,

⁴ The older two girls apparently urinated and defecated purposely in inappropriate places, they displayed inappropriate sexual behaviors, and had intense temper tantrums.

“attachment work takes a long time” and it was not reasonable to believe sufficient progress could be made in the next three to four months to allow the children to be returned to T.S.

Marcia Hoffman testified:

It’s a success that she kept her visits, and she did that. It’s a success that she attended the parenting classes. It’s a success that she does have a home that is safe to live in. But all of those accomplishments don’t really mean anything if you attend a parenting class and you’re not willing to change or learn, and if you keep your visits but you still can’t relate to your children or you’re willing to change or you’re willing to take direction from a person role modeling appropriate parenting for you. So there are successes but it’s taken 15 months to get there, and, again, I don’t think these children can wait for a parent.

Ms. Hoffman also testified there were no services requested that DHS had not followed through with. Individual therapy had been recommended throughout the CINA proceedings, parenting classes had been offered, and family team meetings had been offered. All had been repeatedly declined or consented to only after court order.

T.S. testified asking for visits to occur in her home. She testified that she now realized she had problems expressing emotions and hoped that therapy could help her. She asked for an additional four months to show the court that she could make changes. T.S. was asked if she had made any requests of DHS for services that had not been met. She responded:

I have asked to be explained to what other services they could possibly offer. And it was never explained to me in a way that I could understand other than just therapy.

Q. But you haven’t made any specific request? A. No. I think I did mention medical at one time when I had a really severe sinus infection, and I know I need glasses.

She informed the court that she would not disclose the names of the girls' fathers, because she had safety concerns ranging from one father's violent tendencies to other fathers' mental health and drug abuse issues. She thought one father might be dead. T.S.'s counsel argued in closing that T.S.'s "newly discovered" attachment disorder warranted additional time for T.S. to initiate and participate in counseling.

The court delayed ruling on the termination petition pending notification to various Indian nations of the possibility that the children might be eligible for enrollment. Following negative responses from the Indian nations, on July 23, 2009, the court ordered termination of T.S.'s parental rights to R.S. and S.S. under Iowa Code section 232.116(1)(d) (2009) (CINA adjudication, parent offered services, and circumstances continue) and K.S. under section 232.116(1)(h) (child under three years of age, CINA adjudication, removed from parent's custody for at least six of last twelve months, clear and convincing evidence that children cannot be returned at the present time). The court found that reasonable efforts had been made to eliminate the need for the children's removal, the children could not be returned to her at this time, and that termination was in their best interests.

T.S. appeals. She argues reasonable efforts were not made toward reunification and there is not clear and convincing evidence that the children cannot be returned to her.

II. Scope and Standard of Review.

The scope of review in termination cases is *de novo*. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be proved by

clear and convincing evidence. *In re T.P.*, 757 N.W.2d 267, 269 (Iowa Ct. App. 2008). Evidence is clear and convincing when it leaves no serious or substantial doubt about the correctness of the conclusion drawn from it. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). Our primary concern in termination cases is the best interests of the children. *In re A.S.*, 743 N.W.2d 865, 867 (Iowa Ct. App. 2007).

III. Discussion.

Iowa Code section 232.102(7) requires DHS to “make every reasonable effort to return the child to the child’s home as quickly as possible consistent with the best interests of the child.” In *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000), the court explained that “[t]he State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of a parent.” The focus of reunification is on the health and safety of the child, and mandates a permanent home for a child as early as possible. *Id.*

This record supports a finding that the State made reasonable efforts at reunification consistent with these children’s best interests. While we seriously question whether restricting T.S.’s visits in October 2008 was necessary for the children’s safety or that such a restriction can be viewed as furthering the goal of reunification,⁵ the State did provide T.S. with adequate opportunities to demonstrate her willingness to parent her children keeping paramount their need for safety. T.S. only consented to services reluctantly. She consented to mental health treatment at the eleventh hour. T.S. contended she was not offered

⁵ A decision to restrict visits seems antithetical to reunification. It is understandable that parents would distrust the sincerity of the State’s purported efforts at reunification when visits are restricted.

parenting education, but the record belies the complaint. Moreover, when T.S. did attend parenting classes, she only minimally participated. “A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting.” *Id.* at 495.

“Insight for the determination of the child’s long-range best interests can be gleaned from ‘evidence of the parent’s past performance for that performance may be indicative of the quality of the future care that parent is capable of providing.’” *Id.* (quoting *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981)). T.S. has a long history of resistance to services. Dr. Martin noted that trait in his April 2008 evaluation. We do not believe granting T.S. additional time to address her mental health issues at this stage in the children’s lives is either warranted or in their best interests.

After thoroughly reviewing the record, we also conclude there is clear and convincing evidence supporting the termination of parental rights. These children are in dire need of stability and cannot presently be returned to T.S. We affirm the termination of T.S.’s parental rights.

AFFIRMED.